

T5113

JURAK

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

TRANSFER NO. 5113
WATER RIGHT NO. 32-02135

This is to certify that: **BERTON DALE JURAK**
SUSAN JURAK
HC 61 BOX 1315
DUBOIS ID 83423

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	2.70 CFS	903.0 AF

SOURCE

GROUNDWATER

Priority: 04/15/1975

LOCATION OF POINT(S) OF DIVERSION:

SENW , Sec. 31, Township 11N, Range 35E
CLARK 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>
10N	35E	6	Lot 3 (NENW) 31	Lot 4 (NWNW) 32	Lot 5 (SWNW) 32	
			SENW 32			127
11N	35E	31	NESW 33	Lot 3 (NWSW) 33	Lot 4 (SWSW) 33	
			SESW 32			131
						258

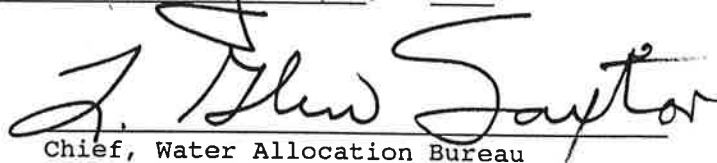
Total number of acres irrigated: 258

CONDITIONS OF APPROVAL AND REMARKS

Right 32-02135 is subject to the conditions of the Final Order in the matter of Application for Transfer 5113.

Dated this 27th day of

February, 1998.


Chief, Water Allocation Bureau

Page 1 of 6STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 5113APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant BERTON DALE AND/OR SUSAN JURAK Phone (208) 374-5232
Post Office address HC 61 BOX 1315 DUBOIS ID 83423

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 _____

SEE ATTACHMENT 1

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
32-02135 08-15-1956 2.70 CFS IRRIGATION 04-01 to 11-01

2. Total amount of water being transferred 2.70 CFS cubic feet per second and/or _____ acre-feet per annum.
3. Source of water GROUNDWATER tributary to _____
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	NW	31	11N	35E	CLARK	

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	
10N	35E	6					31	32	32	32									127
							L3	L4	L5										
11N	35E	31									33	33	33	32					131
												L3	L4						

Total acres 258

PART 1**6. General Information:**

a. Description of diversion system _____
WELL, PUMP TO TWO (2) PIVOT SYSTEMS FOR SPRINKLER IRRIGATION AT PLACE OF USE.

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

SEE ATTACHMENT 1

d. Remarks:

SEE ATTACHMENT 1

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 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 32-02135 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☒ Other SEE ATTACHMENTS

3. Source of water GROUNDWATER tributary to _____
08-15-1956

4. Date or priority _____

5. Water is used for the following purpose:

amount 2.70 cfs for IRRIGATION purposes from 04-01 to 11-01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.70 cfs cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	NW	31	11N	35E	CLARK	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
11N	35E	29									40			40		32	15		127
		31					40			28	2	13	40	8					131
												L-3	L-4						

Total acres 258

9. Describe any other water rights used for the same purpose as described above 32-00051

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

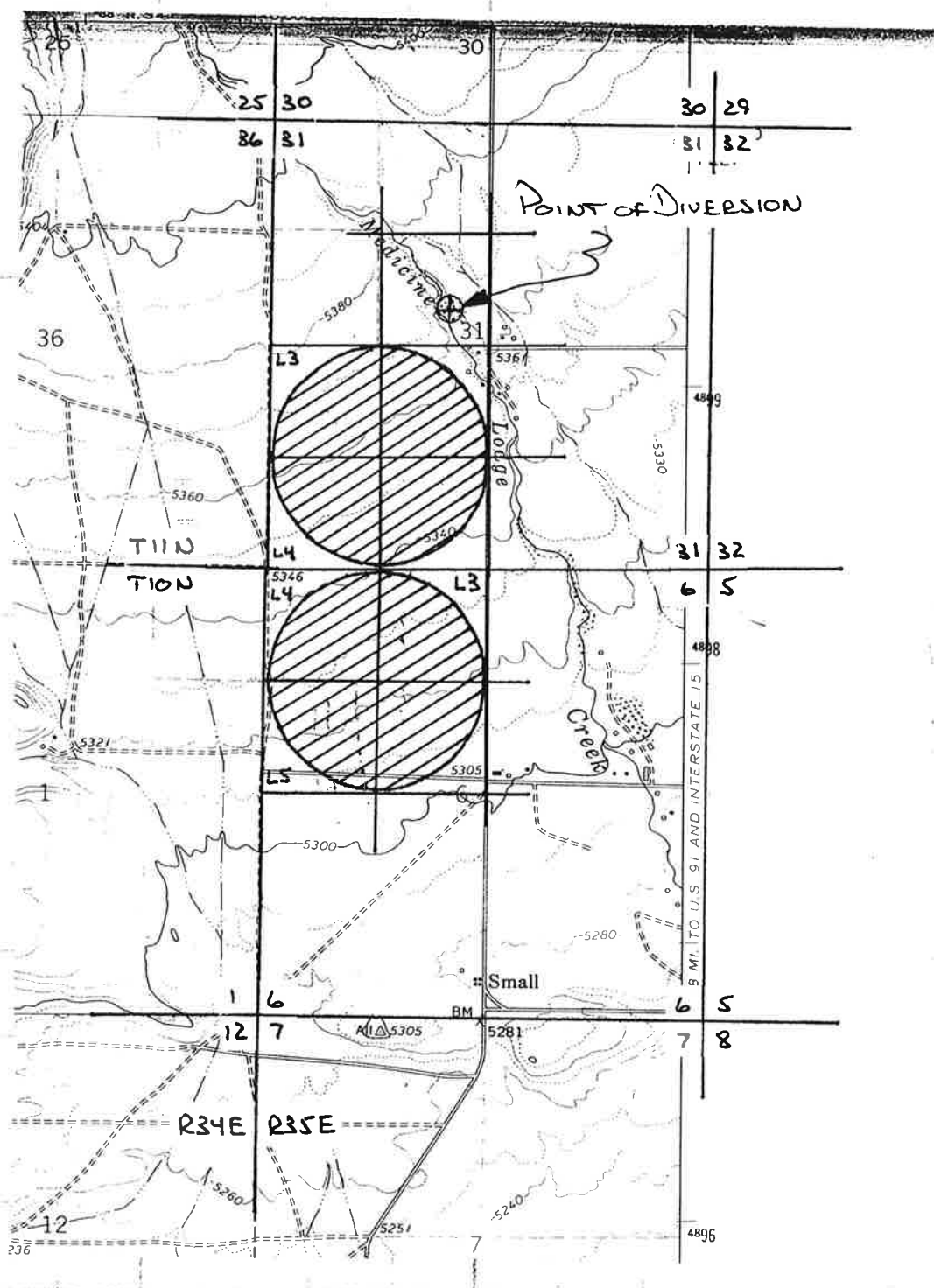
3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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 (cfs/ac-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
				to
				to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 29th day of May, 1997.

Betty J. Thompson
(Signature of Applicant)

Betty J. Thompson
(Notary Public)

BETTY J. THOMPSON, NOTARY PUBLIC
RESIDING AT IDAHO FALLS, IDAHO
MY COMMISSION EXPIRES: 7-1-99

My commission expires

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 1 attachments

Received by PRM Date 5-29-97 Protest filed by Mr. Sean Shenton

Prelim. check by PRM Fee \$100.00 E023271

Receipted by PRM Date 5-29-97

Published in Post Register Copies of protest forwarded by _____

Pub. dates August 2 & 14, 1997 Hearing held by _____ Date _____

Watermaster recommendation requested on July 31, 1997 Recommended for ☐ approval ☐ denial

Waterdist 32 rec'd. by _____

Copy of transfer sent to lien holder _____

ATTACHMENT 1

Part 1A (continued):

2. Describe the reason for the proposed change:

As per the applicants, the changes from the original record shown in this transfer reflect historical use as recorded in SRBA Notice of Claim A32-02135.

Part 1B (continued):

6. General Information:

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

Applicants hold that this transfer reflects historical changes made to the place of use several years ago. Please see attached documentation supplied by applicants as supporting evidence.

d. Remarks:

Please note that this transfer involves "unlayering" of groundwater previously used as a supplemental source to surface water from Medicine Lodge Creek. As per discussion with applicant, use of groundwater right 32-02135 on the proposed place of use was traded several years ago for the use of surface water right 32-00051 on different land. Since that time, the applicants believe that 32-02135 has been used as the sole source of water for the proposed place of use. Note that surface right 32-00051 is still recorded on the proposed place of use.

Transfer 32-02135
Berton Dale and/or Susan Jurak

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JUL 25 1997

Department of Water Resources
Eastern Region

March 10, 1997

To whom it may concern:

We Mark and Barbara Greene having been the owners of the property in the Medicine Lodge area of Idaho described as: GREENE ACRES - MEDICINE LODGE

do hereby certify that we, on (date) 1977 did sell to one Dean and Joanne Shanton a water right previously owned by us and being a "surface" water right, #32-00051 along with land described as: Section 28 - 280 ACRES
Section 29 - 200 ACRES Section 31 - 278.38 ACRES

This above noted water right was split from a "subsurface" well right which was retained by us and later sold to Burt and Suzan Jurak along with land described as:

GREENE ACRES - MEDICINE LODGE

The "subsurface water right #32-02135 has not been in the past, or will not be in the future subject to or adjoined to the water right now owned by Dean and Joanne Shanton. These water rights were meant to be used separately after the sale, and for the future. Neither party believe they have or claim the water right to the other parties' water right or water use.

The undersigned certify the above information to be accurate to their knowledge.

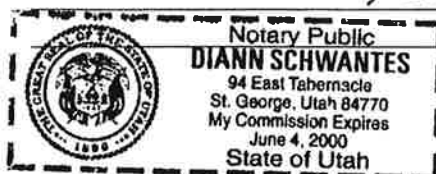
Mark Greene
Mark Greene

7/22/97
Date

Barbara Greene

Date

Notary Seal





Mark & Barbara
Greene

76 West Tabernacle Street
St George, Utah 84770
(801) 628-6999
1-800-350-6999

3/9/97

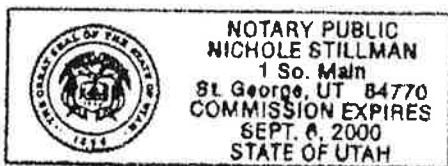
To Whom It May Concern:

The sale of 3.2 cubic feet per second decreed
water from Medicine Lodge Creek, priority date
May 15 1898 No. 32-0051 was sold to Dean Shenton
and Joanne M. Shenton.

This sale has no connection with the ground water
or the well water pertaining to Greene Acres
property.

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 11 DAY OF March 1997
Nichole Stillman
NOTARY PUBLIC

Mark H. Greene
Mark H. Greene



MAKE CHECK PAYABLE TO:

BONNIE G BURNS

CLARK COUNTY TAX COLLECTOR

P O BOX 266

DUBOIS, ID 83423 374-5455

1ST HALF DUE

TAX 331.70

PEN

INT

COST

TOT

1996 TAX BILL/RECEIPT

BILL#

1221

CODE AREA

3-00

PARCEL NUMBER

RP11N35E312410A

L

61,653

I

14,850

P

12,945

TOT MV

89,448

2ND HALF DUE

TAX 331.70

PEN

INT

COST

TOT

FULL DUE

TAX 663.40

PEN

INT

COST

TOT

WAC

5.600

TOT ACS

272.780

JURAK BERTON DALE & SUSAN

HC 61 BOX 1315

DUBOIS

ID 83423

TAXING DISTRICT

RATE

AMOUNT

STATE

.000000000

COUNTY

.004333702

387.64

SCHOOL #161

.002892888

258.76

CEMETERY

.000091153

8.14

LIBRARY

.000099065

8.86

AMOUNT DUE

.007416808

663.40

SEC 31 TWP 11 RGE 35

E2W2, LOTS 2-4

*** 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
RECEIVED OR POSTMARKED BY THE DUE DATE.

KEEP TOP PORTION FOR YOUR RECORDS.

PERSONAL CHECKS ARE YOUR RECEIPT
SUBJECT TO BANK CLEARANCE.

COPY

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH PAYMENT
PERSONAL CHECKS ARE SUBJECT TO BANK CLEARANCE

JURAK, BERTON DALE & SUSAN

COPY

1996

1221

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH PAYMENT
PERSONAL CHECKS ARE SUBJECT TO BANK CLEARANCE

JURAK, BERTON DALE & SUSAN

COPY

1996

1221

2ND HALF TAX

1ST HALF TAX

FULL TAX

AMOUNT DUE

331.70

AMOUNT DUE

331.70

663.40

CLARK COUNTY

RP11N35E312410A

3-00

PEN

INT

COST

TOT

CLARK COUNTY

RP11N35E312410A

3-00

PEN

INT

COST

TOT

PEN

INT

COST

TOT

DELINQUENT IF NOT PAID ON OR BEFORE

JUNE 20, 1997

DATE PAID

CHECK #

PAID BY

CASH

DELINQUENT IF NOT PAID ON OR BEFORE

DECEMBER 20, 1996

DATE PAID

PAID BY

CHECK # 5870

CASH

TXNT 1-84

MAKE CHECK PAYABLE TO:

1996 TAX BILL/RECEIPT

PARCEL NUMBER

BONNIE G BURNS

RP10N35E062410A

CLARK COUNTY TAX COLLECTOR

BILL#

888

CODE AREA

3-00

L

54,646

IF O BOX 266

DUBOIS, ID 83423 374-5455

1ST HALF DUE

2ND HALF DUE

FULL DUE

TOT MV

54,646

TAX 202.64

TAX 202.64

TAX 405.28

PEN

PEN

PEN

INT

INT

INT

COST

COST

COST

TOT

TOT

TOT

TOT ACS

199.240

JURAK BERTON DALE & SUSAN

HC 61 BOX 1315

DUBOIS

ID 83423

TAXING DISTRICT

RATE

AMOUNT

STATE

.000000000

COUNTY

.004333702

236.82

SCHOOL #161

.002892888

158.08

CEMETERY

.000091153

4.98

LIBRARY

.000099065

5.40

AMOUNT DUE

.007416808

405.28

SEC 6 TWP 10 RGE 35

LOTS 3-6, SENW

*** 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
RECEIVED OR POSTMARKED BY THE DUE DATE.

KEEP TOP PORTION FOR YOUR RECORDS.

PERSONAL CHECKS ARE YOUR RECEIPT
SUBJECT TO BANK CLEARANCE.

COPY

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH PAYMENT
PERSONAL CHECKS ARE SUBJECT TO BANK CLEARANCE

COPY

JURAK, BERTON DALE & SUSAN

1996

888

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH PAYMENT
PERSONAL CHECKS ARE SUBJECT TO BANK CLEARANCE

COPY

JURAK, BERTON DALE & SUSAN

1996

888

2ND HALF TAX

1ST HALF TAX

FULL TAX

AMOUNT DUE

202.64

AMOUNT DUE

202.64

405.28

CLARK COUNTY

RP10N35E062410A

3-00

PEN

INT

COST

TOT

DELINQUENT IF NOT PAID ON OR BEFORE

DATE PAID

PAID BY

JUNE 20, 1997

CHECK #

CASH

CLARK COUNTY

RP10N35E062410A

3-00

PEN

INT

COST

TOT

DELINQUENT IF NOT PAID ON OR BEFORE

DATE PAID

PAID BY

DECEMBER 20, 1996

CHECK # 5870

CASH

TXNT 1-94

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5113 TO CHANGE THE)
PLACE OF USE OF RIGHT NO. 32-02135)
IN THE NAME OF BERTON DALE AND/OR)
SUSAN JURAK)
_____)

FINAL ORDER

On January 16, 1998, the hearing officer for the Idaho Department of Water Resources (department) issued a Recommended Order in connection with the above captioned matter. None of the parties filed a petition for reconsideration, exceptions or briefs in connection with the Recommended Order. Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order.

FINDINGS OF FACT

Description of the Proceedings

1. Berton Dale and Susan Jurak (applicants) filed Application for Transfer No. 5113 with the department on May 29, 1997. Notice of the application was published in The Post Register, Idaho Falls, on August 7 and 14, 1997. A protest against approval of the application was received from Dean Shenton (protestant) on August 25, 1997.
2. The department requested and received comments from the watermaster for Water District 32-C, Greg Shenton, who expressed concern that if License No. 32-02135 is a supplemental right, transferring it could injure the owner of the primary right.
3. A conference was held on this matter on October 28, 1997, and a hearing was held on December 2, 1997, at Idaho Falls. The applicants were present at the hearing and were represented by Attorney Kent W. Foster. The protestant was present and represented by Attorney Blair Grover. Testimony was taken and exhibits were admitted.
4. On December 10, 1997, the protestant filed a motion for late filing of exhibits. The applicant has not objected to the motion.

RECEIVED
MAR 26 1998

Description of Right No. 32-02135

5. License No. 32-02135 authorizes the use of 2.70 cfs from a ground water source for irrigation of 258 acres of land located as follows:

80 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 29
47 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 29
68 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 31
63 acres in the SW $\frac{1}{4}$, Section 31, all located in
Township 11 North, Range 35 East.

The point of diversion for License No. 32-02135 is a well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, Township 11 North, Range 35 East. The license authorizes the diversion of up to 774 acre feet per year with a priority date of August 15, 1956.

6. The application that initiated License No. 32-02135, and the department's field examination report upon which License No. 32-02135 is based, indicate that the use of ground water under the license is supplemental to a surface water right (No. 32-00051, priority date of May 15, 1888) decreed from Medicine Lodge Creek. The department's field examination in 1963 found that the well was constructed to pump water into Medicine Lodge Creek to replace water diverted upstream from Medicine Lodge Creek for use on the lands listed in the license.

7. The use described in Claim No. A32-02135, filed in the Snake River Basin Adjudication (SRBA) by the applicants, differs from that of License No. 32-02135 with respect to the place of use. The claimed place of use is 127 acres in the NW $\frac{1}{4}$, Section 6, Township 10 North, Range 35 East, and 131 acres in the SW $\frac{1}{4}$ Section 31, Township 11 North, Range 35 East. The water from the well is applied through two circular pivot systems.

Description of the Application

8. Application for Transfer No. 5113 seeks to change the place of use for License No. 32-02135 to 127 acres located in the NW $\frac{1}{4}$ of Section 6, Township 10 North, Range 35 East and 131 acres located in the SW $\frac{1}{4}$ of Section 31, Township 11 North, Range 35 East. The requested change would make the place of use identical with that claimed on SRBA Claim No. A32-02135, and according to the applicants, change the department's water right records to match the use that has been made under License No. 32-02135 since the mid-1970s.

Issues Considered in the Hearing

9. The following issues were identified for consideration in the hearing:
- a. Do the applicants own all of the right sought to be transferred?
 - b. Can a supplemental right be converted to a primary right?

- c. Has the right to use License No. 32-02135 on the protestant's place of use been forfeited through non-use?
- d. If the water available under a primary right is sufficient so that a supplemental right is not needed for a period of 5 or more years, does forfeiture apply to the supplemental right?
- e. Does the department have authority to determine ownership of a right in processing an application for transfer filed under Section 42-222, Idaho Code?

Facts Concerning Ownership of Right No. 32-02135

10. Greene Acres, a limited partnership which included, perhaps among others, Mark H. & Barbara J. Greene, husband and wife, and David R. & Sherrie A. Yeaman, husband and wife, owned a parcel of land in Clark County including the land listed in License No. 32-02135 and the land to which the right is sought to be transferred in this proceeding.

11. The protestant acquired the land previously owned by Greene Acres in Sections 28 and 29, Township 11 North, Range 35 East, on November 18, 1977. The place of use under License No. 32-02135 in Section 29 (127 acres) is included in the land covered by this transaction (herein called the "Section 29 land"). The contract of sale, the warranty deed from the Yeamans, and quit claim deeds from Greene Acres, Vernon & Hellen E. Farnworth, and Don E. & Gayle N. Cassity (previous owners), conveying this land to the protestant are all silent concerning License No. 32-02135. However, each of these documents include the following provision:

Together with 3.2 cubic feet per second decreed water from Medicine Lodge Creek, priority date May 15, 1888, Decree No. 32-0051.

12. A letter dated August 16, 1977, from the protestant to Dave Yeaman (Protestant's Exhibit 8) documented discussions concerning the purchase of the land by the protestant. This letter includes the following sentence:

Included in the sale of this property are all water rights which are appurtenant to and decreed to the above described lands. Also all rights and ownership to ditch right of ways and diversion structures (two) which are presently being used. (emphasis added)

13. A warranty deed dated July 8, 1996, from Mark H. & Barbara J. Greene to the applicants conveyed the following described land:

Lot 1, Section 1, Township 10 North, Range 34 East.

Lots 3, 4, 5, and 6 and SE¼NW¼ Section 6, Township 10 North, Range 35 East.

Lots 2, 3, and 4 and E½NW¼ W½SW¼ Section 31, Township 11 North, Range 35 East.

The land in Section 31 includes 131 acres licensed under Right No. 32-02135. The warranty deed includes "appurtenances" but does not specifically refer to License No. 32-02135 or any other water right.

Facts Concerning Use of Water Under License No. 32-02135

14. In the mid-1970s, Greene Acres reconstructed the well and pumping system associated with License No. 32-02135 and began irrigating the present place of use applying the water through two circular pivots. The use of water under License No. 32-02135 was enlarged from use as a supplemental water supply to use as a primary water supply.

15. The protestant was an employee of Greene Acres for six or seven years during the late 1970s and early 1980s. He helped replace a plastic mainline with steel pipe from the well to the pivots in 1977. He testified that as part of his duties as an employee for Greene Acres that he operated the well and sprinkler system to produce crops on the lands using the circular pivots.

16. Since reconstruction of the well and associated irrigation system in the mid-1970s, it has not been possible to divert ground water from the well into Medicine Lodge Creek in exchange for surface water diverted upstream from the creek.

17. Ground water was used to irrigate the land under the circular pivot systems starting in 1975. Since then the land has been irrigated and a crop produced each year except for 1997.

18. The Section 29 land owned by the protestant has not received ground water since about the 1977 irrigation season, either directly or in exchange for Medicine Lodge Creek water diverted out of priority. This land has been in a federal set-aside program (CRP) since the mid-1980s and is under contract to remain in the CRP for another 10 years.

19. Water District 32-C records document that the following volumes of water (listed in 24 hour-cfs) from Medicine Lodge Creek have been diverted for use on the protestant's land under decreed Right No. 32-00051 during the period 1978 to 1987:

1978	318	1983	489
1979	0 (no water available)	1984	386
1980	630	1985	165
1981	322	1986	509
1982	512	1987	153

20. Water District 32-C records from 1957 to 1977 do not include any documentation of ground water injected into Medicine Lodge Creek in exchange for water taken from the creek out of priority. The records document a pattern that Water Right No. 32-00051 was delivered water during the early part of the irrigation season with deliveries generally curtailed in mid-summer of most years as the flow of the creek declined allowing only earlier priority rights to receive water.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all of the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho, and is in the local public interest as defined in Section 42-203A, Idaho Code; . . .

2. The applicants bear the burden of coming forward with evidence that the proposed transfer will not result in an enlargement in use, will not injure other water rights and is consistent with conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicants bear the burden to show that their proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The applicants bear the ultimate burden of proof regarding all issues.

5. The record for this matter can be augmented to include the exhibit filed on December 10, 1997.

6. The Idaho Supreme Court in Jenkins v. State Department of Water Resources, 103 Idaho 384 (1982) determined that the department is statutorily required to examine all evidence of whether a proposed transfer will injure other water rights or constitute an enlargement of the original right. Therefore, evidence which demonstrates that an applicant does or does not own the right sought to be transferred must be considered by the department in determining whether the actual holder of that right or other rights will be injured.

7. Section 42-222, Idaho Code, provides that "Any person, entitled to the use of water ... who shall desire to change the point of diversion, place of use ... shall first make

application to the department of water resources for approval of such change." The department must determine that the applicant for a transfer is the owner of the water right or has the authorization of the owner to seek the change in the right.

8. Actions taken by the parties before and after the sale of the Section 29 land to the protestant support a conclusion that the deeds conveying ownership to the protestant of the land to which part of License No. 32-02135 was appurtenant do not operate to convey an interest in License No. 32-02135.

9. Greene Acres, acting in the mid-1970s to reconstruct the irrigation system to divert and use ground water on the present place of use, demonstrated their intention to retain and use all of License No. 32-02135. The reconstruction of the system and the physical use of water associated with License No. 32-02135 at its present place of use began prior to the sale of the Section 29 land to the protestant.

10. The actions of the protestant in using only Medicine Lodge Creek water on the lands he purchased in Section 29, by not making a call for ground water under License No. 32-02135, and in assisting to rebuild the system and produce crops using the circular pivots demonstrated his understanding that License No. 32-02135 was not included in his purchase of the Section 29 land. The protestant did not receive any ownership interest in License No. 32-02135 through the purchase of the Section 29 land.

11. Ownership of License No. 32-02135 was retained by Greene Acres and was conveyed with the purchase of the land to the applicant.

12. The issue of forfeiture of the right to use part of License No. 32-02135 on Section 29, Township 11 North, Range 35 East, is moot because the right has been transferred by operation of law for use on other land prior to purchase of the Section 29 land by the protestant.

13. The Idaho Legislature under Section 42-1425, Idaho Code, has approved a policy recognizing the validity of transfers made prior to November 19, 1987, where the diversion rate is not increased and other rights are not injured.

14. The Idaho Legislature, under Section 42-1426, Idaho Code, has approved a policy supporting recognition of certain enlarged uses of water made prior to November 19, 1987, under a water right with no increase in the rate of diversion and without complying with the mandatory permit system if other water rights are not injured by the enlargement.

15. Pursuant to the authority of the Director of the Department of Water Resources under Section 42-222, Idaho Code, to condition the approval of a change to a water right, the priority date of License No. 32-02135 should be advanced to the date of the enlargement and the transfer approved with conditions to prevent injury to other rights, including all rights established in accordance with state law prior to the effective date of Section 42-1426, Idaho Code.

ORDER

Application for Transfer No. 5113 to change the place of use of License No. 32-02135 is hereby APPROVED, subject to the following conditions:

1. The date of priority of License No. 32-02135 is advanced to April 15, 1975.
2. This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.
3. After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 acre feet per year per acre at the field headgate for irrigation of the land upon which it is authorized to be used.
5. This transfer records a previously accomplished change in place of use and does not authorize changes to the place of use or point of diversion from that existing at the time Application for Transfer No. 5113 was filed with the department.
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 this transfer does not preclude the opportunity for review of the validity of the water right in the ongoing Snake River Basin Adjudication.

IT IS FURTHER ORDERED that the record for this matter is augmented to include the exhibit filed on December 10, 1997.

Signed in Boise, Idaho this 27th day of February, 1998.



KARL J. DREHER
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of March 1998, I have served the foregoing Final Order upon the parties of record in this proceeding by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the parties as follows:

BERTON DALE JURAK
SUSAN JURAK
HC 61 BOX 1315
DUBOIS ID 83423

DEAN SHENTON
HC 61 BOX 1110
DUBOIS ID 83423

KENT W FOSTER ESQ
PO BOX 50130
IDAHO FALLS ID 83405

BLAIR GROVER
GROVER AND ARCHIBALD
215 FARNSWORTH WAY
PO BOX 36
RIGBY ID 83442-0036


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1998

RECEIVED

JUN 26 1998

Department of Water Resources
Eastern Region

Dallas Jurak
HC 61, Box 1320
Dubois, Idaho 83403

VIA FAX No. 208-662-5203

Re: Water Right No. 32-02135 (Transfer No. 5113)

Dear Ms. Jurak:

Your letter of June 20, 1998, asks for clarification of Condition No. 5 of the Final Order dated February 27, 1998, approving Transfer No. 5113. A copy of the Final Order is attached for your reference. Condition No. 5 was included in the Order in response to information in the application indicating that the purpose of the transfer was to record the historic use of the right. Idaho law contemplates that an application will be filed and approval obtained prior to making a change in use of a water right. Because Application for Transfer No. 5113 was seeking to record a change in use that had already occurred, and because the basis for approval of the after-the-fact application relied upon the change having occurred prior to November 19, 1987, the condition needed to be included.

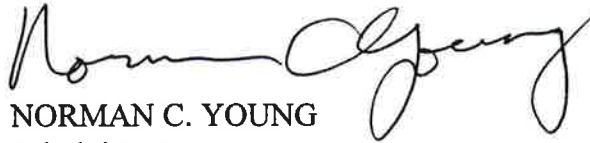
Condition No. 5 relates only to Transfer No. 5113, and will not prevent consideration of an application for transfer of Right No. 32-02135 that may be filed in the future provided that the approval criteria of Section 42-222, Idaho Code, are satisfied.

Finding of Fact No. 14 on page 4 of the Final Order recognizes that the ground water right was enlarged from a supplemental right to a primary right. Conditions No. 1 and No. 2 of the Final Order address this enlargement in use by advancing the priority date of Right No. 32-02135 and subordinating its use to rights that could be injured by the enlarged use. The approval of Transfer No. 5113 treats Right No. 32-02135 as a primary right because the enlargement occurred prior to November 19, 1987,

Dallas Jurek
June 23, 1998
Page 2 of 2

If additional information is needed, I will be happy to provide it.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young". The signature is fluid and cursive, with the first name "Norman" and last name "Young" clearly distinguishable.

NORMAN C. YOUNG
Administrator
Water Management Division

Attachment: Final Order

c: File 32-02135

Harold Jones, Eastern Region