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RECEIVED
DEC 03 2018
Department of Water Resources
Eastern Region

Attorneys for Jorgensen Farms Limited Partnership

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT
ORDER CORRECTING WATER RIGHT
TRANSFER NO. NO. 4842

AFFIDAVIT OF THOMAS J. BUDGE

STATE OF IDAHO)
 :SS
COUNTY OF BANNOCK)

Thomas J. Budge, being first duly sworn, deposes and states as follows:

1. I am over the age of 18, competent to testify, and state the following based upon my own personal knowledge.

2. I am the attorney for Jorgensen Farms Limited Partnership, the petitioner in this matter.

3. Attached hereto as Exhibit A is a true and correct copy of an excerpt from the Final Decree *In the Matter of General Determination of the Rights to the Use of Surface and Ground Water in the Bancroft-Lund Area*. This excerpt contains the decreed elements of water right nos. 13-2198 and 13-7005 which have since been renumbered 29-8240 and 29-8241.

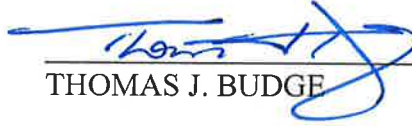
4. Attached hereto as Exhibit B is a true and correct copy of application transfer no. no. 4842 ("Transfer no. 4842").

5. Attached hereto as Exhibit C is a true and correct copy of the notice of publication of Transfer 4842.

6. Attached hereto as Exhibit D is a true and correct copy of the protest filed by Neibaur Farm Enterprises against Transfer 4842.
7. Attached hereto as Exhibit E is a true and correct copy of a letter from Neibaur Farm Enterprises withdrawing its protest against Transfer 4842.
8. Attached hereto as Exhibit F is a true and correct copy of the IDWR order approving Transfer 4842 and the transmittal letter accompanying the order.
9. Attached hereto as Exhibit G is a true and correct copy of a memo from IDWR staff member Pam Skaggs regarding Transfer 4842.
10. Attached hereto as Exhibit H is a true and correct copy of a memo by IDWR staff member Tim Luke regarding Transfer 4842.
11. Attached hereto as Exhibit I is a true and correct copy of an excerpt from IDWR Transfer Processing Memo 24.
12. Attached hereto as Exhibit J is a true and correct copy of an IDWR order correcting water right license no. 11-2008.
13. Attached hereto as Exhibit K is a true and correct copy of an IDWR order correcting water right license no. 22-7397.
14. Attached hereto as Exhibit L is a true and correct copy of an IDWR order correcting water right license no. 22-13457.
15. Attached hereto as Exhibit M is a true and correct copy of an IDWR order correcting water right transfer no. 69638.
16. Attached hereto as Exhibit N is a true and correct copy of an IDWR order correcting water right transfer no. 75147.
17. Attached hereto as Exhibit O is a true and correct copy of an IDWR order correcting water right transfer no. 77576.
18. Attached hereto as Exhibit P is a true and correct copy of an IDWR order correcting water right transfer no. 80061.

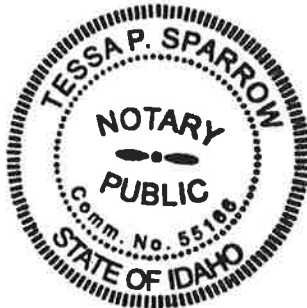
FURTHER YOUR AFFIANT SAITH NOT.

DATED this 29th day of November, 2018.


THOMAS J. BUDGE

STATE OF IDAHO)
 :SS
County of Bannock)

Signed or sworn to (or affirmed) before me on this 29th day of November, 2018, by
Thomas J. Budge.



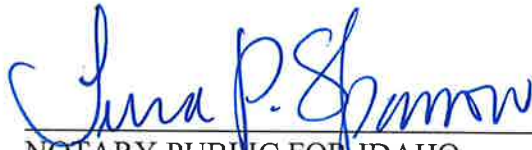

NOTARY PUBLIC FOR IDAHO
Commission expires: 10/05/2021

EXHIBIT A

Excerpt from Final Decree *In the Matter of General Determination of the Rights to the Use of Surface and Ground Water in the Bancroft-Lund Area*

RECEIVED

AUG 10 1992

143995

FILED

92 JUL 28 PM 1 56

CARIBOU CO. ID.

STATE OF IDAHO } ss.
County of Caribou

I hereby certify that this instrument was filed at the request
of Department of Water Resources
at 10:00 o'clock A m this 5th day of
August, 1992 in my office and duly
recorded in Microfilm Records
Rebecca Jenkins-Smith
Stephanie Lansberry NJO
Ex-Officio Recorder Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CARIBOU

In the Matter of General	)	Civil No. 2919
Determination of the Rights to	)	
the Use of Surface and	)	
Groundwater in the Bancroft-Lund	)	FINAL DECREE
Area.	)	

R. Keith Higginson, Director of the Idaho Department of Water Resources, filed a Motion for Final Decree on July 1, 1992, 1992. The motion came on for hearing July 28, 1992.

Based on the motion and the argument presented at hearing, the court finds and concludes as follows:

The Director's Report for the Bancroft-Lund Area was filed November 15, 1992. The court entered an Order Amending Report, which amended Finding of Fact No. 14 and Conclusions of Law 16 and 18, and amended the List of Claims/Rights Not Recommended.

Last Chance Canal Company and Utah Power & Light Company filed objections to the report.

The adjudication statute provides for entry of partial decree of uncontested matters, entry of further partial decrees as

FINAL DECREE, Page 1

MICROFILMED

APR 13 2000

MAY 14 1996

necessary to resolve objections and final decree incorporating all partial decrees. Idaho Code §42-1412(8)(9)(10). A List of the Uncontested Portions of Director's Report has been filed with the court as required by Idaho Code §42-1412(9), and hearing on the partial decree of uncontested matters is set for July 28, 1992.

A Stipulation Resolving Objections of Utah Power & Light Company and Last Chance Canal Company has been filed with the court along with a motion seeking approval of the stipulation. Hearing on the motion was set for July 28, 1992, immediately preceding hearing on partial decree of uncontested matters. Upon entry of the order approving stipulation there were no contested matters remaining to be resolved. Therefore, no partial decrees are necessary and the court may proceed with entry of the final decree completing the Bancroft-Lund adjudication.

THEREFORE, IT IS HEREBY ADJUDGED AND DECREED that:

All rights to the use of surface and groundwater from the Bancroft-Lund Area are as described in the Director's Report, except that:

1. The Findings of Fact and Conclusions of Law attached hereto are substituted for the Findings of Fact and Conclusions of Law in the Director's Report.

2. List of Claims/Rights Not Recommended attached hereto are substituted for the List of Claims/Rights Not Recommended in the Director's Report.

DATED this 28th day of July, 1992.

151
DANIEL C. HURLBUTT
District Judge

FINAL DECREE, Page 2 MICROFILMED
APR 13 2000

MAY 14 1996

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CARIBOU

IN THE MATTER OF THE GENERAL DETERMINATION)
OF THE RIGHTS TO THE USE OF THE SURFACE)
AND GROUNDWATERS IN THE BANCROFT-LUND AREA)

Civil No. 2919

DIRECTOR'S REPORT

INTRODUCTION

The above-entitled cause was initiated under the provisions of Idaho Code §42-1406, by submission of a petition containing signatures of more than five water users in the Bancroft-Lund Area, requesting that the Director of the Idaho Department of Water Resources obtain authority to commence a general adjudication of ground water rights in the Bancroft-Lund Area.

Pursuant to Idaho Code §42-1407, C. Stephen Allred, Director of the Department of Water Resources, petitioned the court on February 11, 1980, for an order commencing a general determination of the existing rights to the use of surface and ground water with point of diversion and place of use within the Bancroft-Lund Area. Orders authorizing the department to commence an investigation and determination of the various rights to the use of said waters and joining about 375 landowners and possible water users in

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APR 14 1996

18. Except for entries in the Listing of Water Rights with a basis of "application" or "permit", the surface and ground waters of the Bancroft-Lund Area water system have been found to have been appropriated as described in the Listing of Water Rights. The Listing of Water Rights generally describes the water rights as of June 16, 1980. However, the status of some rights has changed pursuant to administrative proceedings completed after June 16, 1980 but before January 1, 1990, and the Listing of Water Rights describes those rights as they existed upon completion of the administrative proceeding. A summary of those rights is found at pages Page xxiii to Page xxv.

Signed this 8TH day of November, 1991.


 R. KEITH HIGGINSON
 Director
 Idaho Department of Water Resources


 A. LYNNE KROGH-HAMPE
 Deputy Attorney General
 Idaho Department of Water Resources
 1301 North Orchard Street
 Statehouse Mail
 Boise, Idaho 83720-9000
 Telephone: (208) 327-7906

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APR 27 2000

MAY 14 1992

THIS RIGHT HAS BEEN SUPERCEDED BY A DECREE

CASE NAME Director's Report - Bancroft - Lund Area.

DECREE DATE 7/28/1992.

SEE DECREE FILE NO. 13-R

ALL ACTIONS TAKEN BEYOND THIS POINT HAVE BEEN BASED ON THE
DECREED VERSION OF THIS RIGHT & MAY MODIFY THE DECREED RIGHT.

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APR 27 2000

IDAHO DEPARTMENT OF WATER RESOURCES
 RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: NOV-12-1991

PAGE: A-40

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: GROUNDWATER						
13-02198	EVERETT W. SMITH 1670 TURNER RD. GRACE ID 83421	12/22/1958	IRRIGATION	04-15 10-15	2.88 CFS	LICENSE
			DOMESTIC	01-01 12-31	738.0 AFY	
					.04 CFS	
					1.2 AFY	
			TOTAL QUANTITY:		2.88 CFS	
			CONSUMPTIVE USE:		738.0 AFY	
					615.0 AFY	
	NON-IRRIGATION-USES:					
	DOMESTIC, 1 HOME					
	POINT OF DIVERSION:					
	T10S R40E S05					
	PLACE OF USE: IRRIGATION					
	SENW					
	T09S R40E S32	SWSW 19.0	SESW 19.0	SWSE 3.0	SESE 15.0	
	T10S R40E S05	NWNE 34.0	SWNE 28.0	NENW 38.0	NWNW 34.0	
		SWNW 28.0	SENW 28.0			
	246.0 ACRES TOTAL					
	PLACE OF USE: DOMESTIC					
	SAME AS OTHER USE					
	REMARKS: THE MAXIMUM COMBINED RATE OF DIVERSION UNDER THIS RIGHT AND RIGHT					
	13-07005 SHALL NOT EXCEED 3.82 CFS.					
	THE MAXIMUM COMBINED IRRIGATED LAND UNDER THIS RIGHT AND RIGHT					
	13-07005 SHALL NOT EXCEED 355 ACRES.					
	THIS RIGHT WHEN COMBINED WITH ANY OTHER RIGHTS SHALL NOT EXCEED A					
	DIVERSION RATE OF 0.02 CFS PER ACRE, A DIVERSION AMOUNT OF 3.0					
	AFY PER ACRE, NOR A VOLUME OF CONSUMPTIVE USE OF 2.5 AFY PER ACRE					
29-00570	GEORGE MAX JENKINS LARUE JENKINS 1438 MOUNTAIN RD. BANCROFT ID 83217	08/01/1959	DOMESTIC	01-01 12-31	.04 CFS	BENEFICIAL USE
					1.2 AFY	
			TOTAL QUANTITY:		.04 CFS	
					1.2 AFY	
	NON-IRRIGATION-USES:					
	DOMESTIC, 1 HOME					
	POINT OF DIVERSION:					
	T09S R39E S15					
	PLACE OF USE: DOMESTIC					
	NENE					
	T09S R39E S15	NENE				

96614 1 1991

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 APR 13 2000

AJ5856WP

IDaho DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: NOV-12-1991
PAGE: A-50

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM																				
SOURCE: GROUNDWATER																										
13-07005	EVERETT W. SMITH 1670 TURNER RD. GRACE ID 83241	05/15/1969	IRRIGATION	04-15 10-15	3.74 1056.0	CFS AFY																				
					TOTAL QUANTITY:	3.74 1056.0																				
					CONSUMPTIVE USE:	880.0 AFY																				
POINT OF DIVERSION: T10S R40E S05 SENW																										
PLACE OF USE: IRRIGATION																										
<table border="0"> <tr> <td>T09S R40E S32</td> <td>SWSW 16.0</td> <td>SESW 21.0</td> <td>SWSE 3.0</td> <td>SESE 20.0</td> </tr> <tr> <td>T10S R40E S05</td> <td>Lot 1 (NENE)33.0</td> <td>Lot 2 (NENE)34.0</td> <td>SWNE 28.0</td> <td>SENE 19.0</td> </tr> <tr> <td></td> <td>Lot 3 (NENW)40.0</td> <td>Lot 4 (NENW)40.0</td> <td>SWNW 36.0</td> <td>SENW 37.0</td> </tr> <tr> <td></td> <td>NWSE 21.0</td> <td>SWSE 4.0</td> <td></td> <td></td> </tr> </table>							T09S R40E S32	SWSW 16.0	SESW 21.0	SWSE 3.0	SESE 20.0	T10S R40E S05	Lot 1 (NENE)33.0	Lot 2 (NENE)34.0	SWNE 28.0	SENE 19.0		Lot 3 (NENW)40.0	Lot 4 (NENW)40.0	SWNW 36.0	SENW 37.0		NWSE 21.0	SWSE 4.0		
T09S R40E S32	SWSW 16.0	SESW 21.0	SWSE 3.0	SESE 20.0																						
T10S R40E S05	Lot 1 (NENE)33.0	Lot 2 (NENE)34.0	SWNE 28.0	SENE 19.0																						
	Lot 3 (NENW)40.0	Lot 4 (NENW)40.0	SWNW 36.0	SENW 37.0																						
	NWSE 21.0	SWSE 4.0																								

352.0 ACRES TOTAL

REMARKS: THE MAXIMUM COMBINED RATE OF DIVERSION UNDER THIS RIGHT AND RIGHT
13-02198 SHALL NOT EXCEED 3.82 CFS.
THE MAXIMUM COMBINED IRRIGATED LAND UNDER THIS RIGHT AND RIGHT
13-02198 SHALL NOT EXCEED 355 ACRES.
THIS RIGHT WHEN COMBINED WITH ANY OTHER RIGHTS SHALL NOT EXCEED A
DIVERSION RATE OF 0.02 CFS PER ACRE, A DIVERSION AMOUNT OF 3.0
AFY PER ACRE, NOR A VOLUME OF CONSUMPTIVE USE OF 2.5 AFY PER
ACRE.

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EXHIBIT B

Application for Transfer No. 4842

\$100 Fee

Page 1 of 8STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 4842

RECEIVED APPLICATION FOR TRANSFER OF WATER RIGHT

FEB 25 2000

PART 1

547-7214 M
3864

Department of Water Resources

Name of applicant Jorgensen Brothers C/O Terry + Keith Jorgensen Phone (208) 425-Post Office address 1928 old Hwy 30 BANCROFT ID 83217

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 BETTER PRODUCTIVE GROUND ON THE NEW PLACE OF USE

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

1. Right Number Priority Amount (cfs/ac-ft) Nature of Use Period of Use
- | Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|--------------|------------|--------------------|---------------|---------------|
| 13-02198 | 12/22/1958 | 2.88 | IRRIGATION | 4-15 to 10-15 |
| 13-07005 | 5/15/1969 | 3.74 | IRRIGATION | 4-15 to 10-15 |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred *3.82 cubic feet per second and/or 1065 acre-feet per annum.
3. Source of water GROUNDWATER tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	14	9S	40E	CARIBOU	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
9S	40E	13					38	39	39	38									154
		14	13		30	40		39	39	40									201

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APR 27 2000Total acres 355

PART 1

6. General Information:

a. Description of diversion system WELL AND PUMP TO PIVOTS

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

DRY FARM

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 _____

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Page 3 of 8Transfer No. 4842

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. 13-02198 Decreed to EVERETT W. SMITH
in case of STATE OF IDAHO vs. GERALD ACKERMAN ET AL
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice
☐ Warranty Deed
☐ Other _____
3. Source of water GROUNDWATER tributary to _____4. Date or priority 12/22/1958

5. Water is used for the following purpose:

amount 2.88 cfs for IRRIGATION purposes from 4-15 to 10-15
(cfs/ac-ft) amount 0.04 cfs for Domestic purposes from 1-1 to 12-31
(cfs/ac-ft) amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right *2.88 cubic feet per second and/or 738 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	NW	5	10S	40E	CARIBOU	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
9S	40E	32											19	19			3	15	56
10S	40E	5	34		28		38	34	28	28									190

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APR 27 2000

Total acres 2469. Describe any other water rights used for the same purpose as described above 13-07005

PART 2Transfer No. 4842

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	

MICROFILMED
 APR 27 2000

Total acres _____

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-07005 Decreed to EVERETT W. SMITH
in case of STATE OF IDAHO vs. GERALD ACKERMAN ET AL
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water GROUNDWATER tributary to _____

4. Date or priority 5/15/1969

5. Water is used for the following purpose:

amount 3.74 cfs for IRRIGATION purposes from 4-15 to 10-15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right *3.74 cubic feet per second and/or 1056 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	NW	5	10S	40E	CARIBOU	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals.
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
9S	40E	32											16	21			3	20	60
10S	40E	5	33	34	28	19	40	40	36	37						21	4		292
			11	12			13	14											

MICROFILMED
APR 27 2000

Total acres 352

9. Describe any other water rights used for the same purpose as described above 13-02198

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

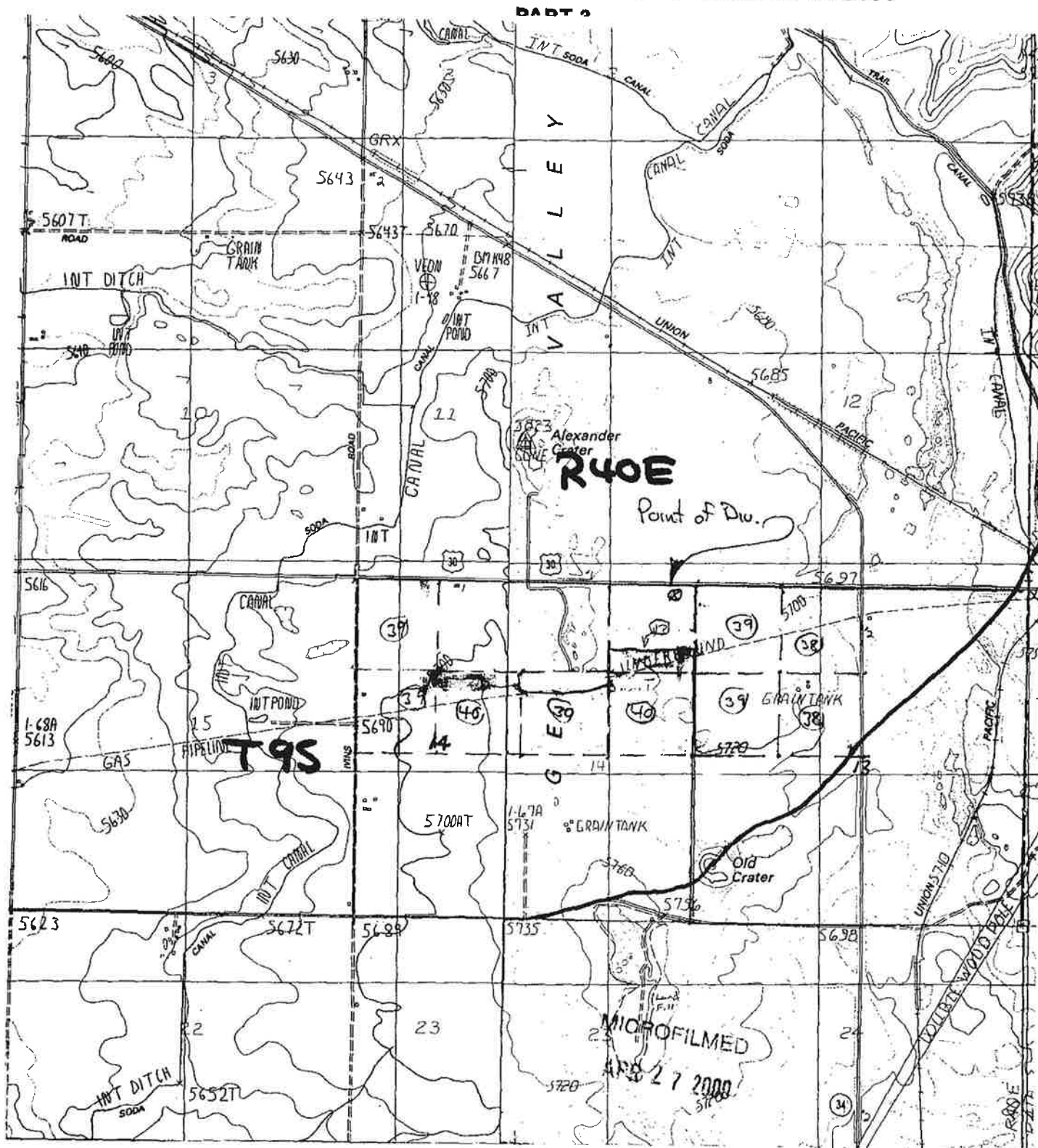
3. Lands irrigated or place of use:

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 _____

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



PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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

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

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

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

JORGENSEN BROTHERS

BY Terry Jorgensen
Terry Jorgensen (Signature of Applicant)

Subscribed and sworn to before me this 17th day of May, 1996

Paula J. Cost
(Notary Public)

My commission expires 3/5/98

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by WM Date 5/20/96 Protest filed by _____

Prelim. check by _____ Fee #100

Receipted by HWT #E022181 Date 5-20-96

Published in Caribou County Sun Copies of protest forwarded by _____

Pub. dates June 6 & 13, 1996 Hearing held by _____ Date _____

Watermaster recommendation requested on June 24, 1996 Recommended for ☐ approval ☐ denial

Groundwater Dist Dancroft Sund rec'd. _____ by _____

Copy of transfer sent to lien holder _____

MICROFILMED
APR 27 2000

AJ5808NP
(OD-26)

IDaho DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

10/31/95 08:49:05
Page 1

Water Right Number - 13-07005

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - +

+ - First Name - - +

+ - - - - Address - - - - - +

*** C - CURRENT OWNER ***
SMITH

EVERETT W

1 - 1670 TURNER RD
2 -
3 -

City- GRACE
Phone - 208-000-0000

State- ID Zip- 83241

+ - - Priority Date - - +
05/15/1969

+ - - Region - - - +
15 EASTERN

+ - - Stage - - - +
L - LICENSE

+ - - Status - - - - +

+ - - Source - - - - - +
GROUNDWATER

+ - - Tributary - - - - - +

+ - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County Diversion Name

10S 40E 5 SE NW (29) CARIBOU

+ - - Code Description Period From Period To Diversion Rate Diversion Volume +
01 - IRRIGATION 04/15 10/15 3.740 1056.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
3.740 1056.00 880.0

+ - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County

09S	40E	32	SW SW		16.0	01	IRRIGATION	(29) CARIBOU
09S	40E	32	SE SW		21.0	01	IRRIGATION	(29) CARIBOU
09S	40E	32	SW SE		3.0	01	IRRIGATION	(29) CARIBOU
09S	40E	32	SE SE		20.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NE NE	1	33.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NW NE	2	34.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SW NE		28.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SE NE		19.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NE NW	3	40.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NW NW	4	40.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SW NW		36.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SE NW		37.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NW SE		21.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SW SE		4.0	01	IRRIGATION	(29) CARIBOU

Total Acres: 352.0

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - 13-02198

MICROFILMED
APR 27 2000

Water right number - 13-07005

Prefix Translation: WATER RIGHT

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

THE MAXIMUM COMBINED RATE OF DIVERSION UNDER THIS RIGHT AND RIGHT
13-02198 SHALL NOT EXCEED 3.82 CFS.
THE MAXIMUM COMBINED IRRIGATED LAND UNDER THIS RIGHT AND RIGHT
13-02198 SHALL NOT EXCEED 355 ACRES.
THIS RIGHT WHEN COMBINED WITH ANY OTHER RIGHTS SHALL NOT EXCEED A
DIVERSION RATE OF 0.02 CFS PER ACRE, A DIVERSION AMOUNT OF 3.0
AFY PER ACRE, NOR A VOLUME OF CONSUMPTIVE USE OF 2.5 AFY PER
ACRE.

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

No Old Water Right Numbers found.

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

No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - +

+ - - - - Decree Defendant - - - +

+ - Decree Date - +
00/00/0000

+ - - Audit Fields - 02/12/90 SRBA 10/29/91 SKAW 11/27/91 CPSHAW 03/29/95 POST-STD

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

No Comments Found

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing - 00/00/0000	Field Inspection Made - 00/00/0000	Civil Case Number - 2919
Objection Filed Date - 00/00/0000	Field Inspection Flag -	Old Case Number -
Response Filed Date - 00/00/0000	Verified Date - 00/00/0000	Old Judicial District -
Claim Received Date - 00/00/0000	Last Amended Date - 00/00/0000	Temporary Right - P
Proof Due Date - 00/00/0000	Proof Made Date - 00/00/0000	Water District -
Licensed Date - 00/00/0000	Receipt Number - X999999	Federal/State Indicator - S
Claims Tape Error Flg -	POU Ownership Flag - Y	Presumption Flag -
Fee Exempt Flag -	Name Connector -	Notice of Error Flag -

MICROFILMED
APR 27 2000

AJ5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

10/31/95 08:48:29
Page 1

Water Right Number - 13-02198

Prefix Translation: WATER RIGHT

Old (0) Number -

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

*** C - CURRENT OWNER ***

SMITH

EVERETT W

1 - 1670 TURNER RD

2 -

3 -

City- GRACE

State- ID Zip- 83421

Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
12/22/1958 15 EASTERN L - LICENSE

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
GROUNDWATER

+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County Diversion Name

10S 40E 5 SE NW (29) CARIBOU

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
01 - IRRIGATION		04/15	10/15	2.880	738.00
43 - DOMESTIC		01/01	12/31	0.040	1.20

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
2.880 738.00 615.0

TwN	Rng	Sec	Tract	Lot	Acres	Code	Description	County
09S	40E	32	SW SW		19.0	01	IRRIGATION	(29) CARIBOU
09S	40E	32	SE SW		19.0	01	IRRIGATION	(29) CARIBOU
09S	40E	32	SW SE		3.0	01	IRRIGATION	(29) CARIBOU
09S	40E	32	SE SE		15.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NW NE		34.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SW NE		28.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NE NW		38.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	NW NW		34.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SW NW		28.0	01	IRRIGATION	(29) CARIBOU
10S	40E	5	SE NW		28.0	01	IRRIGATION	(29) CARIBOU

Total Acres: 246.0

+ - - Diversion Means -

+ - - Non-Irrigation Use - DOMESTIC, 1 HOME

+ - - Other Rights for Same Use - 13-07005

AJ5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

10/31/95 08:49:02
Page 2

Water right number - 13-02198

Prefix Translation: WATER RIGHT

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

THE MAXIMUM COMBINED RATE OF DIVERSION UNDER THIS RIGHT AND RIGHT
13-07005 SHALL NOT EXCEED 3.82 CFS.
THE MAXIMUM COMBINED IRRIGATED LAND UNDER THIS RIGHT AND RIGHT
13-07005 SHALL NOT EXCEED 355 ACRES.
THIS RIGHT WHEN COMBINED WITH ANY OTHER RIGHTS SHALL NOT EXCEED A
DIVERSION RATE OF 0.02 CFS PER ACRE, A DIVERSION AMOUNT OF 3.0
AFY PER ACRE, NOR A VOLUME OF CONSUMPTIVE USE OF 2.5 AFY PER ACRE

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

No Old Water Right Numbers found.

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

No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +

00/00/0000

+ - - Audit Fields - 02/12/90 SRBA 02/22/90 PEPPERSA 10/29/91 SHAW 11/27/91 CPSHAW 03/29/95 POST-STD

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

No Comments Found

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 2919
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 00/00/0000	Last Amended Date	- 00/00/0000	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	-
Licensed Date	- 00/00/0000	Receipt Number	- X999999	Federal/State Indicator	- S
Claims Tape Error Flg	-	POU Ownership Flag	- Y	Presumption Flag	-
Fee Exempt Flag	-	Name Connector	-	Notice of Error Flag	-

MICROFILMED
APR 27 2000

MAKE CHECK PAYABLE TO:
DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

CARIBOU COUNTY 1995 PROPERTY TAX NOTICE
CODE AREA 15

PARCEL NUMBER
RL 35410

MARKET VALUE HOMESTEAD NET VALUE

6,059 0 6,059

JORGENSEN, TERRY C ETAL
1928 OLD HWY 30
BANCROFT, ID 83217

TAXING DISTRICT **RATE* **AMOUNT**
COUNTY .5397089% 32.71
SCHOOL DIST #14 .6215843% 37.66
TURNER CEM. .0347819% 2.11
GRACE LIBRARY .0502908% 0.05

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APR 27 2008

E1/2SW1/4, SW1/4SW1/4, 120 AC.
SEC 33 T 9S-R 40 E

TOTAL TAX/SPECIALS 1.2463659% 75.53
-CIRCUIT BREAKER
-PREPAYMENT ON
NET TAX/SPEC DUE 75.53

*** 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.

1ST	TAX	37.77	2ND	TAX	37.76	FULL	TAX	75.53
HALF	PEN		HALF	PEN			PEN	
	INT			INT			INT	
	COST			COST			COST	
	TOT			TOT			TOT	

AT THE NORTH OF THE COURTHOUSE IS AN ELEVATOR AND
PARKING FOR SENIOR CITIZENS & HANDICAPPED PERSONS

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

1995

15

JORGENSEN, TERRY C ETAL RL 35410
1928 OLD HWY 30

MAKE CHECK PAYABLE TO:
DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

CARIBOU COUNTY 1995 PROPERTY TAX NOTICE
CODE AREA 15

PARCEL NUMBER
RL 35370

MARKET VALUE HOMESTEAD NET VALUE

26,676 0 26,676

JORGENSEN, TERRY C ETAL
1928 OLD HWY 30
BANCROFT, ID 83217

Smith

TAXING DISTRICT	**RATE*	**AMOUNT**
COUNTY	.5397089%	143.96
SCHOOL DIST #14	.6215843%	165.81
TURNER CEM.	.0347819%	9.28
GRACE LIBRARY	.0502908%	13.42

S1/2 S1/2 160 AC. SEC 32
T 9S-R 40 E

TOTAL TAX/SPECIALS	1.2463659%	332.47
-CIRCUIT BREAKER		
-PREPAYMENT ON		
NET TAX/SPEC DUE		332.47

★ ★ ★ 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.

1ST TAX	166.24	2ND TAX	166.23	FULL TAX	332.47
HALF PEN		HALF PEN		PEN	
INT		INT		INT	
COST		COST		COST	
TOT		TOT		TOT	

AT THE NORTH OF THE COURTHOUSE IS AN ELEVATOR AND
PARKING FOR SENIOR CITIZENS & HANDICAPPED PERSONS

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

1995
15

MICROFILMED
APR 27 2000

DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

PARCEL NUMBER
RL 36560

MARKET VALUE HOMESTEAD NET VALUE

38,675 0 38,675

JORGENSEN, TERRY C ETAL
1928 OLD HWY 30
BANCROFT, ID 83217

TAXING DISTRICT **RATE* **AMOUNT**
COUNTY .5397089% 208.73
SCHOOL DIST #14 .6215843% 240.40
TURNER CEM. .0347819% 13.45
GRACE LIBRARY .0502908% 19.45

LOTS 2-3-4, S1/2NW1/4, SW1/4
NE1/4 245 AC.
SEC 4 T10S R40E

MICROFILMED
APR 27 2000

TOTAL TAX/SPECIALS 1.2463659% 482.03
-CIRCUIT BREAKER
-PREPAYMENT ON
NET TAX/SPEC DUE 482.03

*** 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.

1ST TAX	241.02	2ND TAX	241.01	FULL TAX	482.03
HALF PEN		HALF PEN		PEN	
INT		INT		INT	
COST		COST		COST	
TOT		TOT		TOT	

AT THE NORTH OF THE COURTHOUSE IS AN ELEVATOR AND
PARKING FOR SENIOR CITIZENS & HANDICAPPED PERSONS

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

1995
15

JORGENSEN, TERRY C ETAL RL 36560
1928 OLD HWY 30
BANCROFT, ID 83217

2ND HALF TAX

CARIBOU COUNTY 1995 PROPERTY TAX NOTICE

MAKE CHECK PAYABLE TO:
 DIANE C. MEADS, TAX COLLECTOR
 P.O. BOX 507
 SODA SPRINGS, ID 83276
 (208) 547-3726

CODE AREA 15

PARCEL NUMBER
 *RL 36570

MARKET VALUE	HOMESTEAD	NET VALUE
226,573	0	226,573

JORGENSEN, TERRY C ETAL
 1928 OLD HWY 30
 BANCROFT, ID 83217

TAXING DISTRICT	**RATE*	**AMOUNT**
COUNTY	.5397089%	1222.83
SCHOOL DIST #14	.6215843%	1408.34
TURNER CEM.	.0347819%	78.81
GRACE LIBRARY	.0502908%	113.95
TV TRANSLATOR		15.00
LANDFILL		65.00

N1/2, N1/2SE1/4, SW1/4SE1/4,
 445.50 AC. SEC 5 T10S R40E

MICROFILMED
 APR 27 2000

TOTAL TAX/SPECIALS	1.2463659%	2,903.93
-CIRCUIT BREAKER		
-PREPAYMENT ON		
NET TAX/SPEC DUE		2,903.93

*** 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.

1ST HALF	TAX PEN	1,431.97	2ND HALF	TAX PEN	1,431.96	FULL	TAX PEN	2,903.93
	INT			INT			INT	
	COST			COST			COST	
	TOT			TOT			TOT	

AT THE NORTH OF THE COURTHOUSE IS AN ELEVATOR AND
 PARKING FOR SENIOR CITIZENS & HANDICAPPED PERSONS

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

1995
 15

JORGENSEN, TERRY C ETAL RL 36570

EXHIBIT C

Notice of Publication of Transfer 4842

RECEIVED

JUL 15 1996

Department of Water Resources
Eastern Region

PUBLIC NOTICE

First Time Published

**NOTICE OF PROPOSED
CHANGE OF A WATER RIGHT
NO. 4842**

Notice is hereby given that Jorgensen Brothers c/o Terry & Keith Jorgensen, 1928 Old Highway 30, Bancroft, ID 83217 has applied to the Department of Water Resources to change point of diversion and place of use of the waters of a groundwater source. The right sought to be changed is evidenced by a decree and recorded as follows:

Decree No. 13-02198 decreed to Everett W. Smith in case of State of Idaho vs. Gerald Ackerman et al Source: groundwater Amount: 2.88 cfs Priority: 12/22/1958 Point(s) of Diversion: SENW, SEC 5, T10S, R40E, Caribou County.

The water is used for irrigation from 04/15 to 10/15 within the S1/2S1/2, SEC 32, T09S; NENE, SWNE, NW1/4, SEC 5, T10S, R40E, B.M.

Decree No. 13-07005 decreed to Everett W. Smith in case of State of Idaho vs. Gerald Ackerman et al Source: groundwater. Amount: 3.74 cfs Priority: 05/15/1969 Point(s) of Diversion: SENW, SEC 5, T10S, R40E, Caribou County.

The water is used for irrigation from 04/15 to 10/15 within the S1/2S1/2, SEC 32, T09S; N1/2, W1/2SE, SEC 5, T10S, R40E, B.M.

**TO BE CHANGED AS
FOLLOWS:**

The water will be diverted from the NENE, SEC 14, T09S, R40E, Caribou County and used to irrigate 355 acres within the NW, SEC 13, NENE, S1/2NE, W1/2NW, SENW, SEC 14, T09S, R40E, B.M.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 N. Skyline Dr., Idaho Falls, ID 83402, together with a protest fee of \$25 on or before June 24, 1996. The protestant must also send a copy of the protest to the applicant.

(s) KARL J. DREHER
Director

Published in the Caribou County
Sun on June 6 and 13, 1996.

**Affidavit of
Publication**

County of Caribou }
State of Idaho } ss.

Mark Steele

being first duly sworn on his
oath, states:

That he is Publisher
of the Caribou County Sun, a
newspaper of general circula-
tion in Caribou County, Idaho,
published weekly at Soda
Springs in said County that said
newspaper has been published
in said County uninterruptedly
and continuously for over sev-
enty-eight consecutive weeks,
prior to the first publication of
the annexed notice or advertise-
ment;

That the annexed notice was
published as per clipping at-
tached in the regular and entire
edition of said newspaper and
not in any supplement thereof

for 2 successive weekly
issues thereof, the date of the
first publication being the

6th day of
June, 1996

The date of the last publication

being the 13th day of
June, 1996

On this 28th day of June

in the year of 1996 before

me, a Notary Public, personally
appeared

[Signature]
known or identified to me to be the
person whose name subscribed to
the within instrument, and being
by me first duly sworn, declared
that the statements therein are
true, and acknowledged to me that
he executed the same.

[Signature]
Notary Public for Idaho
Residing at Soda Springs, Idaho
My commission expires:

MICROFILMED

EXHIBIT D

Protest filed by Neibaur Farm Enterprises against Transfer 4842

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST**

RECEIVED

JUN 24 1996

Department of Water Resources
Eastern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested 4842
2. Name of protestant Neibaur Farm Enterprises
3. Protestant's representative for service (If different than protestant)
Chad B. Neibaur
4. Service mailing address 1550 Central Rd, Bancroft, ID 83217
5. Service telephone no. (208) 648-7113
6. Basis of protest (including statement of facts and law upon which the protest is based)
a. Transfer water from Basin 13 to Basin 29
b. Transfer location is at mouth of water source
to area already experiencing shortages & interference
c. Existing water & source is of questionable quality.
 (additional pages may be attached to describe the nature of the protest)
7. What would resolve your protest? Retract application & transfer
within Basin

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 24th day of June, 1996

Neibaur Farm Enterprises
PROTESTANT

Chad B. Neibaur by Mitchell F. Neibaur
PROTESTANT'S REPRESENTATIVE

MICROFILMED
APR 27 2000

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by HWT Date 6-24-96 Time 5:00 pm
\$25.00 fee Received by HWT # E022302 Date 6-24-96

MICROFILMED

APR 27 2000

EXHIBIT E

Letter Neibaur Farm Enterprises withdrawing its protest against Transfer 4842



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 21, 2000

Chad B. Neibaur
Neibaur Farm Enterprises
1550 Central Rd
Bancroft, ID 83217

RE: Protest against Transfer 4842
Rights 13-02198 & 13-07005

Dear Mr. Neibaur:

The department acknowledges the withdrawal of your protest against Application for Transfer 4842 in the name of Jorgensen Brothers that proposes a change to water rights 13-02198 and 13-07005. The application will now proceed through normal review and processing.

Sincerely,

Pamela S. Skaggs
Sr. Water Resource Agent

MICROFILMED

APR 27 2000

APR 24 2000

Department of Water Resources

Meyers, Thomsen & Larson, PLLP
Attorneys at Law

M. Jay Meyers Steven A. Thomsen A. Bruce Larson

Pocatello Office

300 North Seventh Avenue
P.O. Box 4747
Pocatello, ID 83205
Telephone: (208) 233-4121
Facsimile (208) 233-4174

A. Bruce Larson

April 21, 2000

Soda Springs Office

241 South Main Street
P.O. Box 608
Soda Springs, ID 83276
Telephone: (208) 547-2186
Facsimile (208) 547-2297

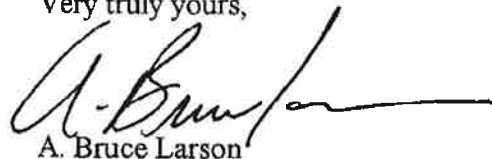
L. Glen Saxton
Chief, Water Allocation Bureau
Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RE: Application for Transfer No. 4842

Dear Mr. Saxton:

This letter is to advise you that due to Neibaur Farm Enterprises withdrawal of their protest of the above referenced transfer, a copy of the letter sent to Harold Jones by Neibaur Farm Enterprises is attached. The letter effectually resolves the protest. However, in the event the letter does not resolve the protest please schedule the matter for hearing per the Order Granting Petition for Reconsideration.

Very truly yours,



A. Bruce Larson
Attorney for Jorgensen Brothers

:pc
cc: Harold Jones

*no. Need to micro-
film.
Was previously faxed
in and microfilmed.
Keep Orig for reference.*

March 31, 2000

Idaho Dept. of Water Resources

RECEIVED

APR 11 2000

Department of Water Resources
Eastern Region

RE: Jorgensen Trans no. 4842

Dear Sirs:

I was recently contacted by the Jorgensens concerning their pending water transfer (4842). We (Neibaur Farm Enterprises) protested the transfer when it was originally advertised because of the following concerns:

1. Our wells are located in a short water area (see attached map) and we felt that relocating their well to their requested site would put further pressure on our area.
2. We have a neighbor who is already threatening to call for his water (see map Warren Lloyd). We were concerned that relocating the Jorgensen well would put further stress on the Lloyd well and further exacerbate the situation. A call for water by the Lloyds if sanctioned by the IDWR could affect us directly because of our proximity.
3. We were concerned about a cross-basin transfer (Basin 13 to Basin 29) and what that may imply for the future of our basin 29 wells.

The above are still our concerns. However, we understand the desire of the Jorgensens to place some of their prime real estate into potato production and we also recognize their difficulty in the current location of obtaining their full water right. We also do not wish them difficulties of any sort. Therefore, we shall ~~herewith withdraw our protest of~~ transfer No. 4842 but would request by so doing that should any of the above concerns be manifest in future years that calls against our junior wells never be considered.

Sincerely,


Chad B. Neibaur

Neibaur Farm Enterprises

TRANSFER

4842

EXHIBIT F

IDWR Order Approving Transfer 4842



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

April 24, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREIER
DIRECTOR

DBA JORGENSEN BROTHERS
TERRY C JORGENSEN ET UX
KEITH C JORGENSEN ET UX
1928 OLD HWY 30
BANCROFT ID 83217

RE: TRANSFER OF WATER RIGHTS 29-08240/29-08241 (Transfer 4842)

Dear Water Right Holder(s):

Enclosed is the copy of your approved Transfer of Water Rights for the above referenced water rights (Transfer 4842). Please be sure to thoroughly read the Conditions and Remarks listed on the transfer. Also, please be advised that the accompanying transfer approval should be considered and treated as an **preliminary order** of the department issued pursuant to section 67-5243, Idaho Code. Enclosed are instructions for responding to **Preliminary Orders** if you are in disagreement with the approved transfer.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Peppersack".

for Jeff Peppersack, Manager
Water Right Permits Sections

JP:klt

Enclosures

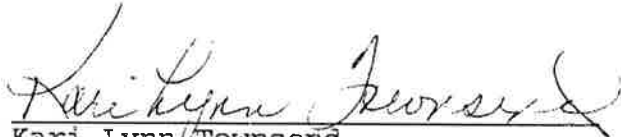
MICROFILMED

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of April, 2000 I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

RE: TRANSFER OF WATER RIGHTS 29-08240/29-08241
(Transfer 4842)

DBA JORGENSEN BROTHERS
TERRY C JORGENSEN ET UX
KEITH C JORGENSEN ET UX
1928 OLD HWY 30
BANCROFT ID 83217


Kari Lynn Townsend
Secretary

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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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 24, 2000

CRAIG SCHULER
WATERMASTER
255 W 4 S
SODA SPRINGS ID 83276

RE: TRANSFER OF WATER RIGHTS 29-08240/29-08241
(Transfer 4842)

Dear Craig:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water rights (Transfer 4842) in the name of Jorgensen Brothers.

If you have any questions, please call me at 208-327-7940.

Sincerely,

Samula S. Skaggs

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

ENCLOSURE

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described below.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of the order. The Department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from a preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

CERTIFICATE OF SERVICE

All documents intended to be part of the Department record in connection with a preliminary order shall be served upon the representatives of each party of record. Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate.

I HEREBY CERTIFY (swear or affirm) that I have this day of _____, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).
(Signature)

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Department may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when (a) the petition for reconsideration is disposed of; or (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

RIGHT TO HEARING

Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department is otherwise provided by statute, any person aggrieved by any decision, determination, order, or action of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Department, who is aggrieved by a denial or conditional approval ordered by the Department, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Department to contest the denial or conditional approval upon filing with the Department, within fifteen (15) days after receipt of the denial or conditional approval, a written permission stating the grounds for contesting the action by the director and requesting a hearing.

APPEAL OF FINAL ORDER TO DISTRICT COURT

If a preliminary order becomes final, any party aggrieved by the final order or orders previously issued in the case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which (a) a hearing was held, or (b) the final agency action was taken, or (c) the party seeking review of the order resides, or (d) the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. See Sections 67-5270 through 67-5273, Idaho Code.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4842
WATER RIGHT NO(S) . ~~13-02198/13-07005~~
29-08240/29-08241

This is to certify that: DBA JORGENSEN BROTHERS
TERRY C JORGENSEN ET UX
KEITH C JORGENSEN ET UX
1928 OLD HWY 30
BANCROFT ID 83217

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>DIVERSION VOLUME</u>
Right No. 13-02198 :			
IRRIGATION	04/15 to 10/15	2.88 CFS	
Priority: 12/22/1958			
Right No. 13-07005 :			
IRRIGATION	04/15 to 10/15	3.74 CFS	
Priority: 05/15/1969			
TOTAL:		* 3.82 CFS	* 108.6 AF

SOURCE
GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION: NENE , Sec. 14, Township 09S, Range 40E
CARIBOU 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>
09S	40E	13	NENW 38	NWNW 39	SWNW 39	
			SEnw 38			154
		14	NENE 13	SWNE 30	SENE 40	
			NWNW 39	SWNW 39	SEnw 40	201
Total number of acres irrigated:						* 355 **

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

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APR 47 2000

TRANSFER NO. 4842
WATER RIGHT NO(S). 13-02198/13-07005

CONDITIONS OF APPROVAL AND REMARKS

3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. The Director maintains jurisdiction of this transfer up to five (5) years for the purpose of determining potential injury to existing rights, both junior and senior, in the vicinity of the transferred point of diversion.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
- ** 8. Right 13-02198 is limited to the irrigation of 246.0 acres in the place of use described above in a single irrigation season.
- ** 9. Right 13-07005 is limited to the irrigation of 352.0 acres in the place of use described above in a single irrigation season.
- * 10. Rights 13-02198 and 13-07005 when combined shall not exceed a total diversion rate of 3.82 cfs, a total annual maximum diversion volume of 108.6 af, and the irrigation of 355.0 acres.
11. The well previously used under Rights 13-02198 and 13-07005 shall be abandoned in a manner which complies with Department well abandonment rules.

Dated this 24th day of

April

2000


Chief, Water Allocation Bureau

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APR 27 2000

EXHIBIT G

Memo from IDWR Staff Member Pam Skaggs regarding Transfer 4842

MEMORANDUM

TO: Files 13-02198 & 13-07005

FROM: Pam Skaggs/State Office

SUBJECT: Transfer 4842

DATE: April 24, 2000

Transfer 4842 proposes to change both the point of diversion and place of use under Rights 13-02198 and 13-07005. The original location and the proposed location are within the Bancroft-Lund GWMA; however, the proposed change will move the rights to Basin 29.

The transfer was protested and concerns raised about moving this groundwater right within the GWMA. The protestant was concerned about the impact the transfer would have on both his own well and a neighbor's who was already concerned about production of his own well. The transfer will move the point of diversion for these rights to a closer proximity to their wells than the original well in Basin 13.

Review by Department Staff (see Tim Luke's memo of 03-17-2000) on the previous use of the original well, and rather the rights were primary or supplemental reflected concerns about the lower than average annual volumes. Tim found that these groundwater rights are apparently primary use rights, but that the annual volumes identified for the previous four years are very low when compared to neighboring wells. The total volumes identified for 1996-1999 were 70.2 af, 47.4 af, 81.0 af and 98.7 af, respectively.

The transfer approval was limited to a maximum annual volume of 108.6 af (98.7 af plus 10% to compensate for calculation margin of error) to avoid expansion of use through this transfer approval. Other approval conditions include annual measuring & reporting, Director maintaining jurisdiction for up to 5 years to determine potential injury in the vicinity of the new diversion, watermaster control, irrigation overlap, drilling permit requirements, permissible place of use limits, combined right limits, well abandonment for original well and standard transfer conditions.

MICROFILMED

WR0725NP
(00-725)

IDAHO DEPARTMENT OF WATER RESOURCES
I-R-S PLACE OF USE 1/4 1/4 COMPARISON REPORT

DATE: 04/20/00
PAGE: 1

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE		SUM
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
T09S R40E S 32 Existing P/O																										
T1100255	BEAR RIVER :																									
T1100262	BEAR RIVER :																									
T1100449	BEAR RIVER :																									
T1100531C	BEAR RIVER :																									
1300955	BEAR RIVER :																									
1300956	BEAR RIVER :																									
1300991C	BEAR RIVER :																									
1300992C	BEAR RIVER :																									
1302198	GROUNDWATE :														19	19					3	15			56	
*1302198	GROUNDWATE :														19	19					3	15			56	
1302314	BEAR RIVER :	27		6		2		32		4		11								21		8		10	121	
1304076	BEAR RIVER :																									
1307005	GROUNDWATE :														16	21					3	20			60	
*1307005	GROUNDWATE :														16	21					3	20			60	
1307161	GROUNDWATE :							38		38		38		40				38							192	
*1307161	GROUNDWATE :							38		38		38		40				38							192	
--86 MAP--	C29Q-BB 94 :	1								11		7					7	25	26			3			80	

T10S R40E S 5

T1100255	BEAR RIVER :																	
T1100262	BEAR RIVER :																	
T1100449	BEAR RIVER :																	
T1100531C	BEAR RIVER :																	
1300955	BEAR RIVER :																	
1300956	BEAR RIVER :																	
1300991C	BEAR RIVER :																	
1300992C	BEAR RIVER :																	
1302197	GROUNDWATE :									40	40	40	40					160
*1302197	GROUNDWATE :									40	40	40	40					160
1302198	GROUNDWATE :	34	28			38	34	28	28									190
*1302198	GROUNDWATE :	34	28			38	34	28	28									190
1302314	BEAR RIVER :													30	21	9	37	97
1304076	BEAR RIVER :																	
1307005	GROUNDWATE :	01-33	02-34	28	19	03-40	04-40	36	37					21	4			292
*1307005	GROUNDWATE :	01-33	02-34	28	19	03-40	04-40	36	37					21	4			292
1307010	GROUNDWATE :														35			35
*1307010	GROUNDWATE :														35			35
NO MAPPING INFO AVAILABLE																		

No Overlaps

T4842

EXHIBIT H

Memo by IDWR Staff Member Tim Luke regarding Transfer 4842

Memorandum

To: Glen Saxton

From: Tim Luke

Date: March 17, 2000

Re: Jorgensen Transfer Application No. 4842: Potential Supplemental Use of Ground Water Rights

You requested that I look at the attached water right transfer application and address the question of whether or not the ground water rights identified in the transfer are used as supplemental rights. I've investigated this matter using several different sources as follows:

- 1) Review of water measurement and energy use records, 1996 – 1999
- 2) Review of Bear River Basin ground water diversion inventory database and GIS coverage completed by IDWR contractor, Spatial Dynamics, 1999.
- 3) Review of Last Chance Canal Co. water rights and discussions with representatives from the Last Chance Canal Co.

1. Water Measurement and Energy Use Records

Attached to this memo is a spreadsheet showing annual water use estimates for Jorgensen's well in T10S, R40E, Section 5, SENW (diversion name = Jorgensen South Well). Annual use estimates are provided for years 1996 through 1999. We developed two separate PCC ratios based on two separate conditions. We then weighted the two PCC's assuming 50 percent operation under each condition. We then compared these annual volumes with average annual volume estimates of some wells in the surrounding area. The wells we selected are ones that have fairly simple operating conditions and/or are wells that we have relatively higher confidence in the accuracy of the annual estimates. Comparisons were made between total annual estimated volume and the volume per acre. The percent differences between the Jorgensen well and the average of the surrounding wells are shown on the spreadsheet. The surrounding wells that are included on the spreadsheet are not used as supplemental wells.

MICROFILMED
APR 27 2000

1

As shown on the spreadsheet, the annual estimated use from the Jorgensen South well is considerably less than the surrounding wells.

2) Review of 1999 Bear River Basin Inventory

The IDWR Planning and Technical Services Bureau hired a contractor in 1999 to inventory ground water diversions within the Bear River Basin. As part of this inventory process, the contractor interviewed owners of ground water irrigation rights and asked whether the rights were used as primary or supplemental rights. The contractor prepared GIS coverage maps and displayed rights by place of use according to the water rights and field verification. The coverage also shows the rights as either supplemental or primary based on the information supplied by the owners. The wells and rights in question under Transfer 4842 are shown as primary rights. They are not identified as supplemental.

3) Review of Last Chance Rights and Discussions with Last Chance Canal Co. Representatives

All of the Last Chance water rights that I reviewed included the same general place of use described under rights 13-02198 and 13-07005 (the rights in the transfer). One of the Last Chance water rights is attached to this memo (right 13-00955). Section 5, T10S, R40, and Section 32, T9S, R40E, are both included as the place of use under the Last Chance rights. Although the land may be included with the Last Chance service area, it may not necessarily be irrigated with water from the Last Chance system.

I spoke with Mark Gibbs, Last Chance Canal Co. board member, on March 16, 2000, concerning the use of canal water on the lands described by rights 13-02198 and 13-07005. Gibbs is not 100 percent sure that canal water is used on the land in question, but it is his understanding that the land is irrigated with ground water only. He further believes that the previous landowner historically irrigated the same land with only the ground water rights. I also spoke with one of the ditch riders in Grace who works for the Last Chance Canal Co. The rider I spoke with does not work the lateral closest to this land and he was not certain if Jorgensen used canal water on this same land. I have made two phone calls to the ditch rider of the other lateral but have not been able to actually catch him at home during normal business hours.

In addition to the above, I wish to mention that I received a call from a concerned citizen in Grace about two weeks ago. The caller apparently is a neighbor of Jorgensen and is concerned about a proposal by Jorgensen to expand the size of an existing feedlot. The caller advised that he had knowledge about Jorgensen connecting the well in the SENW of Section 5 with another irrigation well in T9S, R40E, Section 32. This latter well was the

subject of an IDWR NOV issued this past January and involved a separate violation in which Jorgensen has already paid a civil penalty. I confirmed that the water rights associated with each well do not authorize diversion of water from more than one well. The caller also mentioned that Jorgensen does use surface water on the land in Section 5 and that both wells are tied into his surface water system. The caller said he was going to send some specific information but I have yet to see it. Thus far, this latter information appears to be hearsay only.

I have confirmed on my own field visits that the well in Section 32, T9S, R40E is a supplemental well and that it is tied into Jorgensen's surface water system. I have been to the well in Section 5 on several occasions. There is nothing at the well head that clearly shows the well being connected to any surface water system, although the systems could possibly be connected elsewhere. My initial field visit and measurement of this well was in 1996. I talked with one of Carl Jorgensen's son's, Terry, about this well and my measurement in 1996. During our conversation I thought I understood Terry to explain that this well was used as a supplemental source. This discussion however took place away from the well and about an hour after the visit. I did not document this discussion in my field notes so I can not confirm Terry Jorgensen's statements concerning the issue of supplemental use.

Grain is the only crop that I can recall seeing in the immediate area near the well in Section 5 during my several visits. Grain would be a lower water use crop than the other major crop grown in the area, seed potatoes.

Summary

The annual water use estimates that we have compiled and calculated indicate that water use from the well associated with the transfer is rather low. When compared with other wells in the area, it appears that this well may have been used more as a supplemental source. However, other evidence indicates that the use and source is not supplemental. The interview or survey of Jorgensen by the Bear River Basin ground water inventory contractor and interview of Last Chance Canal co. officials indicate that the ground water rights are not supplemental.

I believe the evidence points mostly toward the well in Section 5 being used as a primary source of water. Lacking any other clear evidence, I don't believe the supplemental issue is a valid reason for denying the petition to reconsider the transfer application.

Date: 3/17/00

Comparison Wells for Jorgensen Transfer

Name	WR # 1	WR # 2	Site Tag #	Ac # 1	Ac # 2	Max Acres	Max CFS	GPM \ ac	1996 ac.ft	1996 af/ac	1997 ac.ft	1997 af/ac	1998 ac.ft	1998 af/ac	1999 ac.ft	1999 af/ac
Jorgensen - Smith Well	13-02197		A0004908	318		318	3.48	4.91			76.33	0.24	165.05	0.52	119.4	0.38
Bart Christensen - Anderson	13-07099		A0004059	306		306	4.79	7.03	164.91	0.54	102.6	0.34	149.63	0.49	142.15	0.46
Bart Christensen - Hegstrom	13-07147		A0004058	313		313	5.01	7.18		0.00	122.37	0.39	152.73	0.49	159.18	0.51
Phil Yost - Welch Wells	13-07163	13-07225	4061-4062	283	169	452	4.37	4.34	284.49	0.63	178.18	0.39	279.4	0.62	283	0.63
Von (Eric) Simonson	13-07084	13-07259	A0000148	274	96	370	4.36	5.29	313.26	0.85	210.78	0.57	259.84	0.70	261.29	0.71
Stoddard Farms	29-07434		A0004115	307		307	3.34	4.88	0	0.00	232.74	0.76	343.65	1.12	376.62	1.23
Gem Valley Farms - Stanton	29-07000B		A0004117	299		299	4.41	6.62	0	0.00	164.58	0.55	274.19	0.92	344.42	1.15
Average						337.9	4.25	5.75			155.37	0.46	232.07	0.69	240.87	0.72

Jorgensen South Well	13-02198	13-07005	A0003600	246	352	355	3.82	4.83	70.2	0.20	47.4	0.13	81	0.23	98.67	0.28
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% Diff.= 4.8 -10.1 -16.0 -69.5 -71.1 -65.1 -67.1 -59.0 -61.5

% Difference is comparing the "Jorgensen - South Well" values with "Average" values

Annual Volumes

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APR 27 2008

EXHIBIT I

Excerpt from IDWR Transfer Processing Memo 24

ADMINISTRATOR'S MEMORANDUM

Transfer Processing No. 24

To: Water Management Division Staff
From: Gary Spackman 
RE: **TRANSFER PROCESSING POLICIES & PROCEDURES**
Date: January 21, 2009

This memorandum supersedes Transfer Processing Memorandum No. 24 dated October 30, 2002.

The purpose of this memorandum is to provide policy guidance for processing applications for transfers of water rights pursuant to Section 42-222, *Idaho Code*, and other applicable law. The revisions to the October 30, 2002 memorandum are provided to recognize statewide application of this memorandum, to clarify the guidance based on updates to statutes and Department policy, and to streamline transfer processing to reduce application processing time and existing application backlogs. These policies and procedures are to be followed until rescinded or amended, or superseded by statute or rule or court decision, to assure that applications are processed efficiently and with consistency.

Regardless of whether or not an application for transfer is protested, Section 42-222, *Idaho Code*, requires that the department evaluate whether there would be injury to other water rights, there would be an enlargement in use of the original right, the proposed use would be a beneficial use, the proposed use would be in the local public interest, the proposed use would be consistent with the conservation of water resources within the State of Idaho, and whether the proposed change would impact the agricultural base of the local area. In the case where the place of use is outside of the watershed or local area where the source of water originates, the department must also evaluate whether the change would adversely impact the local economy of the watershed or local area. The department must also evaluate the validity of the right (or part thereof) being changed and must assure that the applicant owns the right or otherwise has the authority to apply for the transfer.

1. When a Transfer is Required.

Section 42-222, *Idaho Code*, requires the holder of a water right to obtain approval from the department prior to changing: (1) the point of diversion, (2) the place of use, (3) the period of use, or (4) the nature of use of an established water right. An established water right is a licensed right, a decreed right, or a right established by diversion and beneficial use. Approval is sought by filing an application for transfer with the department. A claim in an adjudication or a statutory claim must be filed to allow a transfer application to be processed for a right based upon diversion and beneficial use.

Changes to Elements of a Water Right. An application for transfer is required if a proposed change would alter any of the four elements of the water right listed above that can be changed pursuant to Section 42-222, *Idaho Code*, as recorded with the department or by decree. Conditions or other provisions of a water right may further define or limit a recorded element of a water right; an application for transfer is required for a proposed change that could alter such a condition. For example, a proposed change of use under a water right for an industrial use, which includes a condition limiting the quantity of water that can be consumptively used, to a different industrial use that would increase the quantity of water that would be consumptively used can not be made unless enlargement is prevented.

If a proposed change has the potential to injure other rights or the potential to enlarge the right, even when there would be no change in any of the recorded elements of the right, an application for transfer should be filed to provide for evaluation of injury and enlargement issues before the change is made. For example, if the point of diversion from a fully appropriated creek is proposed to be moved where additional water would be available for diversion or if the proposed point of diversion as changed would move upstream of the points of diversion for other rights, the change can not be made unless other conditions are imposed, such as mitigation, to prevent injury.

Changes to Points of Diversion. If a point of diversion is proposed to be moved to a different tract than described as an element under an established water right, then a transfer application is required. This includes a change from one 10-acre legal subdivision to another if the point of diversion has been previously described as a 10-acre legal subdivision. An application for transfer is also required when a point of diversion is proposed to be added for a water right, even when the existing authorized point of diversion is recorded as a 10-acre legal subdivision and the additional diversion would be within the same 10-acre legal subdivision.

If a point of diversion is proposed to be moved from a tributary to a location downstream from the confluence of the tributary and the surface water stream to which the tributary is joined, then an application for transfer is required. If a point of diversion is proposed to be moved from a stream to the stream to which it is tributary at a location upstream of the confluence between them, or moved from one tributary to another tributary, an application for exchange is required pursuant to Section 42-240, *Idaho Code* rather than an application for transfer.

Changes in Place of Use. An application for transfer is required if a change in the location of use between 40-acre legal subdivisions is proposed that would result in an increase in the number of acres within a 40-acre legal subdivision or in use of water at a new 40-acre legal subdivision that is not included within the recorded place of use element for the right. An application for transfer is also required for a proposed change in location of use under a water right for irrigation to a location outside of prescribed boundaries such as those provided under Section 42-219, *Idaho Code*, with or without a proposed change in purpose of use, except for those rights held by irrigation districts or municipal providers, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change. A proposed change to any water right held for irrigation involving a change in the number of irrigated acres of less than one acre at the original place of use or at a proposed new place of use is not approvable unless the proposed change involves a new purpose of use within the original place of use or the applicant provides a verification procedure approved by the Director that can be practically administered to prevent injury or enlargement.

Consolidation of Acreage. An application for transfer is required for proposed consolidation of water use for irrigation by permanently reducing the number of acres authorized for irrigation under a water right, while maintaining the original diversion rate or annual diversion volume.

Land Application of Wastewater. An application for transfer is required for a proposed change in the place of use under a water right for uses such as industrial, dairy, or confined animal feeding operations that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, when there is not a full existing water right for irrigation of the place of use receiving wastewater.¹

Correction of Errors. An application for transfer may also be required to correct errors in licenses or decrees. For example, a transfer application may be required to correct the location of the place of use of a water right decreed by a court if the decree is later determined to be in error. However, a transfer action is not always required to correct such errors. For example, if a water right claim is determined to be in error, the claim can be amended to correct the error. Similarly, some clerical errors in a license or decree may be corrected by issuance of an amended license or decree (by the jurisdictional court) without using the transfer process. Also, a change to a description of the location of the place of use or point of diversion, as used by the department for administration of water rights, resulting from improved methodology does not require an application for transfer, as described below. In addition, conditions that are no longer applicable may be modified or removed from a license without a transfer, provided other rights are not materially affected. For decrees, conditions that are no longer applicable should be noted in comments on the department's electronic record for the right. However, a change to any element of a decreed water right requires filing an application for transfer, unless the appropriate court makes the change by amending the decree.

¹ The guidance provided here effectively revises the guidance to staff for filing an application for transfer as provided in Application Processing Memorandum No. 61 concerning wastewater from industrial uses.

2. When a Transfer is not Required.

An application for transfer is not required if a proposed change will not alter any of the elements of a water right as licensed or decreed, except that even when the recorded elements of a water right are not changed an application should be filed under such circumstances described in Section 1 above. In addition, an application for transfer is not needed when an accomplished change to a water right or an enlargement of a right has been claimed in an adjudication in accordance with the provisions of Sections 42-1425 or 42-1426, *Idaho Code*.

Changes in Consumptive Use. Consumptive use of water under a water right is not, by itself, an element of the water right subject to the requirements to file an application for transfer. Unless there is a specific condition of the water right limiting the amount of consumptive use, changes in water use under a water right for the authorized purpose of use that simply change the amount of consumptive use do not require an application for transfer provided that no element of the water right is changed. However, when determining the amount of water that can be transferred pursuant to an application for transfer proposing to change the nature or purpose of use, and for certain other circumstances as described herein, historical consumptive use is considered.

Change in Ownership. An application for transfer is not required to change the owner of record for a water right or address of record for a right holder. Changes in ownership or address are to be filed in accordance with Section 42-248, *Idaho Code*, or for adjudication claims in accordance with Section 42-1409(6), *Idaho Code*. However, a transfer application filed pursuant to Section 42-222, *Idaho Code*, accompanied by evidence documenting a change in ownership for a water right, or showing a change in the address of the owner of a water right, satisfies the requirements of Section 42-248, *Idaho Code*.

An application for transfer is not required to change the owner of record of one or more water rights, or portions thereof, that are part of a larger group of water rights authorized for use within and appurtenant to a permissible place of use² if the conveyance documents provide evidence of the change in ownership and appurtenance of each of the rights and if other elements of the rights will not be changed.

An application for transfer is not required to eliminate one or more points of diversion authorized under a water right through a change in ownership if the conveyance

² A permissible place of use is defined as a legal description of the authorized location where water may be applied under a water right for irrigation use, but the use in any year is limited to a specified number of acres which is less than the larger described location. For example, a water right may describe a permissible place of use as four 40-acre legal subdivisions totaling 160 acres, but the water right also limits the acreage that may be irrigated to 40 acres. The water right owner cannot irrigate more than 40 acres in a given year under the right. A permissible place of use is typically, but not always, irrigated by multiple rights with separate acreage limitations that, when used together, provide for irrigation of the entire permissible place of use in the same year.

documents provide evidence of the limitation and if other elements of the rights will not be changed.

Partial Relinquishment. An application for transfer is not required to relinquish a portion of a water right such as elimination of a purpose of use or a point of diversion or a reduction in acres and proportional rate. The water right owner should provide a notarized statement of relinquishment including specific identification of the water right(s) and the specific reduction(s).

Split Rights. An application for transfer is not required when a water right for irrigation is proposed to be split, with notice to the department pursuant to the provisions of Section 42-248, *Idaho Code*, such that a disproportionate per acre share of the right would be conveyed to another party provided that the resulting diversion rates do not exceed 0.02 cfs per acre, the amount of water historically applied per acre, or the amount of water diverted at a particular point of diversion, whichever is greater, for that part of the right conveyed or retained, and provided no other changes are made.

Changes to Points of Diversion within Recorded Location. An application for transfer is not required if a change in point of diversion is proposed to be moved to a location within the same legal public land survey subdivision as currently recorded on the water right and the change will not enlarge the right or injure other rights (if within a recorded legal public land survey subdivision, a transfer is required if injury is likely when moving the point of diversion to bypass another point of diversion or when moving a well significantly closer to another well or surface water source).

An application for transfer is not required for the situation described in the preceding paragraph, even when the point of diversion is described by a shapefile in the department's GIS database. The department will not initiate an enforcement action against the water right owner due to a discrepancy between the department's shape file and the physical location of use within the recorded legal subdivision if the discrepancy is limited to the situation described in the preceding paragraph. The department may update the shapefile in its GIS database from its own information or information provided by the water right owner.

Replacement of Point of Diversion. An application for transfer is not required to replace a point of diversion if the new point of diversion is constructed at the same location as described in the license or decree for the water right, and the change will not enlarge the right or injure other rights.

Refined Descriptions. An application for transfer is not required when a change in the description of the location of the point of diversion or place of use is only the result of improved methodology for referencing and displaying the location, which results in a more accurate description of the same physical location. The department will not initiate an enforcement action against the water right owner due to the discrepancy between the water right record and the referenced location if the discrepancy is created by better methodology and is not due to a change in the physical location. However, if the water right owner wishes to correct the water right record, an application for transfer

or an appropriate amendment will be required, as previously described for correction of errors.

Changes in Place of Use within Recorded Location. An application for transfer is not required if a change in the location of use within 40-acre legal subdivisions is proposed that would not result in an increase in the number of acres within any 40-acre legal subdivision nor use of water at a new 40-acre legal subdivision (except for a proposed change in location outside of prescribed boundaries such as those provided for irrigation use under Section 42-219, *Idaho Code* or by court decree, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change).

An application for transfer is not required for the situation described in the preceding paragraph, even when the place of use is described by a shapefile in the department's GIS database. The department will not initiate an enforcement action against the water right owner due to a discrepancy between the department's shape file and the physical location of use within the 40-acre legal subdivisions if the discrepancy is limited to the situation described in the preceding paragraph. The department may update the shapefile in its GIS database from its own information or information provided by the water right owner.

Generally Described Place of Use. As provided in Section 42-219, *Idaho Code*, an application for transfer is not required to change the place of use within a generally described place of use. A generally described place of use may be by court decree or as provided in Section 42-219(5) and (6). Pursuant to Section 42-219(7), any change within a generally described place of use can not result in an increase in the diversion rate, or in the total number of acres irrigated under the water right, and can not cause injury to other water rights. Any change to the boundaries of a generally described place of use requires an application for transfer, except for a municipal provider as described below or for an irrigation district where changes in boundaries must be documented by a map of the revised boundaries filed with the department in accordance with Section 43-323(2), *Idaho Code*.

Municipal Places of Use. An application for transfer is not required to change or add a place of use for "municipal purposes" within the "service area" of a "municipal provider." See Sections 42-202B and 42-222(1), *Idaho Code*, for appropriate definitions and provisions governing use of municipal water rights. The ownership of a portion of a municipal water right held by a municipal provider for reasonably anticipated future needs can be changed to a different municipal provider subject to the provisions of Section 42-248, *Idaho Code*. However, the right can not be changed to a place of use outside the service area of a municipal provider or to a new nature of use, and an application filed for such a change is to be returned and any associated application fee refunded.

In-stream Stock Watering. An application for transfer is not required to divert water away from a stream for stock watering purposes provided the diversion is added and used in conjunction with an in-stream stockwater right and provided the diversion meets

certain conditions pursuant to Section 42-113(3), *Idaho Code*. See guidance memorandum for in-stream stock diversions dated June 26, 2000, for additional information.

Intensified Use of Water. An application for transfer is not required to increase production under an authorized use of water, unless the proposed change would also result in a change to one or more of the elements of the water right(s) as licensed or decreed. For example, an application for transfer is not required to increase the number or volume of raceways in a fish propagation facility, increase the number of cows at a dairy, change irrigation to a more water consumptive crop, or increase the generating capacity of hydroelectric generators, so long as none of the elements of the associated water rights are changed.

Mitigation Through Non-Use of a Right. An application for transfer is not required to mitigate for the diversion and use of water under another right if the mitigation is accomplished through non-use of water under an existing valid water right, except under specific circumstances where a transfer is required as part of the Department's approval of the mitigation plan (see Section 42-223 (10), *Idaho Code* for reference to mitigation approvals where non-use of water may apply).

Land Application of Wastewater to Replace Existing Supply. An application for transfer is not required for a proposed change in the place of use under a water right for uses such as industrial, dairy, or confined animal feeding operations that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, when there is a full existing water right for irrigation of the place of use receiving wastewater.¹

3. Requirements for an Acceptable Application for Transfer.

The department is a public service oriented agency, and department employees traditionally have helped applicants complete transfer application forms. The existing transfer backlog, together with the increasing number and complexity of new applications for transfer, requires that staff focus their time on processing existing acceptable applications. Department employees are encouraged to provide general assistance to applicants but should refrain from completing application forms on behalf of applicants.

An applicant or qualified consultant must prepare and submit an application for transfer in accordance with the minimum requirements enumerated below to be acceptable for initiating the processing of the application by the department. An application that does not comply with these minimum requirements is to be considered incomplete and is to be returned to the applicant along with a letter or checklist identifying the deficiencies. The letter shall state that unless the application is resubmitted within 30 days of its return, the application fee will be refunded. An application for transfer that satisfies the minimum requirements will be processed in accordance with Section 5, Information Needed to Complete Processing of a Transfer Application.

EXHIBIT J

IDWR Order Correcting Water Right License No. 11-2008

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
LICENSE 11-2008 IN THE NAME OF)
WILLIAM L. ALLRED)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Idaho Department of Water Resources ("Department") as a result of a potential notice of change in water right ownership, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On February 17, 1906, William L. Allred filed an Application for Permit seeking a water right for 0.02 cfs from a spring located in the NE1/4 of Section 22, Township 15S, Range 43E. The application stated that the water would be for domestic use, but did not describe any specific place of use. The application stated that the diversion would be from a small spring that only needed to be cleaned out.
2. The application was approved on April 7, 1906 and permit no. 1914 was issued to Mr. Allred. Proof of Completion of Works was submitted by Mr. Allred on October 6, 1906. The document stated that "the water is to be used for domestic purposes in the NW1/4 of Sec. 22, Township 15 South, Range 43 East." The Proof of Completion of Works was accompanied by depositions from Earnest Allred and William Pugmire stating that the diversion works had indeed been completed and that the spring was diverted to a stockwater trough. The State Engineer, James Stephensen, issued a Notice of Completion of Works in 1906, identifying the place of use as the SW1/4 of the NE1/4 of Section 22, Township 15 South, Range 43 East.
3. On November 1, 1911, the United States of America issued a Homestead Patent to William L. Allred for a one hundred sixty acre tract of land located in the NE1/4 of Section 22, Township 15 South, Range 43 East.
4. Apparently there arose a question as to whether the documents proving beneficial use had been properly filed by the applicant. In March 1922, Earnest Allred sent a letter to the Commissioner of Reclamation asserting that all of the paperwork required to prove beneficial use had been properly filed. The letter gave a brief description of the system. It stated that the spring was diverted a short distance to water stock.
5. In August 1922, a representative for the State Engineer conducted a field exam of the diversion system. He found that the spring was diverted into a stockwater trough. His report included a hand-drawn map that showed that the trough was located close to the spring in the SW1/4 of the NE1/4 of Section 22, Township 15 South, Range 43 East.

6. In October 1922, License No. 1914 was issued (later renumbered as 11-2008) by the Commissioner of Reclamation. The License stated that the location of use was "For domestic use in NW1/4 Sec. 22, T. 15 S., R 43 E."

7. Topographic maps of the area indicate that a ridge divides the northwest quarter and the northeast quarter of Section 22. To convey water from the spring described as the point of diversion to the northwest quarter of Section 22 would require pumping the water uphill and over the ridge.

8. The water right backfile contains a letter, dated November 8, 1971, signed by James Bunderson and E. John Rich of St. Charles Idaho, that states that the spring located in the NE1/4 of Section 22, Township 15 South, Range 43 East, was "used for culinary, gardening, and livestock purposes when the land was first homesteaded."

9. Currently, water from the spring is collected and diverted through a buried pipe into a nearby stockwater trough.

ANALYSIS

The evidence set forth above strongly suggests that the place of use described in License 11-2008 was incorrect. The original appropriation of water made by William L. Allred was meant to provide for the domestic uses associated with his Homestead Land Patent, including stockwater uses. The homestead was established in the northeast quarter of Section 22. All descriptions of the diversion system state that the spring water was diverted into a nearby stockwater trough. The letter from Bunderson and Rich verify that the spring water was used at the original homestead. The topography of the land provides further evidence that the domestic supply from the spring was to be used in the northeast quarter of Section 22. The only way to convey water from the spring to the northwest quarter is by pumping the water uphill. The various descriptions of the diversion system do not indicate that any pumping was taking place.

CONCLUSIONS OF LAW

1. Under Section 42-219, Idaho Code, the Department has an obligation to issue a water right license that accurately describes the place of use for the water right.

2. Evidence available to the Department at this time indicates that water right license 11-2008 contained an error at the time it was issued. The place of use described in the license (NW1/4 of Sec. 22, Township 15 South, Range 43 East) was incorrect. The evidence indicates that the place of use should have been listed as the NE1/4 of Sec. 22, Township 15 South, Range 43 East.

3. The Department should revise the place of use listed in water right license 11-2008 to describe the NE1/4 of Sec. 22, Township 15 South, Range 43 East.

ORDER

IT IS HEREBY ORDERED that the place of use description for water right license 11-2008 is CORRECTED as set forth in the Amended Water Right License 11-2008 issued on this date in conjunction with this order.

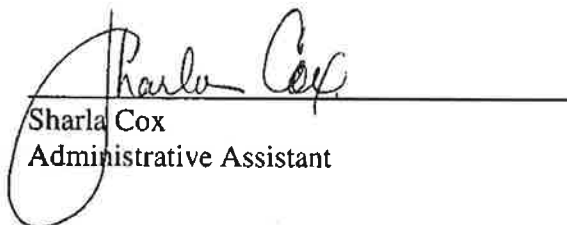
Dated this 30th day of September, 2010.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of September 2010, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER CORRECTING LICENSE to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

All property owners within the north half of Section 22, Township 15 South, Range 43 East.
RE: WATER RIGHT LICENSE 11-2008

Jaren S. Pugmire
PO Box 5
St. Charles, ID 83272

Louis M. Pugmire
145 North Mall Drive, Unit 85
St. George, UT 84790

Dora T. Mecham Family Trust
PO Box 361
Garden City, UT 84028

A Charles Rasmussen
1374 East 3200 South
Preston, ID 83263

Michaelson
PO Box 67
St. Charles, ID 83272

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

EXHIBIT K

IDWR Order Correcting Water Right License No. 22-7397

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF CORRECTING)
WATER RIGHT LICENSE NO. 22-7397)
IN THE NAME OF LAYNE HARRIS)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Department of Water Resources (Department) as a request for correction of a water right license, the Department finds, concludes, and orders:

CASE SUMMARY

Layne Harris, through his attorneys Kent Foster and Rob Harris, requested that the Department correct Water Right License 22-7397 to show the authorized diversion rate as 3.16 cfs, or 0.02cfs per acre, of water for the 158-acre irrigated place of use. The Department issued the license in 1990 with an authorized diversion rate of 1.97 cfs based on the conclusion that the 3.21 cfs of water diverted by Mr. Harris was spread over 258 acres. Mr. Harris admits that he irrigated approximately 258 acres at the time of the Department's field examination to verify beneficial use in connection with the permit, but he asserts that the 3.21 cfs was applied only to his 158 acres during the authorized development period for Permit 22-7397.

The Department did not conduct a hearing on the matter. For this decision the Department relied upon public records maintained by the Department, including all records pertaining to water rights, claims to water rights, and applications for water rights. The Department allowed the right holder's attorney to augment the water right file with the following items relevant to this case:

- "Affidavit of Robert Layne Harris" dated July 3, 2008.
- A copy of a 1985 land lease agreement between the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints ("Landlord") and Layne Harris ("Tenant").
- A copy of a mortgage for the NE¼ of Section 10, T6N, R41E, B.M., that R. Layne Harris, Beverly K. Harris, W. Henry Harris, Lena Harris, Danny L. Harris, and Marguerite C. Harris signed with the Federal Land Bank of Spokane.

JURISDICTION AND AUTHORITIES

Idaho Code § 42-219 says, in pertinent part:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

FINDINGS OF FACT

1. On June 24, 1982, the Department issued Layne Harris (right holder) a permit to establish a right to divert 3.2 cubic feet per second (cfs) from ground water within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10, T6N, R41E, B.M., for the irrigation of 160 acre in the NE $\frac{1}{4}$ of Section 10, T6N, R41E, B.M. The priority date for the permit was April 30, 1982. As a condition of approval, the right holder was required to submit proof of beneficial use for the permit on or before July 1, 1983.
2. By September 13, 1982, the right holder had installed a 200 horsepower G. E. electric motor with an Aurora turbine pump and a 60 horsepower U. S. electric motor and an Aurora centrifugal booster pump to divert water from his well in the NE $\frac{1}{4}$ of Section 10, T6N, R41E, B.M.
3. On July 2, 1983, the permit lapsed because the right holder had not submitted a proof of beneficial use statement within the required time.
4. On July 21, 1983, the right holder submitted a proof of beneficial use statement indicating that he had irrigated 160 acres in connection with his permit.
5. On August 16, 1983, the Department reinstated the permit. As a penalty for submitting the proof of beneficial use statement after the deadline stated in the permit, the Department advanced the priority date of the permit to May 20, 1982.
6. On August 8, 1985, the right holder leased 96 acres of farmable land in the N $\frac{1}{2}$ of Section 11, T6N, R41E, B.M., from the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints.
7. On July 17, 1987, a Department staff member conducted a beneficial use field examination in accordance with Idaho Code § 42-217 to verify the beneficial use of water established by the right holder in connection with the permit. The field examiner's report indicated that the right holder's diversion and delivery system, which included a 200 horsepower well motor and a 60 horsepower booster pump motor, applied 3.21 cfs of water using nine

quarter-mile hand lines. The field examiner recommended issuing a water right license for 3.16 cfs, or 0.02 cfs per acre, for the 158 acres he found to be irrigated within the permitted place of use.

8. A December 1, 1987, supplement to the examiner's field report prepared by a senior Department staff member stated that the right holder's irrigation system also irrigated land in the N½ of Section 11, T6N, R41E, B.M., in connection with other water rights. Including the land in Section 10 and the land in Section 11, the right holder's irrigation system covered approximately 258 acres.

9. The right holder's well in the SE¼NE¼, Section 10, T6N, R41E, B.M., was not an authorized point of diversion for water rights appurtenant to land in Section 11, T6N, R41E, B.M.

10. The field examiner's report does not state that the nine quarter-mile hand lines were used exclusively to irrigate the permitted place of use or that they were used also used to irrigate land in Section 11, T6N, R41E, B.M.

11. On January 24, 1990, a Department staff member prepared a memorandum titled "Clarification and Correction of Field Examination" for the permit. In the memorandum the staff member indicated that nine quarter-mile hand lines is generally excessive for the irrigation of 158 acres and that nine hand lines is more reasonable for 258 acres. The memorandum also explains that because the irrigation system covered 258 acres, the established diversion rate per acre was 0.0124 cfs. The author of the memorandum recommended that the Department apply the established rate per acre to the 158-acre place of use reported by the field examiner and issue a license with a total diversion rate of 1.97 cfs.

12. On February 28, 1990, the Department issued Layne Harris a water right license for the diversion of 1.97 cfs from ground water within the SE¼NE¼, Section 10, T6N, R41E, B.M., for the irrigation of 158 acres in the NE¼ of Section 10, T6N, R41E, B.M. The Department did not issue the license as an order of the Department or indicate a deadline for appealing the issuance of the license or the elements of the water right confirmed in the license.

13. On February 5, 2007, the Department received a request to correct the licensed diversion rate to 3.16 cfs from the attorney for the right holder, Kent W. Foster.

14. On June 24, 2008, the Department notified the right holder's new attorney, Robert L. Harris, that it did not have sufficient information to refute the prior diversion rate analysis or to change the license.

15. On July 8, 2008, the right holder's attorney submitted an affidavit from the right holder. In item no. 14 of the affidavit, the right holder explains that he did not lease or irrigate the 100-acre parcel (actually 96 acres according to the lease agreement) in Section 11 until 1986.

16. In item no. 5 of the right holder's affidavit, he explains that he "developed nine quarter mile handlines for convenience in order to get across the property faster." It is not clear from the right holder's statement what he means by "the property," but it can be inferred from other statement in item no. 5 that "the property" was 160 acres.

17. After the license was issued in 1990, the Department has changed the standard season of use for irrigation at the licensed place of use to 4/1 to 10/31.

18. The licensed annual volume for the right is 553.0 af or 3.5 af per acre, but a condition of approval on the license limits the use to 3.0 af per acre.

19. The standard annual diversion volume limit for irrigation in the vicinity of the licensed place of use is 3.5 af per acre.

ANALYSIS

The essential question of this case is whether the right holder diverted and used more than 1.97 cfs of water to irrigate a 158-acre portion of the permitted place of use before extending his irrigation system to cover an additional 100 (or 96) acres. If the right holder diverted and used more than 1.97 cfs for the 158 acres prior to submitting proof of beneficial use in 1983, then the Department erred in its original determination of beneficial use and the right holder is entitled to a water right license for the additional amount.

The 1982 mortgage agreement shows that the right holder had already installed the same diversion works that were found by the Department's field examiner in 1987. The timing of the installation of the diverting works is critical for two reasons. First, the fact that the booster motor and pump were in place by 1982 refutes the assumption that the booster was installed for the purpose of pressurizing lines extended to the leased land in 1985. Second, those diverting works were capable of diverting 3.21 cfs in 1987, and likely were capable of 3.21 cfs in 1982 if a sufficient number of handlines were in place at that time.

The right holder asserts in his affidavit that he employed nine handlines on the 158 acres within the permitted place of use as a matter of convenience, even though fewer handlines may have been sufficient. Because the Department's field examiner did not indicate whether the nine handlines were used on 158 acres or 258 acres, the Department cannot positively refute his assertion, even though it may seem unusual. The right holder did not state when the nine handlines were first employed. It is possible that some were added after he submitted proof of beneficial use, but it is equally possible that all nine handlines were utilized right from the start to deliver 3.21 cfs of water to the permitted place of use.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 obligates the Department to issue a water right license that accurately portrays the water right developed in accordance with the permit.
2. By the time he submitted proof of beneficial use for Permit 22-7397, the right holder had installed sufficient diverting works and applied 3.21 cfs of water from ground water to irrigate 158 acres within the permitted place of use in the NE¼ of Section 10, T6N, R41E, B.M.
3. The authorized diversion rate on Water Right License 22-7397 does not accurately portray the water use developed in accordance with the permit during the authorized development period.
4. The authorized season of use for Water Right License 22-7397 exceeds the accepted normal season for the authorized place of use by one day.
5. The conditions of approval on the license are not consistent with the licensed annual diversion volume limit on the license.
6. The authorized diversion rate for Water Right License 22-7397 should be 3.16 cfs.
7. The authorized season of use for Water Right License 22-7397 should be 4/1 to 10/31.
8. The conditions of approval on the license should limit the use of water to 3.5 af per acre of land irrigated.
9. The Department should correct Water Right License 22-7397 to authorize a diversion rate of 3.16 cfs, a season of use of 4/1 to 10/31, and a diversion volume limit of 3.5 af per acre.

ORDER

IT IS HEREBY ORDERED that the authorized diversion rate for Water Right License 22-7397 shall be 3.16 cfs.

IT IS FURTHER HEREBY ORDERED that the authorized season of use for Water Right License 22-7397 shall be 4/1 to 10/31.

IT IS FURTHER HEREBY ORDERED that approval condition no. 5 on the license shall say:

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 irrigation of the lands above.

IT IS FURTHER HEREBY ORDERED that the Department shall issue a corrected water right license document for Water Right 22-7397 on this date in connection with this order.

Dated this 3rd day of September, 2008.

A handwritten signature in cursive script, appearing to read "Gary Spackman", is written over a horizontal line.

GARY SPACKMAN

Administrator, Water Management Division

EXHIBIT L

IDWR Order Correcting Water Right License No. 22-13457

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE)	
NO. 22-13457 IN THE NAME OF)	
<u>JOHN SMITH OR RICHARD SMITH</u>)	PRELIMINARY ORDER CORRECTING LICENSE

This matter having come before the Idaho Department of Water Resources ("Department") as the result of a motion to set aside a partial decree within the Snake River Basin Adjudication ("SRBA") the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On December 29, 1982, John H. Smith filed an application (No. 22-7418) with the Department, seeking a permit to divert 14.40 cfs of ground water to irrigate 720 acres. The place of use described in the application included the NENW and NWNW of Section 18, T05N, R41E. The place of use did not include acres in the SWNW or SENW of Section 18, T05N, R41E.

2. Permit 22-7418 was issued by the Department on June 11, 1985. The permit place of use was identical to the application place of use and did not include acres in the SWNW or SENW of Section 18, T05N, R41E. Proof of beneficial use was filed by John Smith on July 1, 1985. Mr. Smith stated that he developed 720 acres under the water right permit.

3. On June 16, 1988, John Smith filed claim 22-7418 in the SRBA. Claim 22-7418 described a diversion rate of 4.4 cfs and the irrigation of 617 acres. The place of use listed in claim 22-7418 did not include acres in the SWNW or SENW of Section 18, T05N, R41E. A competing SRBA claim for a portion of water right 22-7418 was filed by Franko Farms Inc. c/o Frank Webster in August 1988.

4. Recognizing that Franko Farms was entitled to a portion of water right 22-7418, John Smith and Richard Smith filed an amended claim in the SRBA in August 1988. The amended Smith claim was assigned no. 22-7418A. The Franko Farms claim was assigned no. 22-7418B. The Smith claim, 22-7418A, described a diversion rate of 3.83 cfs and the irrigation of 537 acres. Claim 22-7418A listed the SWNW and SENW of Section 18, T05N, R41E.

5. Claim 22-7418A included the following statement:

By agreement Mr. Smith leases 80 acres in W1/2 NE1/4 Sec 13 T5N R40E to Franko Farms Inc. who uses their own wells to irrigate this leased ground (claimed under A22-7418B). Franko Farms Inc. in-turn leases 80 acres S1/2 NW1/4 Sec 18 T5N R41E to Mr. Smith who uses his own irrigation system to irrigate this ground as recorded in this claim.

6. The S1/2 of the NW1/4 of Section 18, T05N, R41E was originally covered by water right 22-7071. Right 22-7071 was licensed in November 1978 in the name of Franko Farms and included the S1/2 of the NW1/4 of Section 18. The SRBA claim filed by Franko Farms for right 22-7071 listed the 80 acres of the Smith property (in Section 13, T05N, R40E) being irrigated by the Franko Farms well under the exchange agreement described above.

7. The SRBA claim for 22-7071 did not include the S1/2 of the NW1/4 of Section 18. Franko Farms was allowed to claim a place of use different from that listed on water right license 22-7071 under an accomplished transfer theory because the change occurred prior to 1987. The partial decree issued by the SRBA Court for right 22-7071 did not include the S1/2 of the NW1/4 of Section 18.

8. Because water right 22-7418 was still a permit at the time the SRBA commenced, the Department needed to conduct a review the water right and issue a water right license before the SRBA claim could be processed. On July 9, 1997, the Department conducted a field exam of water right 22-7418A.

9. The field examiner found 592.7 acres being irrigated under water right 22-7418A. The irrigated place of use included acres in the SWNW and SENW of Section 18, T05N, R41E. The field examiner also determined that 5.87 cfs could be diverted from the Smith ground water well.

10. Water right 22-7418A was renumbered to 22-13457 at the time of licensing. When the Department prepared the license for 22-13457, there was discussion about whether the SWNW and SENW of Section 18, T05N, R41E should be included on the Smith license because Mr. Smith did not own the land.

11. In January 2006, a Department employee, Kay Walker, prepared a memo summarizing the history and basis for license 13-13457. The memo included the following discussion:

Lands in S1/2NW1/4, Sec. 18 were previously licensed under Rt. 22-7071 but those lands have not been claimed in the SRBA under Claim 22-7071. [Department staff] will request an amended claim for 22-7071 so that [staff] can recommend the lands in S1/2NW1/4, Sec. 18 as part of that licensed right. I did not include these lands in licensing recommendations [for water right 22-13457] as they are licensed under Rt. 22-7071

12. The SRBA claim for right 22-7071 was never amended by Franko Farms to cover the S1/2 of the NW1/4 of Section 18. License 22-13457 did not include the S1/2 of the NW1/4 of Section 18.

13. A partial decree for right 22-13457 was issued by the SRBA Court on November 24, 2008. The partial decree for right 22-13457 did not include any irrigated acres in the S1/2 of the NW1/4 of Section 18.

14. In April 2012, the Department notified Webster Brothers Farms, the current owner of the property, that the S1/2 of the NW1/4 of Section 18 was being irrigated without a valid water right. In response to that notice, Richard Smith, who continues to lease the property, contacted the department to discuss the history of water right 22-13457. On December 28, 2012, Mr. Smith filed a motion with the SRBA Court to set aside the partial decree for right 22-13457 to address the acres left off of the water right license.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 describes the Department's role in licensing a water right after proof of beneficial use has been submitted:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

2. Under Idaho Code § 42-219, the Department has an obligation to issue a water right license that accurately portrays the extent of beneficial use developed in accordance with a permit.

3. License 22-13457 does not accurately portray the full extent of beneficial use developed under the Smith portion of Permit 22-7418 because it does not include acres irrigated by Mr. Smith in the SWNW and SENW of Section 18, T05N, R41E. Evidence shows that Mr. Smith was leasing the SWNW and SENW of Section 18 in the mid-1980s and could therefore develop a water right on that property.

4. Evidence also shows that the SWNW and SENW of Section 18 was intentionally left off of license 22-13457 in anticipation of an amended claim being filed by Franko Farms for water right 22-7071. The amended claim was never filed by Franko Farms, leaving the SWNW and SENW of Section 18 not covered by a valid water right.

5. Because the irrigated place of use developed by Mr. Smith under water right 22-7418 (22-13457) included the SWNW and SENW of Section 18 through a valid lease agreement, those acres should be included on license 22-13457. The Department should correct License 22-13457 to include all of the acres found by the field examiner in Section 18.

ORDER

IT IS HEREBY ORDERED that Water Right License 22-13457 is CORRECTED as set forth in the Corrected Water Right License issued in conjunction with this Order.

Dated this 26th day of February, 2013.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of February 2013, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING LICENSE, to the person(s) listed below:


Judea Jones
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING LICENSE (22-13457)

**Richard Smith
PO Box 8
Rexburg, ID 83440**

**Jerry Rigby
Rigby, Andrus & Rigby Chtd.
PO Box 250
Rexburg, ID 83440**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

EXHIBIT M

IDWR Order Correcting Water Right License No. 22-69638

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 69638 IN THE) PRELIMINARY ORDER
NAME OF LA VAR NEWMAN) CORRECTING TRANSFER APPROVAL

This matter having come before the Idaho Department of Water Resources (Department) as the result of a clerical error discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. In 2002, La Var Newman filed Application for Transfer No. 69638 seeking to change the point of diversion and place of use for a split portion of water right 32-10358. Mr. Newman's split portion of the right (assigned water right no. 32-13211) authorized the diversion of 8.23 cfs and the irrigation of 368.6 acres.

2. Application for Transfer No. 69638 was approved by the Department on October 24, 2003. Transfer Approval 69638 included a description of water right 32-13211. It also included a description of water right 32-7116, which partially overlaps the place of use for right 32-13211. At the time of the transfer approval, Mr. Newman also diverted water under Permit 32-7253, which also partially overlaps the place of use for right 32-13211.

3. The Department recently conducted a licensing review for Permit 32-7253. During that review, the Department discovered an error in Transfer Approval 69638, specifically in the place of use description for right 32-13211. The acres listed in the SESE and the SWSE of Section 31, T12N, R29E had been inadvertently transposed.

4. Application for Transfer No. 69683 correctly identified the proposed place of use for right 32-13211. The application identified 36 irrigated acres in the SESE of Section 31, T12N, R29E, and 11 irrigated acres in the SWSE of Section 31.

5. The place of use description for right 32-7116 in Transfer Approval 69638 matched the application's place of use description for the acres in Section 31. The map included with the transfer application agreed with the application's place of use description. The ArcGIS shapefile created by the department for Transfer Approval 69638 also agrees with the application's place of use description.

6. In Transfer Approval 69638 the irrigated acres listed in water right 31-13211 for the SWSE and SESE of Section 31 were transposed. 36 acres were listed in the SWSE of Section 31

and 11 acres were listed in the SESE of Section 31. Evidence suggests this transposition of numbers is simply a clerical, data-entry error.

7. The current water right holder should not be required to file a new transfer to correct the Department's clerical error. The Department should correct the error and Transfer Approval 69638 through this order.

CONCLUSIONS OF LAW

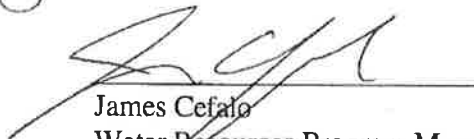
1. Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe water right 32-13211 in Transfer Approval 69638.

2. The Department should issue an Amended Transfer Approval 69638 correcting the clerical error in the place of use description for right 32-13211. 36 irrigated acres should be listed in the SESE of Section 31, T12N, R29E. 11 irrigated acres should be listed in the SWSE of Section 31, T12N, R29E.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 69638 is CORRECTED as set forth in the Amended Transfer Approval 69638 issued in conjunction with this Order.

Dated this 24th day of August, 2012.


James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of August 2011, I mailed a true and correct copy of the foregoing **PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL**, to the person(s) listed below:


Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (69683)

**La Var Newman
2943 North 800 East
Monteview, ID 83435**

**Howard Taylor & Sons
PO Box 51780
Idaho Falls, ID 83403**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

EXHIBIT N

IDWR Order Correcting Water Right Transfer No. 75147

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER)
NO. 75147 IN THE NAME OF)
SOUTHEAST IDAHO ENERGY LLC)

**PRELIMINARY ORDER
RESCINDING TRANSFER**

This matter having come before the Idaho Department of Water Resources ("Department") as a result of an unaccomplished water right transfer, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On March 22, 2004, the Snake River Basin Adjudication Court issued partial decrees for water rights 29-2284 and 29-2301. Water right 29-2284 bore a priority date of March 2, 1949 and authorized the diversion of 4.50 cfs and an annual diversion volume of 3,257.9 acre-feet from ground water for industrial use. Water right 29-2301 bore a priority date of April 24, 1951 and authorized the diversion of 4.00 cfs and an annual diversion volume of 2,895.9 acre-feet from ground water for industrial use. Water rights 29-2284 and 29-2301 were used at the same industrial facility but did not include any combined rate or volume limits.

2. On October 1, 2008, Southeast Idaho Energy LLC ("SEI") filed Application for Transfer No. 75147, proposing to change the points of diversion and place of use for water rights 29-2284 and 29-2301. The proposed points of diversion and place of use were located approximately 20 miles to the southwest of the then-existing points of diversion and place of use.

3. Application 75147 stated that the water rights would be used at a coal gasification and fertilizer production facility to be constructed at the proposed place of use. Application 75147 described two new ground water wells to be drilled at the proposed place of use.

4. Mike McVay, a hydrologist for the Department, conducted a technical review of the proposed transfer and determined that water rights 29-2284 and 29-2301 should be limited to a combined annual diversion volume of 5,070 to prevent impacts to Snake River water rights. McVay Memo, pages 9-11 (February 2, 2010).

5. The Department approved Transfer 75147 on December 31, 2009. The transfer approval included the following conditions:

Rights 29-2284 and 29-2301 when combined shall not exceed a total diversion rate of 8.5 cfs, a total annual maximum diversion volume of 5,070 acre-feet.

The right holder shall accomplish the change authorized by this transfer within one year(s) of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

6. Because the new points of diversion were located within a different administrative basin, the Department assigned new numbers to the water rights. Water right 29-2284 was renumbered as 35-14014. Water right 29-2301 was renumbered as 35-14015.

7. Magnolia Nitrogen Idaho, LLC ("Magnolia") acquired all of the assets of SEI in the fall of 2012, including water rights 35-14014 and 35-14015. Affidavit of Ric Sorbo, CEO of Magnolia (March 13, 2017). Because of financial issues, the industrial facility proposed in Transfer 75147 was never completed. *Id.* The proposed ground water wells were not drilled and no ground water was diverted at the proposed project site. *Id.*

CONCLUSIONS OF LAW

1. The Department has the authority to rescind a prior transfer approval if the conditions of approval are not satisfied.

2. The evidence available to the Department confirms that the changes proposed in Transfer 75147 were never accomplished. SEI and its successor in interest, Magnolia, did not comply with the conditions of Transfer 75147 because the proposed changes were never completed. The Department should rescind Transfer 75147 for failure to comply with the conditions of approval. Water rights 35-14014 (29-2284) and 35-14015 (29-2301) should be returned to their pre-transfer elements and conditions, including removal of the combined annual diversion volume limit.

ORDER

IT IS HEREBY ORDERED that Transfer 75147, approved on December 31, 2009, is **RESCINDED**. The points of diversion and place of use for water rights 35-14014 and 35-14015 shall revert to the locations existing prior to Transfer 75147. The conditions of the water rights shall revert to those existing on the water rights prior to Transfer 75147. Because the water rights are returning to Administrative Basin 29, the water rights should be renumbered to their original water right numbers (29-2284 and 29-2301).

Dated this 12th day of June, 2017.



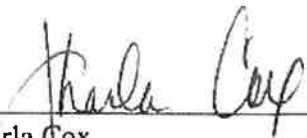
James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of June 2017, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER RESCINDING TRANSFER, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

**Power County
c/o Sharee Sprague
543 Bannock Avenue
American Falls, ID 83211**

**Douglas Balfour
230 W Lewis
PO Box 490
Pocatello, ID 83204**



Sharla Cox
Administrative Assistant

6/2/2017

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	POWER COUNTY 543 BANNOCK AVE AMERICAN FALLS, ID 83211 (208) 226-7610

Tributary

3,257.9 AF

Sec. 13, Twp 06S, Rge 33E, POWER County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
06S	33E	12											X	X			X	X	
06S	33E	13	X	X	X	X	X	X	X	X					X	X			

1. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

6/2/2017

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	POWER COUNTY 543 BANNOCK AVE AMERICAN FALLS, ID 83211 (208) 226-7610

Status: Active

Tributary

Volume

2,895.9 AF

2,895.9 AF

Sec. 13, Twp 06S, Rge 33E, POWER County

INDUSTRIAL within POWER County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S	33E	12											X	X			X	X	
06S	33E	13	X	X	X	X	X	X	X	X					X	X			

1. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a Preliminary Order issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

EXHIBIT O

IDWR Order Correcting Water Right Transfer No. 77576

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 77576 IN THE NAME OF) PRELIMINARY ORDER
ARLIN D. OR CORALLE M. KNIGHT) CORRECTING TRANSFER APPROVAL

This matter having come before the Idaho Department of Water Resources ("Department") as the result of computation errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On May 11, 2012, Arlin Knight filed Amended Application for Transfer No. 77576, seeking to change the point of diversion and place of use for water rights 31-7277, 31-11449 and a 60-acre split portion of water rights 31-10534 and 31-11452. The transfer application was advertised to the public and was not protested. Transfer 77576 was approved on July 18, 2012.

2. The Snake River Basin Adjudication ("SRBA") Court issued partial decrees for water rights 31-7277, 31-10534, 31-11449 and 31-11452 in 2002 and 2003. The partial decrees for these four water rights included various combined limits (diversion rate, volume, and irrigated acres) with water rights 31-2291A and 31-11424 because the six rights were all developed from shared ground water wells.

3. Water rights 31-2291A and 31-11424 are currently in the name of Circle B Farms Limited Partnership ("Circle B Farms"). Water rights 31-2291A and 31-11424 were added to the transfer as associated rights to update the combined limit conditions to reflect the split of water rights 31-10534 and 31-11452.

4. Water right 31-11452 was split into right 31-12305 (remaining portion) and right 31-12306 (transferred portion). Water right 31-10534 was split into right 31-12307 (remaining portion) and 31-12308 (transferred portion).

5. As part of the transfer approval, the Department also split the combined limits. The limits were split based on two groupings: (1) the water rights transferred to Mr. Knight's proposed place of use (31-7277, 31-11449, 31-12306, and 31-12308), and (2) the water rights remaining at the original location and the Circle B Farms water rights (31-12305, 31-12307, 31-2291A, and 31-11424). The combined limits should have been split in proportion to the number of acres under each of the water rights.

6. During a recent review of water rights in the area, the Department discovered that the combined limit conditions listed in Transfer Approval 77576 were calculated incorrectly. The

combined limits were not calculated based on the proportionate acres under each of the water rights. Attachment A to this Order lists the water rights and the combined limits as they existed before the transfer and the correct way the water rights should have been listed after the transfer.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe the water rights included in Transfer Approval 77576. The combined limit conditions for the rights should have been calculated based on the proportionate acres under each of the water rights as shown in Attachment A.

2. The Department should issue an Amended Transfer Approval 77576, correcting the errors in the water right conditions.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 77576 is CORRECTED as set forth in the Amended Transfer Approval 77576 issued in conjunction with this Order.

Dated this 20th day of June, 2013.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of June 2013, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL, to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (77576)

**Arlin or Coralle Knight
2379 East 2050 North
Hamer, ID 83425-5143**

**Circle B Farms Ltd Partnership
PO Box 69
Lewisville, ID 83431**

Preliminary Order Correcting Transfer Approval 77576 Attachment A

Water Rights Prior to Transfer 77576

Knight

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-7277	11/22/1977	1.87	417	139
31-11449	2/25/1949	0.99	220.5	63
31-10534	2/2/1942	1.4	280	80
31-11452	2/25/1949	1.96	114.6	80

Circle B Farms

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-2291A	2/25/1949	1.96	53.3	10
31-11424	2/2/1942	1.4	53.3	10

Combined Limits Prior to Transfer 77576

31-2291A / 31-11424: 53.3 af, 10 acres, 8.4 af in 14 days

31-10534 / 31-11452: 280 af, 80 acres, 66.6 af in 14 days

31-7277 / 31-11449: 2.78 cfs, 486.5 af, 139 acres

31-2291A / 31-11449 / 31-11452: 1.96 cfs

31-2291A / 31-11424 / 31-11449 / 31-10534 / 31-11452: 4.20 cfs

Water Rights After Transfer 77576

Knight

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-7277	11/22/1977	1.87	417	139
31-11449	2/25/1949	0.99	220.5	63
31-12308	2/2/1942	1.05	210	60
31-12306	2/25/1949	1.47	86	60

Circle B Farms

<u>Right No.</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
31-2291A	2/25/1949	1.96	53.3	10
31-11424	2/2/1942	1.4	53.3	10
31-12307	2/2/1942	0.35	70	20
31-12305	2/25/1949	0.49	28.6	20

Combined Limits After Transfer 77576

31-2291A / 31-11424: 53.3 af, 10 acres, 8.4 af in 14 days

31-12305 / 31-12307: 70 af, 20 acres, 16.6 af in 14 days

31-12306 / 31-12308: 210 af, 60 acres, 50 af in 14 days

31-7277 / 31-11449: 2.78 cfs, 486.5 af, 139 acres

31-2291A / 31-12305: 0.38 cfs

31-11449 / 31-12306: 1.58 cfs

31-2291A / 31-11424 / 31-12305 / 31-12307: 0.82 cfs

31-11449 / 31-12306 / 31-12308: 3.38 cfs

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

EXHIBIT P

IDWR Order Correcting Water Right Transfer No. 80061

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 80061 IN THE NAME OF) PRELIMINARY ORDER
TERRELL AND SANDRA YANCEY) CORRECTING TRANSFER APPROVAL

This matter having come before the Idaho Department of Water Resources ("Department") as the result of clerical errors discovered in a transfer approval, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On April 20, 2015, Terrell and Sandra Yancey filed Application for Transfer No. 80061, proposing to change the point of diversion and place of use for a split portion of five separate water rights (35-7355A, 35-13754, 35-8074A, 35-2774A and 35-7644A). Application 80061 proposed to move 5.3 acres of water right 35-7355A to the new place of use.

2. Prior to Transfer 80061, water right 35-7355A shared a common place of use with five other water rights and included the following condition: "Rights 35-2333, 35-7355A, 35-7355B, 35-13753 and 35-13553 when combined shall not exceed a total diversion rate of 9.96 cfs, a total annual maximum diversion volume of 1,972 af at the field headgate, and the irrigation of 493 acres." The 493-acre combined place of use was located in Section 4, T05S, R31E.

3. Because Transfer 80061 proposed moving a 5.3-acre portion of water right 35-7355A to a new place of use and a separate irrigation system, water rights 35-2333, 35-7355B, 35-13553 and 35-13753 were added to Transfer 80061 to update the combined limit condition and reduce the 493-acre combined place of use of the water rights.

4. The reduced combined place of use for water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753 was 487.7 acres, still located in Section 4, T05S, R31E. Application 80061 did not propose any changes to the remaining 487.7-acre combined place of use. Transfer Approval 80061 mistakenly described the combined place of use for water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753 in the neighboring Section (Section 33, T04S, R31E). The error was discovered during the processing of a subsequent transfer application.

5. The evidence available to the Department at this time, indicates Transfer Approval 80061 included a clerical error in the place of use descriptions for water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753. The 487.7-acre combined place of use for these water right should have been located in Section 4, T05S, R31E, instead of Section 33, T04S, R31E. The Department should correct the transfer approval.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-222, the Department has a duty to accurately describe each of the water rights changed as part of a transfer application. The Department did not accurately describe water rights 35-2333, 35-7355A, 35-7355B, 35-13553 and 35-13753 in Transfer Approval 80061. The 487.7-acre combined place of use for these five water rights should have been described in Section 4, T05S, R31E.

2. The Department has the authority to issue Amended Transfer Approval 80061, correcting the error in the place of use legal descriptions.

ORDER

IT IS HEREBY ORDERED that Transfer Approval 80061 is CORRECTED as set forth in Amended Transfer Approval 80061 issued in conjunction with this order.

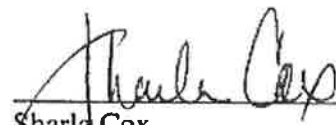
Dated this 15th day of May, 2017.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of May 2017, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL (80061)

**Terrell and Sandra Yancey
1226 S 2700 W
Aberdeen, ID 83210**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.