

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 79677

This is to certify that: KBC FARMS LLC
3010 MC KINLEY ST
AMERICAN FALLS, ID 83211

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
41-8D	WR/DECREED	10/1/1879	0.533 cfs	N/A	N/A	26.0	SOUTH FORK ROCK CREEK

Purpose of Transfer (Changes Proposed)

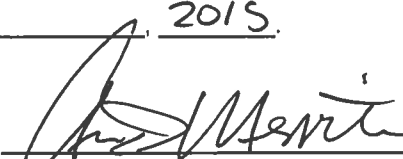
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
41-8D	NO	YES	NO	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
41-8D	41-8D	0.533 cfs	N/A	N/A	26.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.533 cfs	N/A	N/A	26.0		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 23 day of March, 2015.


Southern Region Manager

WATER RIGHT NO. 41-8D **As Modified by Transfer No. 79677**

In accordance with the approval of Transfer No. 79677, Water Right No. 41-8D is now described as follows:

Right Holder: KBC FARMS LLC
 3010 MC KINLEY ST
 AMERICAN FALLS, ID 83211

Priority Date: 10/1/1879

Source: SOUTH FORK ROCK CREEK **Tributary:** ROCK CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	4/01	to 10/31	0.533 cfs 0.533 cfs

LOCATION OF POINT(S) OF DIVERSION

SOUTH FORK ROCK CREEK NWSW Sec 20 Twp 10S Rge 31E POWER County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	31E	20									9.0			17.0					26.0

POU Total Acres: 26.0

CONDITIONS OF APPROVAL

1. The quantity listed above shall be measured at the point of diversion listed for this right by means of a measuring box of the type and dimensions decreed by In Re Houtz et al (Oneida County, Sixth Judicial District Court, June 6, 1903). Any change in the method of measurement shall constitute a change in the point of diversion requiring approval by the Idaho Department of Water Resources as a transfer pursuant to I.C. Section 42- 222.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 41.
3. This right when combined with all other rights shall provide no more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. Irrigation use under this right shall not exceed a total diversion rate of 0.42 cfs without prior approval of the Department.

Transfer No. 79677

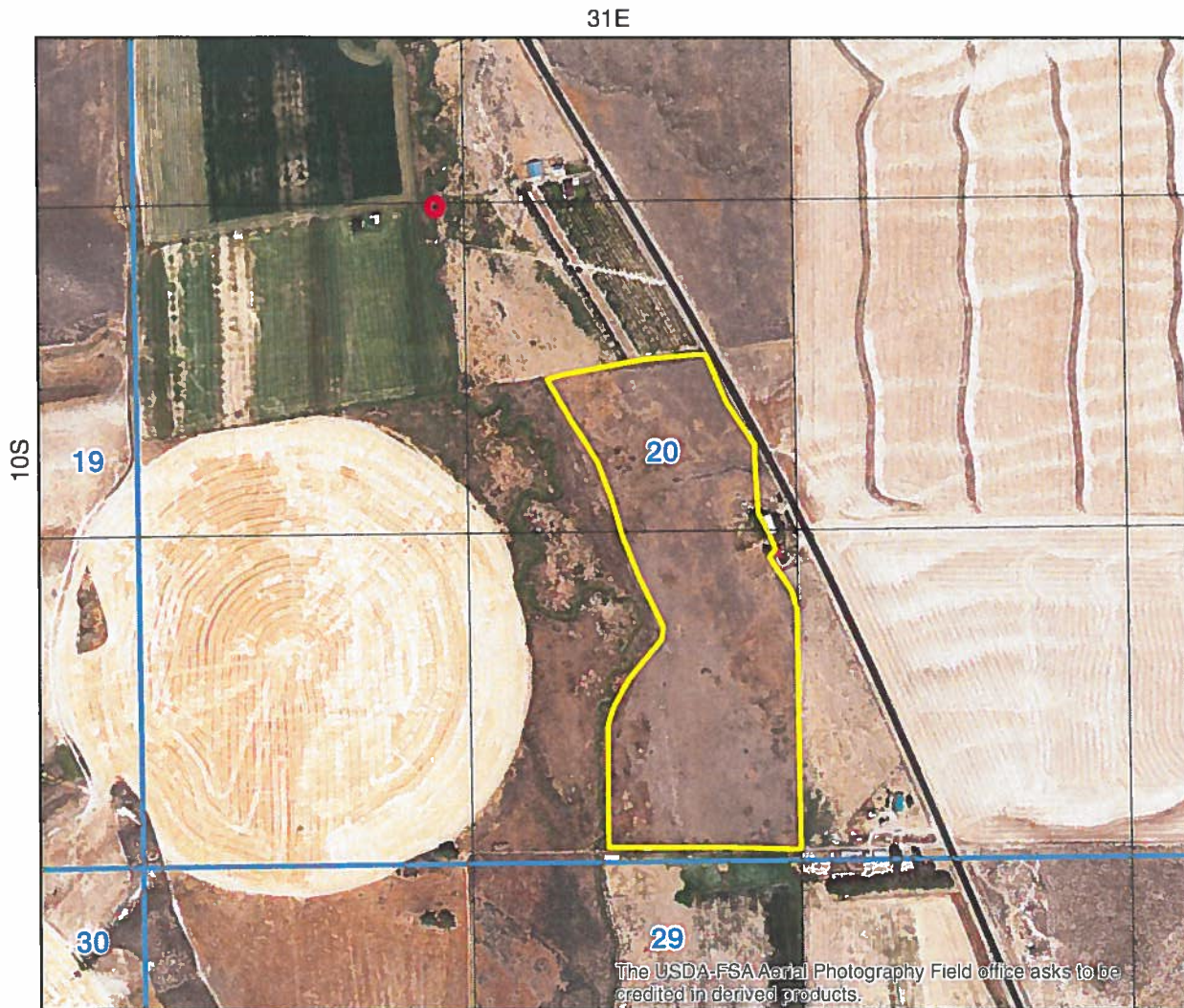
WATER RIGHT NO. 41-8D
As Modified by Transfer No. 79677

CONDITIONS OF APPROVAL

6. Rights 41-8D and 41-10251 when combined shall not exceed the irrigation of 26 acres.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. 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 may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

State of Idaho
Department of Water Resources
Attachment To Transfer No. 79677
41-8D

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.075 0.15 0.3 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 24, 2015

KBC FARMS LLC
3010 MC KINLEY ST
AMERICAN FALLS ID 83211

Re: Transfer No: 79677
Water Right No(s): 41-8D

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) 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 by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action 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 Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt". The signature is fluid and cursive, with the first name "Allen" written in a smaller, more compact script than the last name "Merritt".

Allen Merritt
Southern Regional Manager

Enclosure

cc:

RACINE OLSON NYE BUDGE & BAILEY
C/O RANDALL C BUDGE
PO BOX 1391
POCATELLO ID 83204-1391

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2015 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**Re: Transfer No.: 79677
Water Right No(s): 41-8D**

**KBC FARMS LLC
3010 MC KINLEY ST
AMERICAN FALLS ID 83211**

**RACINE OLSON NYE BUDGE & BAILEY
C/O RANDALL C BUDGE
PO BOX 1391
POCATELLO ID 83204-1391**

A handwritten signature in black ink, reading "Denise Maline", is written over a horizontal line.

**Denise Maline
Administrative Assistant**

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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 24, 2015

JAMES ROBINSON
WATER DISTRICT # 41
PO BOX 157
ROCKLAND, ID 83271

Re: **APPROVED Transfer No. 79677 (KBC Farms LLC)**

Dear Mr. Robinson:

For your information and records, we have enclosed a copy of an APPROVED Application for Transfer within your District.

If you have any questions, please contact this office, or the applicant.

Sincerely,

A handwritten signature in cursive script that reads "Denise Maline".

Denise Maline
Administrative Assistant

Enclosure

MEMORANDUM

TO: Transfer # 79677 File

FROM: Benny Walker

DATE: March 17, 2015

SUBJECT: Filing Fee

The filing fee, \$500.00, for this transfer is based on the total amount of water being transferred. The transfer proposes modifying 0.533 cfs of water rights which equates to a \$500.00 fee. When the transfer was first submitted a check for \$250.00 was included. A letter was sent to the representative requesting the additional fee of \$250.00 for the transfer. A check for \$250.00 was received on 11/7/2014 added to the \$250.00 originally submitted, totaling \$500.00 filing fee.

State of Idaho

County of Power

Brett Crompton being first duly sworn on oath, states:

That he is the Publisher of The Power County Press, a newspaper of general circulation in Power County, Idaho, published weekly at American Falls in said county, that said newspaper has been published in said county uninterrupted and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement:

That the annexed notice or advertisement was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof for successive weekly issues thereof, the date of the first publication being the 14th day of January 2015 and the date of the last publication being the 14th day of January 2015.

Signed

State of Idaho

County of Power

On this 14th day of January in the year of 2015, before me, a Notary Public, personally appeared Brett Crompton, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.



Notary Public for Idaho
Residing at American Falls, Idaho
My commission expires: July 19, 2016

Proposed change of
water right

Published in The Power County Press
on Jan. 7 and 14, 2015

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 79677

KBC FARMS LLC, 3010
MCKINLEY ST. AMERICAN FALLS,
ID 83211; has filed Application No.
79677 for changes to the following water
rights within POWER County(s): Right
No(s). 41-8D; to see a full description of
these rights and the proposed transfer,
please see [www.idwr.idaho.gov/apps/wr-
QueryNewTransfers/QueryNewTrans-
fers.aspx](http://www.idwr.idaho.gov/apps/wr-
QueryNewTransfers/QueryNewTrans-
fers.aspx). The purpose of the transfer is
to change a portion of the above rights
as follows: Application proposes to
change the current point of diversion for
a surface water right from the South Fork
Rock Creek located approximately 4.0
miles south and 1.75 miles east from the
center of the city of Rockland to an ex-
isting point of diversion from the South
Fork Rock Creek located approximately
2.5 miles south and 0.6 miles east from
the center of the city of Rockland. The
proposed change will allow for the diver-
sion of 0.533 cfs for the irrigation of 26.0
acres.

For additional information concern-
ing the property location, contact South-
ern Region office at (208) 736-3033.
Protests may be submitted based on the
criteria of Idaho Code Sec. 42-222. Any
protest against the proposed change must
be filed with the Department of Water
Resources, Southern Region, 650 Addi-
son Ave W Ste 500, Twin Falls ID 83301
together with a protest fee of \$25.00 for
each application on or before January 26,
2015. The protestant must also send a
copy of the protest to the applicant.

GARY SPACKMAN, Director

✓ OK DM 2/27/2015

RECEIVED

State of Idaho
Department of Water Resources
Transfer of Water Right(s)
RECOMMENDATION FORM

JAN 26 2015

DEPT OF WATER RESOURCES
SOUTHERN REGION

Transfer Application No.: 79677

Water Right No(s): 41-8D

Transfer Applicant's Name: KBC FARMS LLC
3010 McKINLEY ST
AMERICAN FALLS, ID 83211

Watermaster's Recommendation:

- a) _____ I do not oppose approval of this application.
- b) X _____ I do not oppose approval of this application if it is conditioned as follows:
an appropriate measuring device is installed, an only 7 gallons, min inch will be diverted as discussed in the document to be sent with this transfer
- c) _____ I oppose approval of this application for the following reasons:
- d) _____ Additional comments:

Dated this 19th day of January, 2015

Water District No. 41


Watermaster's Signature

James Robinson
Printed Name

RECEIVED

JAN 20 2015

DEPT. OF WATER RESOURCES
SOUTHERN REGION

James Robinson (Watermaster)
Water District 41
P.O. Box 157
Rockland, Idaho 83271-0157
January 19, 2015

Dept. Water Resources
650 Addison Ave. W. Suite 500
Twin Falls, Idaho 83301-5858

RE: Transfer No. 79677

Water Right No. 41-8D

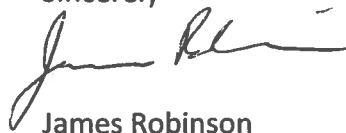
This application has clerical error that should be corrected at some point. On page 2 Item 6a instead of the Robert Spillet Farm It should read the Juan Spillet farm to correspond with the attached deed.

Now, concerning the amount of water to be transferred. I am not sure how this is to be taken into account. I have enclosed various records that I have of the meetings in the early 90's that talk about our measuring structures in District 41. Through these and conversations on the phone with various department personnel, we settled on a 2 gal/min reduction per inch for pumps put into the creek. In other words, if a person has a 10 inch right delivered through a box as talked about in the "Quantity" section of his SRBA decree instead of 90 Gal/Min he would only get 70 Gal, per minute. If a measuring box is built as described he gets what flows through the box. In either case the person would be getting about the 7 Gal/ min.

In this case the .533 cfs converts to 26.65 inches delivered through the above box. This would amount to about 186 gal/ minute. I have also enclosed a letter sent to KBC Farms on 8 Aug. 2014 discussing this situation. Please give me a call at 705-7115. I don't know what to call the amount since it isn't a true cfs either.

If we can sort these things out then I don't have a problem with this transfer.

Sincerely

A handwritten signature in black ink, appearing to read 'James Robinson', is written over the printed name.

James Robinson

DEPT. OF WATER RESOURCES
ATTN: ALAN MERRITT
222 Shoshone St. East
Twin Falls, Id. 83301
Jan. 25, 1995

Dear Mr. Merritt,

We on the Bench Ditch Irrigation Company in Water District 41 protest any change in measuring structures in this District. WE feel that some people in the district may be thinking about changing their structures and would probably end up diverting more water than they have used in previous years. Following are the facts as we see them.

1. The arbitration for the use of water of Rock Creek and its Tributaries states "That all water herein awarded shall be measured in a box or flume placed at the head of every ditch through which the same is to be conveyed of the length of 8 & 1/4 feet with a fall of 1/2 inch to said box the water at notime in said box to be more than 6 inches in depth at the head thereof"
2. These devices have been used since 2/04/1890.
3. To date there have been only 5 pumps installed directly into the creek with meters to tell how much water is being diverted. These pumps total 190 inches, and at the time they were installed, we were not aware of problems in the measuring devices.
4. In the summer of 1994 Steve Clelland started to study this basin as part to the Snake River Adjudication. He found along with James Robinson as watermaster that out of the five or six ditches that they checked, all had their boxes set at the above specifications, and all were actually measuring 20 to 40 percent less water than claimed.
5. An informational meeting was held in November to explain the problems this brings up. It was stated in that meeting that most people appear to have not been getting their water, and haven't been for 100 plus years. A demonstration area was also set up on one ditch to show the differences in measuring devices.
6. We believe that if people begin changing their structures, they will be taking water that has been used to fill other rights for 100 years. This will hurt the youngest rights, turning many of them into dryfarms after 100 yrs.
7. We ask that a letter be sent to all users in the District stating

A. No changes to different measuring devices will be allowed, until a full study of the use of water has been made, and the courts have approved the amount of water to be delivered to each ditch or user.

B. Every ditch should have in place a measuring device as provided for in fact #1, so that accurate measurements actual water used can be made.

We ask that your prompt attention to this matter be given, as the 1995 irrigation season is rapidly approaching.

Sincerely,

Merrill Walker
President

Curtis Munk
Vice President

James Robinson
Secretary

JR

cc: R. Keith Higginson
Director
Dept. Of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor PHILIP E. BATT

R. KEITH HIGGINSON
Director

February 10, 1995

BENCH DITCH IRRIGATION CO
PO BOX 157
ROCKLAND ID 83271

Dear Wateruser:

In response to the Bench Ditch Irrigation Company's letter to IDWR dated January 25, 1995, this letter is being sent to all waterusers of record in the Basin 41 Water District.

As you may know, the arbitration for delivery of water that has operated in the Rockland valley for over 100 years has been very effective in allowing the delivery of water rights by the local watermaster. The box method described in the arbitration has worked to divide the waters fairly, but recent studies of the boxes have determined the actual flow rates that have been delivered for years are different than the rates listed in the arbitration. This is largely due to the fact that the box method, as applied in the valley, is not a standard measuring device.

It is IDWR's position that:

Rights recommended in the ongoing Snake River Basin Adjudication, will be based on the historical beneficial use and historical diversion rate represented by use of the box method.

Conversion to an approved, standard measuring device is encouraged but should not result in a increase in the amount of water diverted. IDWR requests, before any old diversion structure is removed or destroyed, to view and measure the historical diversion rate as delivered by the box described in the arbitration.

Any change in measuring devices or structures that results in an increase of diversion rates above the historical beneficial use will result in injury to junior right holders within the Rock Creek system.

We look forward to working with all waterusers in the district. SRBA examinations will resume in the spring of 1995 and IDWR will measure and evaluate all of the structures diverting from Rock Creek and the East Fork of Rock Creek. If you have questions please contact me at my office in Twin Falls.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Clelland".

STEVE CLELLAND
Water Resource Agent

ROCKLAND MEASUREMENT SEMINAR

SCHEDULE

DATE: TUESDAY NOVEMBER 1ST, 1994

TIME: 1:00 PM

WATER MASTER: JAMES ROBINSON

IDWR STAFF: STEVE CLELLAND
TIM LUKE
JIM STANTON

LOCATION: ROCKLAND SCHOOL

1:00 PM

OPENING COMMENTS --- JAMES ROBINSON

PURPOSE OF MEETING --- STEVE CLELLAND

VIDEO BY IDAHO WATER USERS ASSN. --- "Let's Measure Up"

MEASUREMENT METHODS & DEVICES --- TIM LUKE

QUESTIONS...

3:00 PM

FIELD DEMONSTRATION --- BUDGE DITCH DIVERSION ON EAST FORK
MEASUREMENT COMPARISONS ON:

- ◇ DECREE BOX AT 6" DEPTH
- ◇ CIPOLLETTI WEIR
- ◇ BROADCRESTED WEIR

H.P HOUTZ ARBITRATION MEASURING BOX REQUIREMENTS

In the matter of the application of
H.P. Houtz, ET. AL.; for the arbitration of
the claims to the use of water of
Rock Creek and its Tributaries.

" ...THAT ALL WATER HEREIN AWARDED SHALL BE MEASURED IN A BOX OR FLUME PLACED AT THE HEAD OF EVERY DITCH, THROUGH WHICH THE SAME IS TO BE CONVEYED OF THE LENGTH OF 8 & $\frac{1}{4}$ FEET WITH A FALL OF $\frac{1}{2}$ INCH TO SAID BOX, THE WATER AT NO TIME IN SAID BOX TO BE MORE THAN 6 INCHES IN DEPTH AT THE HEAD THEREOF AND WITHOUT PRESSURE EXCEPT THE NATURAL FLOW OF THE STREAM; SAID BOX TO BE PLACED ON A SOLID FOUNDATION AND CONSTRUCTED OF 2 INCH LUMBER, AND NO CLAIMANT HEREIN TO WHOM WATER IS HEREIN AWARDED SHALL AFTER THE PRESENT SEASON OF 1890 RECEIVE THE WATER HEREIN AWARDED TO HIM UNTIL HIS CLAIM SHALL HAVE BEEN IN EVERY RESPECT COMPLIED WITH; THAT THE RIGHT TO THE USE OF WATER HEREIN CONVEYED TO DIFFERENT CLAIMANTS SHALL DATE FROM THE DATE OF APPROPRIATION BY THEM EACH RESPECTIVELY, AND THAT NO CLAIMANTS' RIGHT, SUBSEQUENT IN TIME, SHALL BE PERMITTED TO USE THE WATER HEREIN AWARDED TO HIM UNTIL THE RIGHT OF EACH AND EVERY PRIOR APPROPRIATOR SHALL HAVE BEEN SUPPLIED; PROVIDED THAT AT THE TIME THE PRIOR APPROPRIATOR SHALL BE USING SAID WATER FOR A USEFUL AND BENEFICIAL PURPOSE, BUT IF SAID USEFUL AND BENEFICIAL PURPOSE DOES NOT EXIST THEN THE WATER HEREIN AWARDED TO SAID PRIOR APPROPRIATOR AND APPROPRIATORS SHALL BE SUBJECT TO USE BY THE SUBSEQUENT APPROPRIATORS ACCORDING TO THE DATE OF THEIR APPROPRIATIONS RESPECTIVELY...."

Filed and Recorded in Book "B" of Judgments, Page 206, County of Oneida, June 6, 1903.

IDWR MEASUREMENT SURVEY			
DITCH	INCHES PER ARBITRATION	IDWR MEASUREMENT	PERCENT DIFFERENCE
BENCH DITCH	445"	350"	21.3%
U.S. DITCH	350"	227"	35.1%
LOWER WEST D.	No Box	81"	
BUDGE DITCH	65"	50"	23.1%
TYLER DITCH	114"	73"	36.0%
ADSHEAD DITCH	160"	116"	27.5%

Average of these ditches for Rockland area = 28.6%
Measurements taken AUG. & SEPT. 1994.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

*** CECIL D. ANDRUS ***
Governor PHILIP E. BATT

R. KEITH HIGGINSON
Director

May 8, 1995

JAMES ROBINSON
WATERMASTER BASIN 41
PO BOX 157
ROCKLAND ID 83271

RE: DELIVERY QUESTIONS FOR 1995 SEASON

DEAR JAMES,

Enclosed please find a copy of the letter recently sent to attorneys for Mr. Juan Spillet. The basic position is as we discussed before; allow for the difference in measuring devices by a standard reduction of miner's inches OR re-build the arbitration device for delivery as before.

Please call me when you are called to begin deliveries so we can begin to measure the major ditches and diversions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Steve'.

STEVE CLELLAND
Water Resource Agent

ENC:



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

May 2, 1995

RECEIVED

PHILIP E. BATT
GOVERNOR

MAY 04 1995

R. KEITH HIGGINSON
DIRECTOR

Kenneth E. Lyon, Jr.
Lyon & Lyon
PO Box 4866
Pocatello ID 83205

Department of Water Resources
Southern Region

RE: Your letter of March 3, 1995 to Mr. Steve Clelland

Dear Mr. Lyon:

Your letter of March 3 suggests IDWR is making "arbitrary decisions" relative to the distribution of water in Water District 41. By this letter I will briefly explain the basis of IDWR's actions. For your convenience I have enclosed a copy of the document on which IDWR relied to develop its understanding of the relevant water rights. This is the arbitration award ("Arbitration"), subsequently confirmed by the District Court which serves as the functional equivalent to a decree of the water rights in Basin 41.

One of IDWR's duties is to instruct the Watermaster of Water District 41. Our instruction is based upon IDWR's understanding of both the arbitration of the water rights involved and applicable law.

Two aspects of this arbitration are important to note. First, the description of water rights includes neither the "more or less" language or a reference to "miners inches" as alleged in Mr. Spillett's letter of February 16, 1995 to Mr. Clelland. The description of some, but not all, of the water rights contains a reference to being measured "under a 4 inch pressure" but none of the other criteria needed to define a miners inch are included in the description of the water rights. For example, of the two water rights referenced in Mr. Spillett's letter, one, 41-00008, mentions the measurement technique but 41-00013 does not.

The second aspect of the arbitration to note is the following requirement:

That all water herein awarded shall be measured in a box or flume placed at the head of every ditch through which the same is to be conveyed of the length of 8 & 1/4 feet with a fall of 1/2 inch to said box the water at no time in said box to be more than 6 inches in depth at the head thereof and without pressure except the natural flow of the stream; said box to be placed on a solid foundation and constructed of 2 inch lumber...(emphasis added)

COPY

Kenneth E. Lyon, Jr.
May 2, 1995
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This box or flume will not, by its design, result in a measurement that correlates to miners inches. The arbitration goes on to specify water users will not receive water in the future unless the water users comply with the arbitration.

One possibility for instructing the watermaster is that the arbitration must be followed absolutely. That would require reconstruction of "boxes" at all diversions where "boxes" don't currently exist.

While requiring "boxes" would meet the requirements of the arbitration I can understand that some water users want to install more modern "standard" measuring devices. The question then is, how can standard measuring devices be installed and used which at the same time maintaining the status quo defined by the arbitration.

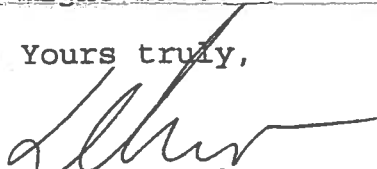
The installation and use of standard measuring devices for the delivery of water amounts from the arbitration, converted to miners inches, does not represent the status quo.

The data developed by IDWR shows the inches of water measured by the "boxes" are consistently less than miners inches. If status quo is to be maintained, "box inches" must be converted to an amount that can be measured by a standard measuring device. This conversion is addressed by Mr. Clelland's letter of February 10, 1995.

I concur with your client in desiring to get this issue resolved. I hope this letter helps explain IDWR's understanding of the status quo.

Please let me know if I can provide you with additional information or answer question you might have.

Yours truly,



David B. Shaw
Adjudication Bureau Chief

Enclosure

COPY

James Robinson
P.O. Box 157
Rockland, Idaho 83271
8 Aug. 2014

To: KBC Farms and Adjhead ditch water users:

After some thought on the meeting of the 28th of July, I realized that to get the 182 gal/ min KBC farms would have to move the point of diversion on the 8D water right. This is for 26.65 inches at 7 gal/ inch which is 186 gpm. This would leave the 13A water right in the Adjhead ditch for 10".

KBC Farms already has the right to 36.67" on the Juan Spillet farm. The total water that KBC Farms could divert if this all works out for the Juan Spillet farm and the Weston farm would be:

26.65"

36.50"

63.15" X 7 Gal/Min= 442 G/M

James Robinson
Watermaster District 41



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858
Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 13, 2015

JAMES ROBINSON
WATER DISTRICT #41
PO BOX 157
ROCKLAND, ID 83271-0157

RE: Transfer 79677
KBC Farms

Dear Mr. Robinson:

Per our phone conversation today you request a copy of the above referenced application pages 1 & 2 along with the associated deed filed with the application is enclosed. This should verify that the property was purchased by KBC Farms from J. Juan Spillet.

If I can be of any further assistance please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Benny Walker". The signature is written in dark ink and is positioned above the printed name and title.

Benny Walker
IDWR Agent
Southern Region

Enclosure(s)