

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

2014

IN THE MATTER OF APPLICATION)
FOR TEMPORARY CHANGE OF A)
WATER RIGHT NOS.: 34-7140)
_____)
_____)

**ORDER AUTHORIZING
TEMPORARY CHANGE**

TC-34-110

WHEREAS, a drought emergency has been declared for Butte County to allow administrative actions to lessen the severe impacts of the drought conditions in the county; and

WHEREAS, section 42-222A, Idaho Code, provides that upon declaration of a drought emergency, the director of the Department of Water Resources ("Department") is authorized to allow temporary changes in the point of diversion, the place of use, and the purposes of use for valid existing water rights or temporary exchanges of water authorized under water rights when the director determines that such changes can be accomplished in accordance with the provisions of section 42-222A, Idaho Code; and

WHEREAS, on May 16, 2014, Marshal Todd and Norma Perkes submitted the attached temporary change application TC-34-110 to the Department; and

WHEREAS, the Department has reviewed the application and has determined the application can be approved with certain conditions;

ORDER

IT IS HEREBY ORDERED that the application is APPROVED subject to the following conditions:

- 1. Diversion and use of right no. 34-7140 is authorized only at the points of diversion and place of use described on the application.**
- 2. This temporary change approval does not authorize construction of a new well as a point of diversion.**
- 3. The applicant assumes all risk of curtailment or mitigation should the diversion and use of water under the temporary change approval cause injury to other water rights, constitute an enlargement in use of the original right, be inconsistent with the conservation of water resources within the state of Idaho, or not be in the local public interest.**
- 4. This temporary change approval may only be used to provide a replacement water supply to lands or other uses that normally have a full water supply, except for the drought conditions. This temporary change approval may not be used to provide water for new development or to allow expansion of the use of water under existing water rights.**

**ORDER AUTHORIZING
TEMPORARY CHANGE**

TC-34-110

5. Rights 34-97, 34-99, 34-7140, and 34-10250 when combined shall not exceed a total diversion rate of 9.72 cfs, a total annual maximum diversion volume of 1207.5 af at the field headgate, and the irrigation of 345 acres.
6. This temporary approval does not authorize the use of diversion works or a delivery system owned by or managed by a corporation or an irrigation district without the written consent of such corporation or irrigation district.
7. The applicants agree to hold the director and the state of Idaho harmless from all liability on account of the diversion and use of water under this temporary change approval.
8. This temporary change does not grant any right-of-way or easement to use the diversion works or conveyance works of another person or entity.
9. The applicant is subject to all conditions and limitations listed on the application under the section titled "ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES".
10. The Watermaster of Water District No. 34 is authorized to administer the temporary change approval.
11. This temporary change approval expires on November 1, 2014 unless rescinded or extended by the director. Thereafter, the water right shall revert to the point of diversion, place of use, and nature of use existing prior to the temporary change approval.

DATED this 21st day of May, 2014.



Lyle Swank
Eastern Regional Manager

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAY 16 2014

Department of Water Resources
Eastern Region

TEMPORARY CHANGE APPLICATION

(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)

Name of Applicant Marshal Todd and Norma Perkes Phone (208) 527-3157
Mailing Address 2790 N. 3325 W., Moore, Idaho 83255 Email tperkes@atcnet.net

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. _____
Due to drought conditions, a surface water right owned by applicant is likely not going to be in priority. This temporary transfer proposes to cover the acres under this surface right, as well as about 26 acres to entirely cover the edge of an existing pivot.

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
34-7140	04/01/1976	2.96	Irrigation	04/01 to 11/01
				to
				to
				to

2. Total amount of water being transferred 2.96 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Ground water tributary to _____.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
4N	26E	5		SE	SE	NW	BUTTE	GROUND WATER	
4N	26E	5		NE	SE	NW	BUTTE	GROUND WATER	
4N	26E	8		NE	NW	NW	BUTTE	GROUND WATER	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	25E	25	4		35	38	6	7	7	6									103
3N	25E	1																	

Total Acres 103

6. General Information:

- a. Who owns the water right to be changed? Diane Hatmaker, Joan Johnson, Walter Johnson, & Sally Johnson.
- b. Describe the arrangement allowing use of the right. Lease agreement.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
No irrigation has occurred at the current POU of 34-7140, and no irrigation will occur if this is approved.
- d. Has the water right sought to be transferred been used this year? ☐ Yes ☒ No If yes, explain. _____
- e. Absent the changes, how would the right be used for the remainder of the year? It would likely be used for irrigation.
- f. Describe other water rights used for the same purpose. 34-622A (Big Lost River right, priority of June 1, 1896)
- g. Remarks: Other water rights used on the applicant's farm are 34-7035A, 34-7122A, 34-7096A, 34-7097A, and 34-7223.

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and 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.

Robert L. Jannis, Attorney
Signature of Applicant

May 16, 2014
Date

FOR DEPARTMENT USE ONLY

Received by M Holliday Date 5/16/14 \$50 fee received by SC Receipt No. E039844
Recommend: ☐ approve ☐ deny Watermaster recommendation _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. TC-34-110, and said application is hereby _____, subject to the following limitations and conditions:

Temporary Change Expiration Date _____

Signed this _____ day of _____, _____.

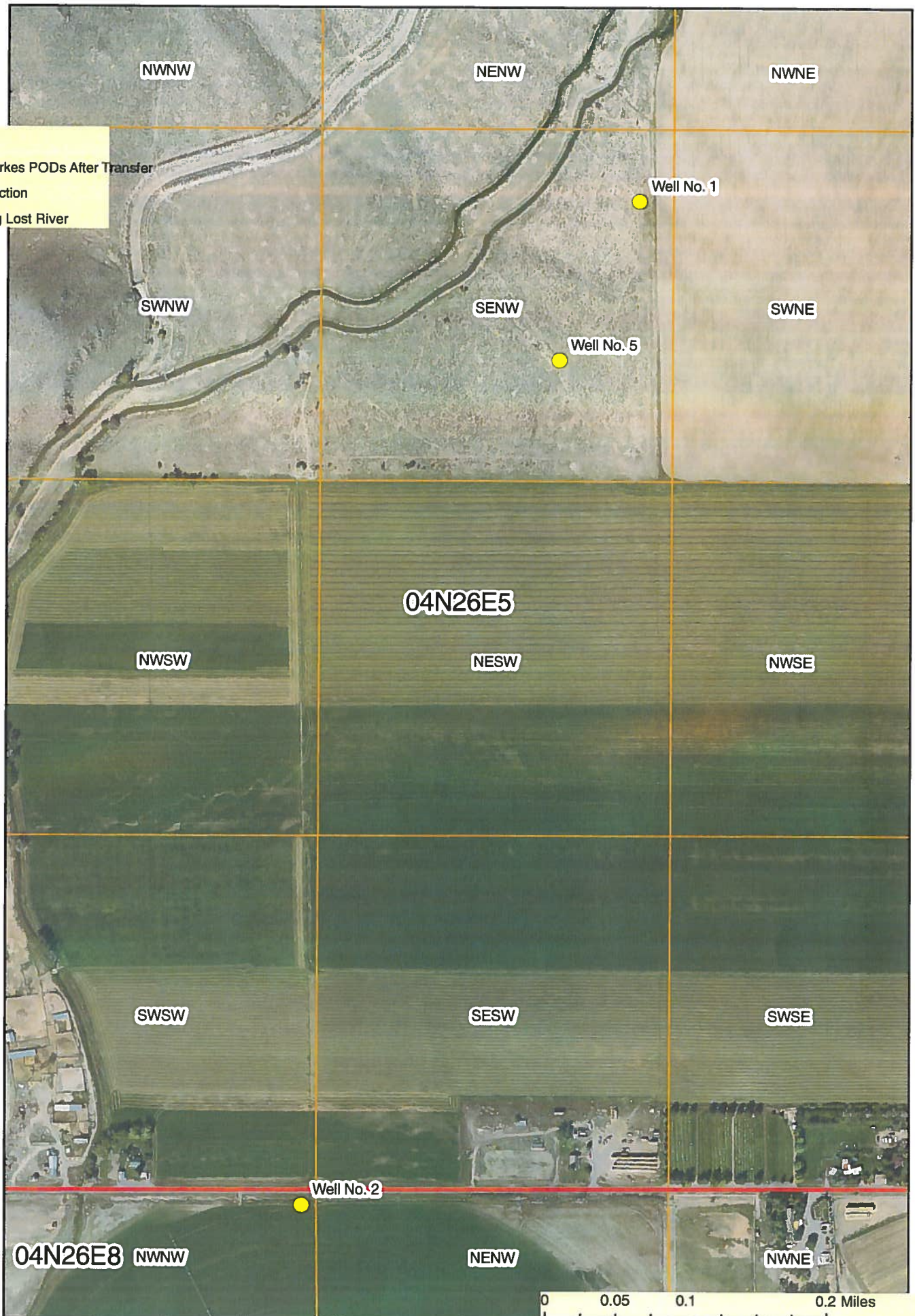
For the Director

PERKES TEMPORARY TRANSFER FOR 34-7140 (location of wells)



Legend

-  Perkes PODs After Transfer
-  Section
-  Big Lost River



12/99

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATERMASTER

Application No: TC-34-110

Applicant's Name: M. TODD PERKES

Watermaster's Recommendation:

a) ☒ I do not oppose approval of this application.

b) ☐ I do not oppose approval of this application if it is conditioned as follows: _____

c) ☐ I oppose approval of this application for the following reasons: _____

d) ☒ Additional Comment: I am the applicant & Watermaster
and don't feel there are any inconsistency with
other applicants in my determination of not opposing.

Dated this 20 day of MAY, 2014.

Water District No: 34

M Todd Perkes
Watermaster's Signature

Use reverse side of page if you need more space.

12/99

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATERMASTER

Application No: TC-34-110

Applicant's Name: M. TODD PERKES

Watermaster's Recommendation:

- a) X I do not oppose approval of this application.
- b) I do not oppose approval of this application if it is conditioned as follows: _____

- c) I oppose approval of this application for the following reasons: _____

- d) Additional Comment: _____

Dated this 19 day of May, 2014.

Water District No: 34

[Signature]
Watermaster's Signature
Mr. BFRID

Use reverse side of page if you need more space.

EASEMENT FOR IRRIGATION WATER

MAR 9 1977

THIS AGREEMENT, Made this 6th day of January, 1977, by and between TIMBERLINE BEEF, INC., an Idaho Corporation with its principal office in Moore, Butte County, Idaho, hereinafter called "Grantor", and MARSHAL TODD PERKES and NORMA L. PERKES, his Wife, of Butte County, Idaho, hereinafter called "Water User":

W I T N E S S E T H

For Value Received, Grantor hereby grants, bargains, sells and conveys to Water User, an Easement and Right-of-Way, the description and uses of which are as follows:

An easement and right of way for the construction, repair, reconstruction, maintenance and operation of a well, pump, motor and associated accessory equipment in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Section 5, Township 4 North, Range 26 East of the Boise Meridian, which well-site is located approximately 500 feet North of the South boundary of said SE $\frac{1}{4}$ NW $\frac{1}{4}$, and 300 feet South of the Timberdome Canal Company Canal, the precise location of which well-site will be agreed upon between the parties, prior to drilling of the well, together with a right of ingress and egress thereto for the above purposes.

An easement and right of way for the construction, maintenance and operation of an approximate 300 foot long buried mainline from the above well, northwesterly to the Timberdome Canal; thence along the said canal to the North boundary line of the Southwest Quarter (SW $\frac{1}{4}$), Section 5, Township 4 North, Range 26 East, Boise Meridian, for the purpose of carrying 500 miner's inches of water.

It is understood and agreed that Water User shall be responsible for, and obligated to pay all costs of construction, repair, reconstruction, maintenance and operation for the said uses, and will indemnify and save harmless Grantor for any loss or cost in connection therewith.

This Easement and Right-of-Way shall be perpetual, and shall inure to the benefit of and be deemed appurtenant to the following lands of Water User:

TOWNSHIP 3 NORTH, RANGE 25 EAST, BOISE MERIDIAN:

SECTION 11: The North Half (N $\frac{1}{2}$) and the Southeast Quarter (SE $\frac{1}{4}$).

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IN WITNESS WHEREOF, The parties have set their hands
this ____ day of January, 1977.

"GRANTOR"

TIMBERLINE BEEF, INC.,

By *Rodney A. Pearson*
Its President

ATTEST:

Elida S. Pearson
Its Secretary

"WATER USER"

Marshal Todd Perkes 1/21/77
Marshal Todd Perkes

Norma L. Perkes 1/28/77
Norma L. Perkes

STATE OF IDAHO

County of Butte

On this 21 day of January, 1977, before me, the undersigned, a Notary Public in and for said State, personally appeared RODNEY A. PEARSON and ELIDA S. PEARSON, known to me to be the President and Secretary, respectively, of TIMBERLINE BEEF, INC., the Corporation that executed the instrument, or the persons who executed the instrument on behalf of said Corporation, and acknowledged to me that the said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Marjorie S. Pearce
Notary Public for Idaho,
Residing at Arco, Idaho.

STATE OF IDAHO

County of Butte

On this 21 day of January, 1977, before me, the undersigned, a Notary Public in and for said State, personally appeared MARSHAL TODD PERKES and NORMA L. PERKES, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

William J. Carlson
Notary Public for Idaho,
Residing at Arco, Idaho

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Water Lease

May 15, 2014

I Walter Johnson have leased to Marshal Todd Perkes
water right 34-7140 for the 2014 irrigation season.

34-7140: 2.96 CFS 148 Acres

Cost of lease: \$[REDACTED] per acres for \$[REDACTED]

Walter Johnson

Walter Johnson

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/19/2014

Water Right 34-7140

<u>Owner Type</u>	<u>Name</u>
Current Owner	JOAN JOHNSON
Current Owner	WALTER H JOHNSON
Current Owner	SALLY RAE JOHNSON
Current Owner	DIANE K HATMAKER

Priority Date: 4/1/1976

Basis: Decreed

Status: Active

Source

GROUND WATER

Tributary

Beneficial Use

IRRIGATION
STOCKWATER

From

4/01

To

11/01

Diversion Rate

2.960 CFS

0.070 CFS

Total Diversion

3.030 CFS

Volume

Source and Point(s) of Diversion

GROUND WATER

SENWSW

Sec. 2, Twp 08N, Rge 21E, CUSTER County

Place Of Use

STOCKWATER within CUSTER 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	
08N	21E	2										X							

IRRIGATION within CUSTER 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	
08N	21E	2			5.0						33.0	21.0			36.0	40.0		13.0	148.0

POU Total Acres: 148.0

Conditions of Approval:

- USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 9.72 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1207.5 AF.
COMBINED RIGHT NOS.: 34-00097, 34-00099 AND 34-10250.
- N05 THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
- USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 345 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-00097, 34-00099 AND 34-10250.
- N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/19/2014

5. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY
OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
6. STOCKWATER, 300 RANGE CATTLE

Comments:

1. FRAZEE CORRECTED ZIP CODE PER D. SHAFF
2. CFRITSCH 7/2/1997 REFORMATTED
CONDITION CODE M01 REMOVED AND REMARKS REFORMATTED.
3. AJU10-DS 6/9/2000 AJU10 CONDITION UPDATE
CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

Dates and Other Information

Decreed Date: 11/24/2000
Civil Case Number: 39576
Judicial District: FIFTH
State or Federal: S
Owner Name Connector: OR
Water District Number: 34
Mitigation Plan: False

Combined Use Limits

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
9.720	1,207.5	345.0
34-97 ,34-99 ,34-7140 ,34-10250		

SubCase:

SubCaseNumber: 34-7140
Class: 2
SF5 Filed Date:
Special Master Recom Signed Date: 3/26/1998
Attorney Assigned: SARA C DENISTON
Adjudication Agent:
Basis of Claim:
Date Filed: 2/26/1993
Objection Status: Active

Water Supply Bank:

N/A