

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 77789 IN THE)
NAME OF RIVERVIEW)
PROPERTIES, LLC)
_____)

**PRELIMINARY ORDER
REJECTING APPLICATION**

FINDINGS OF FACT

1. On March 1, 2012, Riverview Properties LLC filed an application for transfer with the Idaho Department of Water Resources (IDWR) to change water right no. 63-11721.
2. On July 9, 2012, IDWR sent a letter to the Riverview stating that the application was not approvable as filed. IDWR set a deadline of August 9, 2012, by which the applicant was to take action to either correct the deficiencies or withdraw the application. The letter specified the application would be rejected without a timely response.
3. The applicant did not respond to the letter request by the deadline.

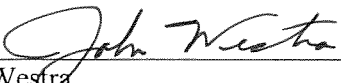
CONCLUSIONS OF LAW

1. The original application for transfer does not meet the criteria of Sections 42-108 and 42-122, Idaho Code and cannot be processed by IDWR.
2. The requested information was not submitted within the allotted time frame. The application should be rejected.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 77789 in the name of the Riverview Properties, LLC is REJECTED.

Dated this 22nd day of October, 2012



John Westra
Manager, Western Regional Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 77789APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of Applicant(s) Riverview Properties LLC Phone 208-459-7098Mailing address 13577 Walker Lake Road Caldwell, ID 83607 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

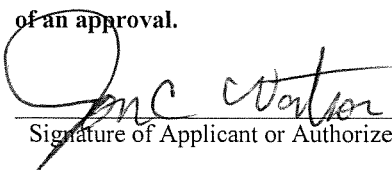
☒ No Representative

Name of Representative _____ Phone _____

Mailing address _____ Email _____

- ☐ Send all correspondence for this application to the representative and not to the applicant.
- OR
- ☐ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.
- OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). 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 rejection of the application or cancellation of an approval.



Signature of Applicant or Authorized Representative

Jon C Watson Manager

Print Name and Title if applicable

2/1/2012

Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☐ Change point of diversion
 ☐ Add diversion point(s)
 ☐ Change place of use
 ☐ Change nature of use
 ☐ Change period of use
 ☒ Other split right for primary acres
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**. Some acres never had ditch water. That land needs to be shown as having primary right to meet changing agriculture industry requirements. Although not changing the delivery system, request split to verify primary acres vs. supplemental acres. Both portions remain under same ownership.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part					
☐ ☒	63-11721	0.44 cfs	Irrigation	3/1 to 11/15	Ground Water
☐ ☐	(balance of right)	not changed)		to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 1.60 cfs and/or ac-ft

2. Total amount of water proposed to be transferred or changed 0.44 cubic feet per second and/or acre-feet per annum.

3. Point(s) of Diversion:

- ☒ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed-the following chart is therefore not completed. (Proceed to #5.)

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	
3N	4W	36			15.6		5.5			1									22.1

Total Acres (for irrigation use) 22.1

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: _____
can measure and report water use in the future if required

- b. Who owns the property at the point(s) of diversion? N/A
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: NO

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:
N/A

- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:
None of these primary acres. See attached information from Wilder Irrigation District confirming some land does not have ditch water. This change is needed to meet market conditions where buyers must verify primary ground water for some crops.

- f. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- | | | |
|--------------------------|-------------------------------------|---|
| ☐ | ☒ | undergone a period of five or more consecutive years of non-use, |
| ☐ | ☒ | currently leased to the Water Supply Bank, |
| ☐ | ☒ | currently used in a mitigation plan limiting the use of water under the right, or |
| ☐ | ☒ | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |

If yes, describe: _____

Total Acres (for irrigation use)

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 63-11721

Current Owner: GREEN ACRES FARMS

Priority Date: 3/19/1992

Origin: Water Right

Status: Active

Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/01 to 11/15	1.6 CFS	
	<u>Total Diversion</u>	1.6 CFS	

Location of Point(s) of Diversion

GROUND WATER NE1/4NW1/4 Sec. 36, Twp 03N, Rge 04W B.M.
CANYON County

Place of Use

IRRIGATION Within CANYON County

T03N R04W S36	SWNE	15.60	T03N R04W S36	NENW	28.50
T03N R04W S36	SENE	36.00			

Total Acres: 80.1

Conditions of Approval:

1. R61 This right when combined with all other rights shall provide no more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
2. Water bearing zone to be appropriated is 350 to 450 feet.
3. 104 If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
4. 065 The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
5. WB7 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 360.5 af at the field headgate for the lands above.

Licensed Date: 9/20/2004

- \$500 for .44 cal change + \$25 gun change

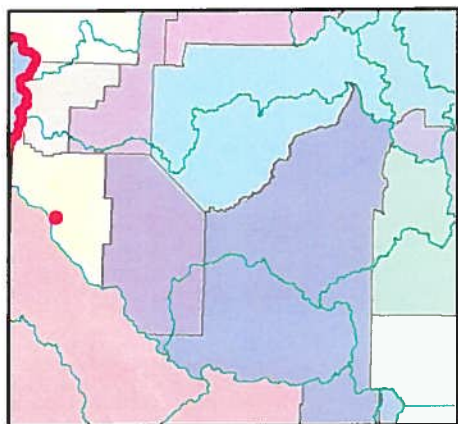


Idaho Department of Water Resources

704.7

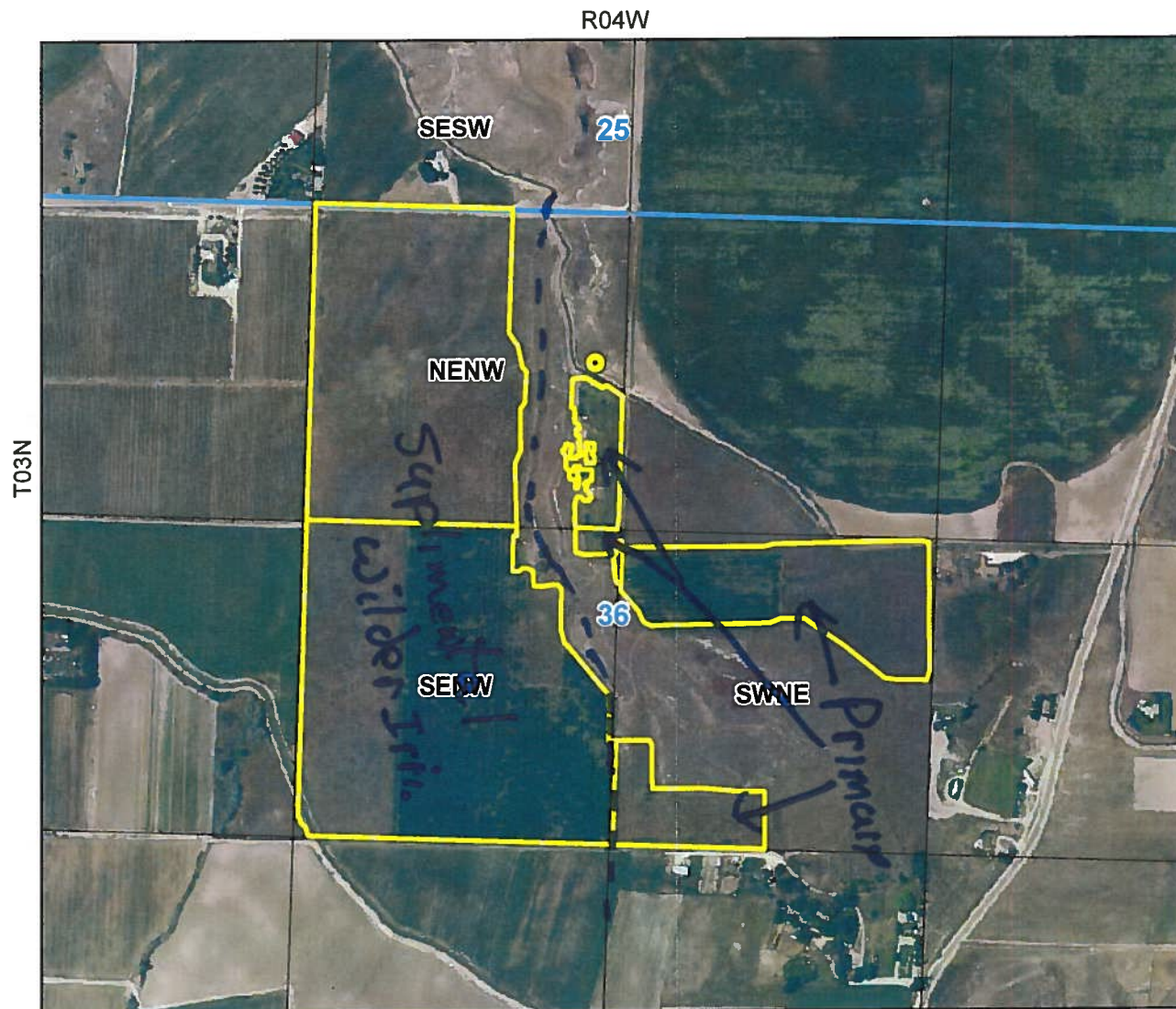
Water Right
63-11721
(IRRIGATION)

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



Canyon County
IDWR Basin 63

Prepared by Lester, Steve
On January 24, 2012
2004 Aerial Photography



0 0.15 0.3 0.6 Miles

Owner: Green Acres Farms

NOTE: Only one owner is listed. There may or may not be more than this in the IDWR database.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

October 23, 2012

RIVERVIEW PROPERTIES LLC
13577 WALKER LAKE RD
CALDWELL ID 83606

RE: Preliminary Order in the matter of Application for Transfer No(s). 77789

Dear Applicant(s):

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed yellow information sheet.

Although we cannot refund the fee for a rejected transfer application, we can process a change of ownership of the water right. You paid the \$25 change of ownership fee. Please complete the attached change of water right ownership form, and send it back to Western Region office with the required documentation described in the form.

If you have any questions regarding this matter, please call me at 208-334-2190. Additional information is also available on our website, www.idwr.idaho.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Westra', with a small 'for' written below it.

John Westra

Manager, Western Regional Office

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2012, I mailed a true and correct copy of the foregoing Preliminary Order to the person(s) listed below:

Riverview Properties, LLC
13577 Walker Lake Rd.
Caldwell, ID 83606



Mandi Pearson
Office Specialist II

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

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

July 9, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Riverview Properties, LLC
13577 Walker Lake Rd.
Caldwell, ID 83607

Re: Application for Transfer No. 77789 (Water Right No. 63-11721)

Dear Applicant:

The above referenced Application for Transfer has been assigned to me for review and processing. After preliminary review of the application, I determined the application is not approvable as filed. The application will be denied if processed as filed due to issues described herein.

The main issue with the transfer proposal is that it states that 22.1 acres of the 80.1 irrigated acres authorized under right no. 63-11721 have never been irrigated with Wilder Irrigation surface water. The transfer seeks to officially change the right for these 22.1 acres from a supplemental right to a primary right.

I reviewed the original water right file for 63-11721. The prior owner sought a temporary right from ground water in 1992, a drought year, to supplement his surface water shares. In the backfile, the applicant clearly states that all of acres in the 63-11721 have been irrigated with surface water. You can access and review the scanned file documents from the Department website at www.idwr.idaho.gov.

In addition to the water right documents on file with IDWR, I reviewed 1974 and 1987 aerial photographs for the entire 63-11721 place of use and the 22.1 acres were clearly irrigated. Because there are no other water rights appurtenant to the property and the aerials predate drilling of the well that is the point of diversion, surface water had to have been used. Copies of the aerials are attached.

Your application purportedly included confirmation from Wilder Irrigation District that some of the place of use did not have ditch water. The only attachment was a map prepared and noted by Steve Lester and sent to you with other guidance on January 12, 2012. It is not verification of any kind, but part of the assistance Steve was attempting to provide in response to your calls and office visits.

Your options are to withdraw your application, amend it with an alternate proposal, or attempt to provide the information to overcome the documentation in IDWR files describe here. IDWR will hold further processing of your application to allow a withdrawal or amendment of the application or any other information you may wish to submit in support of your existing or amended proposal.

If you withdraw the application, please use the form provided. If withdrawn, IDWR will refund \$250 of the \$500 of the transfer fee. Only 50% of the fee will be refunded due to the time IDWR has already invested in this transfer. If you withdraw the application you must file a change of ownership (form included here) for water right no. 63-11721. Idaho law states changes in water right ownership are to be made within 120 days of a property transaction. IDWR will apply \$25 of your paid fee to this change.

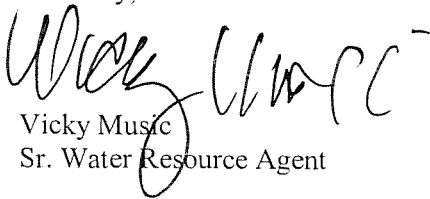
Riverview Properties, LLC
July 9, 2012
Page 2 of 2

Please submit the requested information for application processing to continue. You may seek additional time to provide the information by making a written request to delay processing. Your written response including the requested information, or a request for more time to seek the information, must be received by August 9, 2012.

Without a timely reply, IDWR will issue a preliminary order to deny the application. The application fee will not be refunded for a denied application. A denied application cannot generally be re-filed for substantially the same proposal.

Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicky Music", is written over the typed name and title.

Vicky Music
Sr. Water Resource Agent

Enclosures: Aerial photos, withdrawal form



63-11721 --1987 aerial photo . POU outlined in light blue. The acreage that is being requested to be split out of the right and the groundwater described as primary is irrigated in this photo. This is evidence that Wilder IRR District surface water was used on the property and the ground water right was supposed to be supplemental. *VLW*

