



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

November 16, 2010

MICKELSEN PROPERTIES LLC
PO BOX 438
RIGBY ID 83442

RE: APPLICATION TO LEASE WATER RIGHT 35-4198 TO THE WATER SUPPLY BANK AND APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

Dear Applicant:

On March 23, 2009, the Department received your applications for 35-4198 to the Water Supply Bank. Budgetary considerations caused a processing backlog and we recently began to process your rental.

Your rental application was for a temporary mitigation plan associated with permit 27-11917 because your proposed water use is in the Eastern Snake Plain Aquifer (ESPA). Water right processing in the ESPA, including Bank processing, requires us to run the Eastern Snake Plain Aquifer Model (ESPAM) to determine the need for additional mitigation. Your water right is for four wells; the four wells in question come from three different cells in the ESPAM. The water right record does not indicate how much water comes from each of the four wells, making it exceedingly difficult to appropriately model the water movement proposed by your applications.

Water Supply Bank Rules 25 and 30 (also known as IDAPA 37.02.03.025 and 37.02.03.030) require the Department to review potential applications for injury to other water rights. If injury is likely, such applications are denied. However, we do not have enough information on your water rights to run the ESPAM and determine injury. Because the requirements of Water Supply Bank Rules 25 and 30 can not be met, we are returning the applications to you. Because of the Department's limited resources, we also suggest you hire a consultant to help you gather and submit a complete ESPAM analysis.

Additionally, 35-4198 appears stacked with other rights, including 35-2661A, 35-2902, 35-7607, 35-13295 and possibly others. Stacked rights are identified by limiting or combination conditions with other rights. Portions of all applicable stacked rights must be offered to the Bank to avoid enlargement. If you have any questions, please feel free to contact me at (208) 287-4907.

Sincerely,

Monica Van Bussum

Enclosures: Lease and rental applications

C: Lyle Swank – IDWR Eastern Regional Manager
Robert L. Harris – Holden Kidwell Hahn & Crapo PLLC

12/99

Before the Idaho Water Resource Board

RECEIVED

MAR 23 2009

Department of Water Resources

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

Applicant Mickelsen Properties, LLC Phone 208-745-6626
 Address PO Box 438
 City Rigby State ID Zip Code 83442

A. DESCRIPTION OF WATER SOUGHT FOR RENTAL

- Source of water: Groundwater
which is tributary to: N/A.
- Maximum volume of water sought 252 AF.
- Maximum rate of diversion 1.26 cfs.

B. DESCRIPTION OF USE PROPOSED

- Nature of use Irrigation
- Location of point of diversion NW 1/4 SE 1/4, Section 13,
Township 2S, Range 36E, E.B.M. Bingham County.
- Season of use: From 04/01 to 10/31.
- Description of diverting works:
Pump HP _____ Lift _____ Pump type _____
Canal name, if appropriate _____
- Place of use:
a. If water is for irrigation, describe the number of acres to be
irrigated by 40-acre tract, section, township and range.

Twsp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2S	36E	13														15	40	8	63
			Same Place of Use as Permit No. 27-11917																

Total: 63

b. If water is not for irrigation, describe the nature of the intended use and the place of use.

6. Describe any other water rights used for the same purposes as rental water sought under this application.

Corbett Slough Canal Co. Surface water.

7. Who owns the property at the point of diversion?

Applicant

8. Who owns the property at the place of use?

Applicant

9. Are you seeking a rental for more than one (1) year? Yes

If so, how many years? 5 years

10. Remarks: The irrigation water sought by the applicant has also been leased by the applicant to the water bank (Mickelsen Properties, LLC). This is a companion rental application to the enclosed lease application. The lease is necessary to irrigation 63 acres in Bingham County recently purchased by Mickelsen Properties, LLC from David Schiess. The lease is necessary because a mitigation plan for Permit No. 27-11917 has not been approved. The lease is for a period of five (5) years, or until a recharge plan under Permit No. 27-11917 is approved. The enclosed Application to Lease Water from the Water Supply Bank is the companion lease document to this Rental Application.

10 March 2009
Date

Mickelsen Properties LLC
By Mark Mickelsen general mgr
Signature of Applicant

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

Published in _____ Pub. dates _____

Protests filed by _____

Hearing held by _____

Action recommended _____

RECEIVED

MAR 23 2009

Form 42-1761
01/03

Water Supply Bank No. Department of Water Resources
Water Right No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK

Name of Seller/Lessor Mickelsen Properties, LLC Phone 208-745-6626

Post office address PO Box 438, Rigby, ID 83442

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. 35-4198 Decreed to Mickelsen Properties, LLC
(Name)
in case of In Re SRBA dated Jan. 31, 2002
in Twin Falls county of Fifth Judicial District, State of Idaho
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Permit No. _____ issued by the Idaho Department of Water Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (if the entire right is for sale or lease,
show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: 1.26 cubic feet per second &/or
252 acre-feet per annum.
- b. Point of diversion: NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 29 Township 3N
Range 36E, B.M. in Bonneville County.
Additional points SESWSE, Sec. 30, T3N., R36E, Bonneville Count
SEWNNE, Sec. 31, T3N., R 36E, Bonneville County

c. Place of use:

TWP	RGE	SEC	N E				N W				S W				S E				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2N	36E	6	1.7	1.6	.6	.7									2			3.4	10
3N	36E	28									4.1	5.2	7.2	6.2					22.7
		29									1.4	1.5	4.1		1.7	1.9		2.3	12.9
		30															2.2		2.2
		31		2.4	.9	.9									1.3	1.7	.8	.7	8.7
		32					1.7		.4	.2	2.1	2.6							7

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres 63

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

See attached SRBA partial decree.

- b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

Water has been used every year during the past five (5) years. See attached aerial photo

GIS maps.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right.

N/A

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

N/A

- e. If the water right is a permit, describe the work accomplished toward developing the right.

N/A

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

The water offered for lease by the Lessor to the water bank will be leased back by the same party - Mickelsen Properties, LLC - to irrigate 63 acres in Bingham County recently purchased by Mickelsen Properties, LLC from David Schiess. The lease is necessary because a mitigation plan for Permit No. 27-11917 has not been approved. The lease is for a period of five (5) years, or until a recharge plan under Permit No. 27-11917 is approved. The enclosed Application to Rent Water from the Water Supply Bank is the companion lease document to this Rental Application.

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

☒ For lease for a period from April 1, 2009 to April 1, 2014
(Day, month, year) (Day, month, year)

(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or

_____ As a gift to the State of Idaho.

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as the "current rental rate".

Current Rental Rate.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this right for sale or lease to the Idaho Water Resource Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

10 Mar 2009
Date

Michelson Properties LLC
by Alan Michelson general manager
Signature

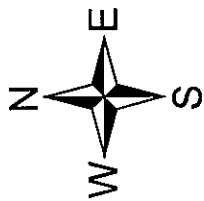
FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

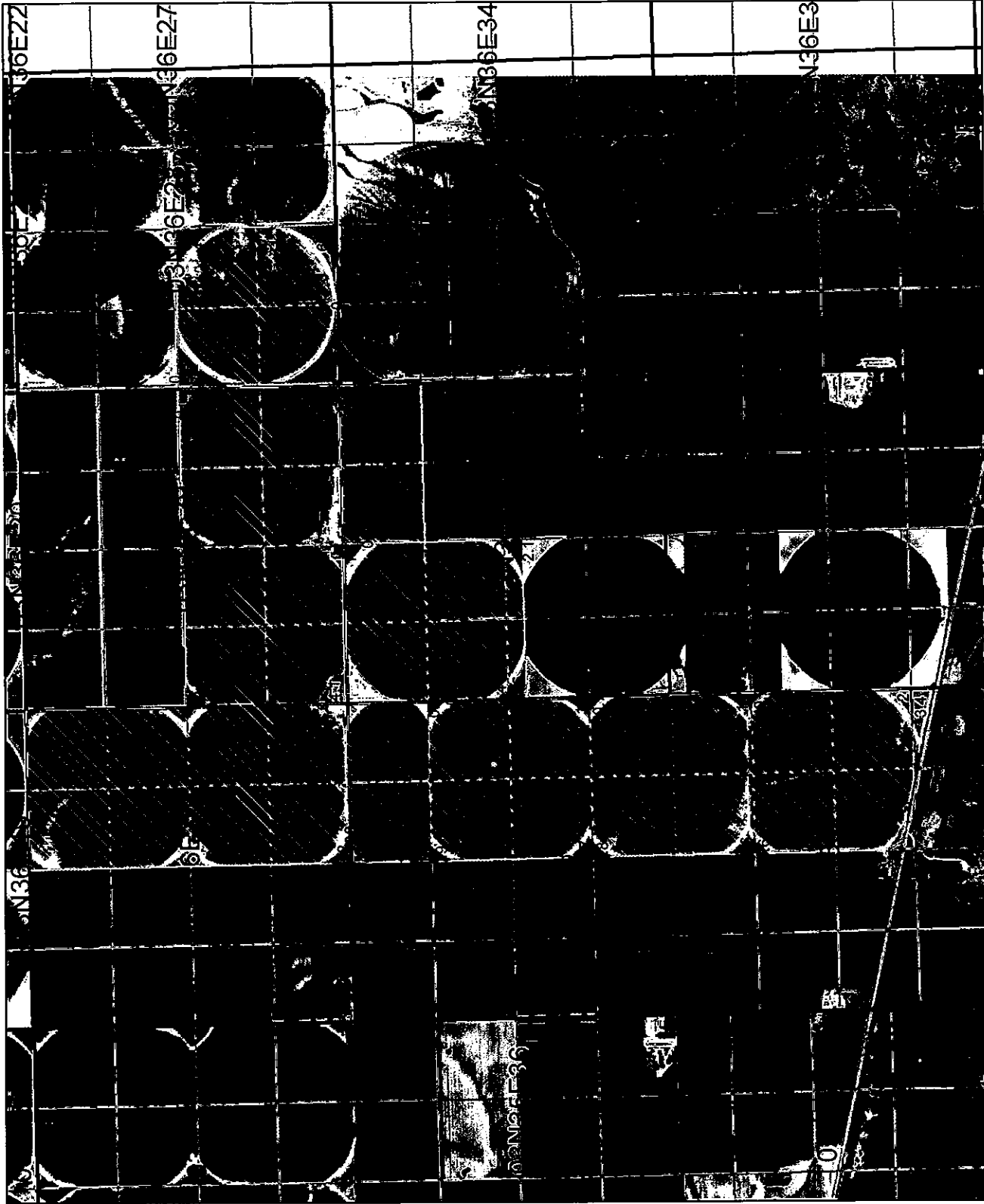
Recommended for _____ approval _____ denial _____ by _____

MICKELSEN PROPERTIES LLC



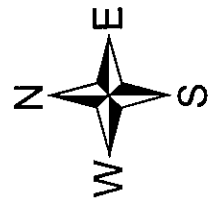
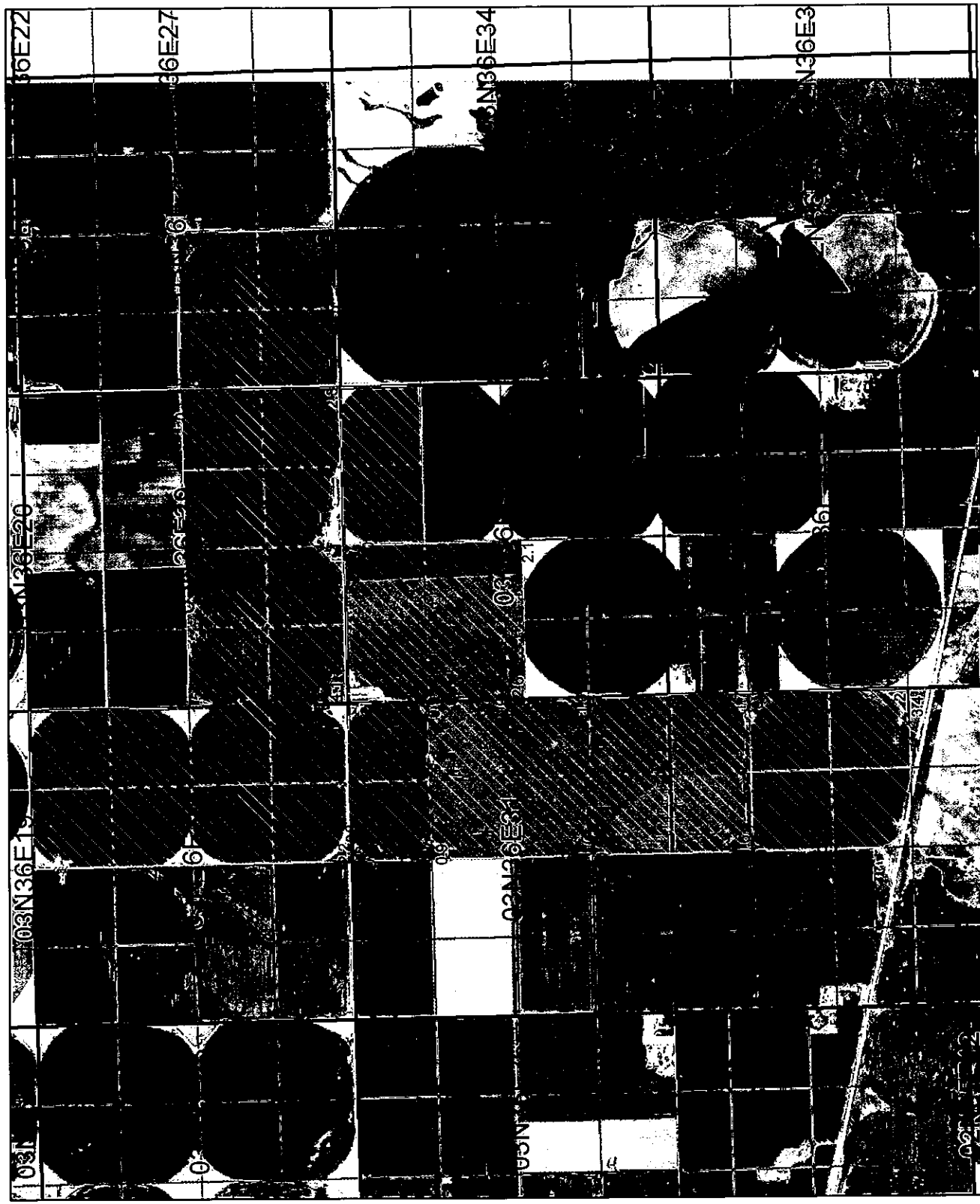
Legend

- WBank_Acres
- Mickelsen_WR
- gcdb_sections
- gcdb_qq



0 0.375 0.75 1.5 Miles

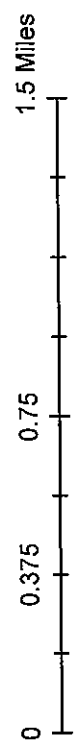
MICKELSEN PROPERTIES LLC



Legend

- WBANK_Acres
- Mickelsen_WR
- gcdb_sections
- gcdb_qq

2006 NAIP Aerial Photo



IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

3/19/2009

WATER RIGHT NO. 27-11917

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DAVID SCHIESS 1009 E PRESTO RD SHELLEY, ID 83274-5354 (208)346-6157

Priority Date: 11/29/2001

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	1.26 CFS	
Total Diversion			1.26 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NWSE	Sec. 13	Township 02S	Range 36E	BINGHAM County
GROUND WATER	SWSE	Sec. 13	Township 02S	Range 36E	BINGHAM County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BINGHAM County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
02S	36E	13		NWSE	15		SWSE	40		SESE	8			

Total Acres: 63

Conditions of Approval:

1.	007	The right holder shall not assign or sell the permit without first securing the written approval of the Department of Water Resources.
2.	004	This right does not grant any right-of-way or easement across the land of another.
3.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
4.	020	Use of water under this right may be affected by an agreement between the protestant and the right holder.
5.	067	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.
6.	048	The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
7.	R64	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
8.		Mitigation for the diversion of water under this right shall be implemented as follows: A. The right holder shall acquire and maintain control of 189 AF of water supplied annually by the Idaho Irrigation District. B. Each irrigation season the right holder shall divert the 189 AF into a pond located in the NW¼NW¼, Section 24, T1S, R37E, B. M., where it shall seep into the ground. C. The right holder shall not divert water under this right until a written agreement providing for the coordination of the permitted use with operation of the Idaho Irrigation District is filed with the Department of Water Resources. D. At the point where water is diverted from the Idaho Canal for mitigation purposes, the right holder shall install and maintain a measuring and recording device that records the total volume of water diverted into the pond annually. The right holder shall make the device and/or records available to the Department for inspection at any time. E. By December 31 of each year, the right holder shall report the total volume of water diverted into the pond for mitigation purposes during the irrigation season. F. The right holder assumes all liability for implementation of the mitigation plan. G. If the right holder cannot continue to implement this mitigation plan for any reason, he shall cease diverting water under this right, or he shall implement an alternative mitigation plan that has been reviewed and accepted by the department.

Dates:

Proof Due Date: 11/01/2003

Proof Made Date: 10/23/2003

Approved Date: 11/12/2002

Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:
Application Received Date: 11/22/2002
Protest Deadline Date: 12/23/2002
Number of Protests: 1
Field Exam Date:
Date Sent to State Off:
Date Received at State Off:

Other Information:
State or Federal:
Owner Name Connector:
Water District Number: 120
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: True

Close