

Page 1 of 8STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 5243

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant JAMES AND/OR PAULA WHITTAKER Phone (208) 768-2491
Post Office address PO Box 210 LEADORE, ID 83464

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 change place of use from poor ground to more productive ground

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 |
|------------------|------------------|--------------------|-------------------|------------------------------|
| <u>74-00073A</u> | <u>3-24-1883</u> | <u>2.36 cfs</u> | <u>irrigation</u> | <u>04-01</u> to <u>11-01</u> |
| <u>74-00117A</u> | <u>5-14-1920</u> | <u>2.12 cfs</u> | <u>irrigation</u> | <u>04-01</u> to <u>11-01</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
2. Total amount of water being transferred 4.48 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Purcell Creek tributary to Texas Creek
4. Point(s) of Diversion: _____

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	10	14N	26E	Lemhi	
		SW	NE	10	14N	26E	Lemhi	

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	
14N	26E	2						8			14	15							37.0
		3	16.2			28							9.3	16.9	10				64.2
		10	40			23.4													63.4
		11					1.4	27	31										59.4

SCANNED
JUN 29 2010Total acres 224.0

VOIDED BY ORDER DATED 06-29-2010

PART 1

6. General Information:

a. Description of diversion system pump + pivot

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:
ground in NWSE S03 T14N R26E would be taken out
of production

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 _____.

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. 74-00073A Decreed to MAHAFFEY Livestock INC
in case of STATE of IDAHO vs. MAHAFFEY Livestock
dated 06-17-1971 in IDAHO county of LEMHI
- 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 PURCELL Creek tributary to TEXAS Creek

4. Date or priority 3-24-1883

5. Water is used for the following purpose:

amount 2.36 cfs for irrigation purposes from 3-15 to 11-15
(cfs/ac-ft) 0.001 to 1.00
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft) _____
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft) _____

6. Total amount of water under right 2.36 cfs cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	10	14N	26E	LEMHI	
		SW	NE	10	14N	26E	LEMHI	

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	
14N	26E	2							8			14	15						37
		3				28								9.3	16.9	40.2			94.2
		10		40		23.4													63.4
		11					27	1											28.0

Total acres 222.6

9. Describe any other water rights used for the same purpose as described above 74-00117A

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. 74-00117A Decreed to MAHAFFEY LIVESTOCK INC
in case of STATE OF IDAHO vs. MAHAFFEY LIVESTOCK INC
dated 06-17-1971 in IDAHO county of LEMHI
- 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 Purcell Creek tributary to Texas Creek

4. Date or priority 5-14-1920

5. Water is used for the following purpose:

amount 2.12 cfs for IRRIGATION purposes from 04-01 to 11-01
(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 2.12 cfs cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	10	14N	26E	LEMHI	
		SW	NE	10	14N	26E	LEMHI	

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	
14N	26E	02							8			14	15						37
		03				28								9.3	16.9	40			94.2
		10		40		23.1													63.4
		11					1.4	27	1										29.4

Total acres 224.0

9. Describe any other water rights used for the same purpose as described above 74-0073A

NOT TO SCALE

579C

EXISTING
POU →

40 ac 3

W & NE 1/4

NE 1/4 NE 1/4

2

11
W & NE 1/4

0.180
SW 1/4 NE 1/4

10

31.0
ac

16

PROPOSED
CHANGE IN POU
→

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

1	<u>New Nature of Use</u>	<u>Amount (cfs/ac-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
				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.

Subscribed and sworn to before me this



James G. Whittaker
(Signature of Applicant)
27th day of March, 19 98

Robert E. Foster
(Notary Public)

My commission expires

02-16-2001**FOR DEPARTMENT USE ONLY**Transfer contains 8 pages and 1 attachmentsReceived by SC Date 3-30-98

Protest filed by _____

Prelim. check by _____ Fee \$100.00Receipted by HWS #E024006 Date 3-3-98Published in Recorder Herald

Copies of protest forwarded by _____

Pub. dates April 16, 23, 1998

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☐ approval ☐ denial

_____ rec'd. _____

by _____

Copy of transfer sent to lien holder _____

PARCEL NO.

RP 14N26E034800 A

TAX CODE 3 00

CATEGORY DESCRIPTION	LOTS/ACRES	MARKET VALUE
1 IRRGTD AG	356.858 AC	208,98
5 DRY GRAZING	164.817 AC	6,04
10 RURAL HOMESITE	1.000 AC	8,70
19 WASTE	10.725 AC	25,72
31 RURAL RES BLDG		22,05
32 RURAL IMP ON AG		

533.400

271,50

PARCEL NO.

RP 14N26E110000 A

TAX CODE 3 00

CATEGORY DESCRIPTION

LOTS/ACRES

MARKET VALUE

2 IRRGTD PASTURE 519.021 AC

153,112

5 DRY GRAZING 120.979 AC

5,474

640.000

153,536*

OWNER WHITTAKER JAMES
& WHITTAKER PAULA
BOX 240
LEADORE ID 83464

LEGAL E2SW4 SE4 LOTS 1 2 3 4
S2NE4 SE4NW4
3 14 26
JAMES 50%
PAULA 50%

PROPERTY ADDRESS

PARCEL NO. RP 14N26E034800 A

TAX CODE 3 00

OWNER WHITTAKER JAMES
& WHITTAKER PAULA
BOX 240
LEADORE ID 83464

LEGAL ALL
11 14 26
JAMES 50%
PAULA 50%

PROPERTY ADDRESS

PARCEL NO. RP 14N26E110000 A

TAX CODE 3 00

PARCEL NO.

RP 14N26E105400 A

TAX CODE 3 00

CATEGORY DESCRIPTION	LOTS/ACRES	MARKET VALUE
2 IRRGTD PASTURE	179.514 AC	52,95
5 DRY GRAZING	59.246 AC	4,56
19 WASTE	1.240 AC	

240.000

57,52

OWNER WHITTAKER JAMES
& WHITTAKER PAULA
BOX 240
LEADORE ID 83464

LEGAL N2S2 E2NE4
10 14 26
JAMES 50%
PAULA 50%

PROPERTY ADDRESS

PARCEL NO. RP 14N26E105400 A

TAX CODE 3 00

**AMENDED NOTICE OF
PROPOSED CHANGE
OF A WATER RIGHT NO. 15243**

Notice is hereby given that James and/or Paula Whittaker, PO Box 24 Leadore, ID 83464, has applied to Department of Water Resources change place of use of the water of Purcell Creek tributary to Texan Creek. The rights sought to be changed are evidenced by licenses and recorded as follows:

License No.: 74-00073a
Source: Purcell Creek
Amount: 2.36 cfs
Priority: 03/24/1883
Point(s) of Diversion: SWNE, NENE SEC 10 T14N R26E, LEMHI COUNTY
The water is to be used for irrigation of 222.6 Acres from 3/15 to 11/15 within SEC 2, 3, 10, & 11, T14N R26E, B.M.

License No.: 74-00117a
Source: Purcell Creek
Amount: 2.12 cfs
Priority: 05/14/1920
Point(s) of Diversion: SWNE, NENE SEC 10 T14N R26E, LEMHI COUNTY
The water is used for irrigation of 224 Acres from 3/15 to 11/15 within SEC 2, 3, 10, & 11, T14N R26E, B.M.
TO BE CHANGED AS FOLLOWS:
The applicant intends to rearrange 30 acres in the above land list from the NWSE of SEC 03 to the SWNW SEC 11 T14N R26E.

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 May 11, 1998. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER

Director

Published in The Recorder Herald on April 23 and 30, 1998.

Affidavit of Publication

STATE OF IDAHO } ss.
County of Lemhi }

RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (printers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein. That the NOTICE OF PROPOSED WATER T5243

a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or hereto for Two(2) consecutive issues, commencing with the issue dated 4-23-1998 and ending with the issue dated 4-30-1998.

STATE OF IDAHO } ss.
County of Lemhi }

On this 30th day of April in this year of 1998 before me, A Notary Public, personally appeared RICKY G. HODGES, 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.

Residing At Salmon, Idaho

Ricky G. Hodges
Notary Public for Idaho

My Commission expires: 9-21-2001

Publication Fee \$ 67.32

Account No. 630



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 1998

JAMES & PAULA WHITTAKER
PO BOX 240
LEADORE ID 83464

RE: Application for TransferS No.: 5243 AND 5244

Dear Mr. Whittaker:

Enclosed please find a copy of the protest filed against the above referenced application for transfer of a water right. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

- 1) Are other water rights injured by the transfer?
- 2) Does the change constitute enlargement in the use of the original water right?
- 3) Is the change consistent with the conservation of water resources within the state of Idaho?
- 4) Does the change conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the four items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,



HAROLD W. JONES
Water Rights Supervisor

HWJ/sc

enclosures

cc: IDWR - State Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 1998

BEVA LUE CLARK
PO BOX 8
LEADORE ID 83464

RE: Applications for Transfer No.s 5243 and 5244

Dear Ms. Clark:

This letter acknowledges receipt of the protests filed by you against the above referenced applications for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

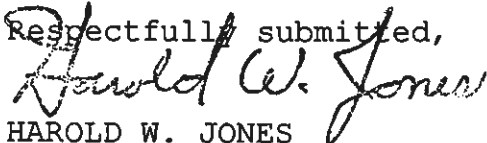
1. Are other water rights injured by the transfer?
2. Does the change constitute enlargement in the use of the original right?
3. Is the change consistent with the conservation of water resources within the state of Idaho?
4. Does the change conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question. The address is as follows:

JAMES & PAULA WHITTAKER
PO BOX 240
LEADORE ID 83464

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ/sc

RECEIVED

APR 29 1998

Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 74-00073A

74-00117A

WATER DISTRICT: 74-W

WATERMASTER: Dan P. Smith

DATE: 4-27-98

HAS THIS WATER RIGHT(S) BEEN DELIVERED WITHIN THE LAST FIVE YEARS?

YES ☒ NO ☐

COMMENTS: I wouldn't recommend many more
changes on Texas Creek tributaries.

☒ I do endorse approval of this change.

☐ I do not endorse approval of this change.

I recommend the following conditions of approval:

Dan P. Smith
Watermaster



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 16, 1998

JAMES WHITTAKER
PO BOX 240
LEADORE ID 83464

RE: Application for Transfers #5243 and #5244

Dear Applicant:

This office is currently in the process of advertising the application in the Recorder Herald on April 16 and 23, 1998. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones
Water Right Supervisor

HWJ::sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 16, 1998

DAN SMITH
WATERMASTER #74-W
BOX 22
LEADORE ID 83464

RE: Application for Transfer No. T5243 AND 5244
James or Paula Whittaker

Dear Mr. Smith:

Please find enclosed a copy of the above referenced application for transfer. Please review the application and submit any comments you may have to our Department as soon as possible.

If we may be of further assistance, please feel free to contact us. Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones
Water Right Supervisor

HWJ/sc
enc.

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. T5243

Notice is hereby given that James and/or Paula Whittaker, PO Box 240, Leadore, ID 83464, has applied to the Department of Water Resources to change place of use of the waters of Purcell Creek tributary to Texan Creek. The rights sought to be changed are evidenced by licenses and recorded as follows:

License No.: 74-00073a Source: Purcell Creek
Amount: 2.36 cfs Priority: 03/24/1883
Point(s) of Diversion: SWNE, NENE SEC 10 T14N R26E, LEMHI COUNTY

The water is used for irrigation of 222.6 Acres from 3/15 to 11/15 within SEC 2, 3, 10, & 11, T14N R26E, B.M.

Left out { License No.: 74-00117a Source: Purcell Creek
Amount: 2.12 cfs Priority: 05/14/1920
Point(s) of Diversion: SWNE, NENE SEC 10 T14N R26E, LEMHI COUNTY

The water is used for irrigation of 224 Acres from 3/15 to 11/15 within SEC 2, 3, 10, & 11, T14N R26E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to rearrange 30 acres in the above land list from the NWSE of SEC 03 to the SWNW SEC 11 T14N R26E.

Any protests against approval of the proposed changed 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 May 4, 1998. The protestant must also send a copy of the protest to the applicant.

11th
KARL J. DREHER
Director

Published in the Recorder Herald on April 16 and 28, 1998.

23th 30th

Typed 4-9-98

Receipt # E02409

Leadore ID
May 1, 1998

Karl J. Dreher-Dir.
Idaho Dept. of Water Resources
900 No. Skyline Dr.
Idaho Falls, Idaho 83402

Dear Mr. Dreher;

I am submitting this letter of protest to you in accordance to instructions in the April 25, 1998 issue of the Recorder Herald, published at Salmon ID. I am protesting change of water rights No. T5243 by James and/or Paula Whittaker, P.O. Box 240, Leadore, ID 83464.

The reason for protest is that the use of water is further from Texas Creek thus, more evaporation and shrinkage in the longer ditch route. Also it is my understanding that this water will be used in sprinkler irrigation causing more evaporation and less water being absorbed into the ground and consequently less return flow to Texas Creek. As any one knows, the further from the creek you put water, the less will return to the creek.

Return flow in the Lemhi Valley streams is what enables so much production.

My water right will be in grave jeopardy if these practices are allowed.

Sincerely,

Beva Lue Clark

Beva Lue Clark
P.O. Box 8
Leadore, ID 83464

768-2446
768-2423 - Steve

922-5074

Copy -
James & Paula Whittaker
P.O. Box 240
Leadore, ID 83464

RECEIVED

MAY 04 1998

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5243 AND 5244 IN THE) NOTICE OF
NAME OF JAMES AND/OR PAULA WHITTAKER) PREHEARING CONFERENCE

On March 30, 1998, application for transfer No. 5243 and 5344 was filed in the name of James and/or Paula Whittaker.

On May 4, 1998 application No. 5243 and 5244 was protested by Beva Lue Clark.

The Department has scheduled the matter for a prehearing conference at 9:30 a.m. on June 23, 1998, at the Senior Citizens Center in Mud Lake, ID in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

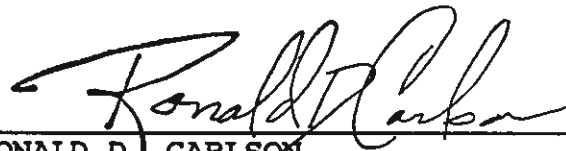
Agenda items for this prehearing conference will include:

1. Identify spokesman and/or counsel representing the protestant.
2. Review of the application.
3. Identify issues of protest.
4. Designate date for identifying witnesses.
5. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference.

*Need Cash donation for
Room Rental

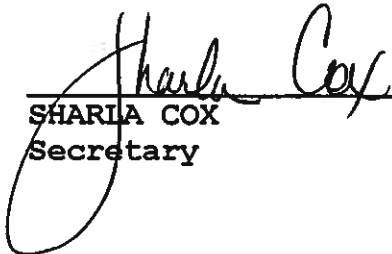
The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten (10) days prior to the conference.

Dated this 11th day of June 1998.



RONALD D. CARLSON
Regional Manager

I hereby certify that on the 11th day of June 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicants (s) and protestant (s) listed below:



SHARLA COX
Secretary

Certified

JAMES AND/OR PAULA WHITTAKER
PO BOX 240
LEADORE ID 83464

BEVA LUE CLARK
PO BOX 8
LEADORE ID 83464

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JAMES AND/OR PAULA WHITTAKER
PO BOX 240
LEADORE ID 83464

4a. Article Number

57

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

6-12-98

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X *Paula Whittaker*

PS Form 3811, December 1994

102595-97-B-0179

Domestic Return Receipt

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

BEVA LUE CLARK
PO BOX 8
LEADORE ID 83464

4a. Article Number

56

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

6-15-98

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X *Beva Lue Clark*

PS Form 3811, December 1994

102595-97-B-0179

Domestic Return Receipt

Thank you for using Return Receipt Service.



IDAHO FISH & GAME

SALMON REGION
1215 Hwy 93 N / P.O. Box 1336
Salmon, Idaho 83467

Philip E. Batt / Governor
Stephen P. Mealey / Director

June 16, 1998

Robert E. Foster
Idaho Department of Water Resources
206 Van Dreff St Suite B
Salmon, Idaho 83467

RE: Whittaker Water Transfers - Leadore Purcell Springs and Big Timber Creek

Dear Mr. Foster:

The Idaho Department of Fish and Game, Salmon Region, is concerned with the conversion from flood to sprinkler irrigation in the Lemhi Basin. I visited the site the Mr. James Whittaker on 6/15/98. Based on what Mr. Whittaker said, he is simply changing place of use, and is not adding additional acres under sprinkler irrigation. In this case we have no concern with this transfer.

I expect IDWR will verify the actual acreage irrigated following project completion.

Sincerely,

Michael R. Larkin
Regional Fishery Manager

JRL:jw

cc: Jim Lukens
Sally Gregory

RECEIVED

JUN 17 1998

Department of Water Resources
Eastern Region

T 5243

JUNE 23, 1998

74-00073A

74-00117A

224 Acres currently flood irrigated
some higher ground that is better than
alkali ground. -

Points of diversion remain the same
Dan Smith watermaster
will put a pivot and pump w/
Bubbler - 125 under pivot - 97 under
surface irrigation

Protestants have lost water right
on creek.

Brockway has been hired by clarks -
Pivots are being installed

- Intent is to use system this
year. -

1994 - Clarks did not put up any
hay.

Kent - Whittaker - Could Brockway have
Permission to go on Whittaker
Property. Crested wheat planted
on perimeter of pivot.

SCHEDULE - July - BROCKWAY REPORT

AUG 1 - Hearing - GO-NO GO -

TAG# A0003064
GPS# R080716A
Texas Creek #1

Lowkin
Z

in normal year No
cuts made on
Tex Creek

photo #6+7 Carl Ellsworth 3 Foot c/s:
Metal - Good Shape

photo 8+9 Texas Creek #2 wooden weir needs replaced
Carl Ellsworth TAG# A0003066 GPS# R080716B

Photo 10+11 POD 12" Culvert on Lock TAG# A0003069 GPS# R080717A

Photo 12 Alexander weir -

Photo 12 James Whitaker Durning - needs control & ~~main~~ structure
GPS# R0807173 TAG# A0003070 200 yards up from Alexander weir

Photo 13 ~~Maize~~ Maize Creek Ranch - Overacker #1
Diversions off main ditch with upstream return
GPS# A080717C TAG A0003071
Needs measuring device replaced
Photo 15

Photo 14 Overacker #2 - needs headgate & measuring device
GPS# R080718A TAG# A0003072

Photo 15 Overacker #3 24" Gippellotti - ok needs some
measuring device maintenance
Photo 16 - Bob & 16 weir

Photo 17 Overacker Durning #1 GPS# R080718B TAG# A0003073
Canvas dam on wood structure

Photo 18 Mill Stream High water Durning - Canvas Dam & No
Measuring Device

Slavin Cont.

GPS# R080719A

TAG# A0003079

Photo 2019 Clark's Diversion - allowance for weir boards
GPS# R080719B TAG# A0003080

Photo 220 Clark Measuring Device - needs repair - wood 4'
+ reset Cippolletti

Photo 221 Whittaker #2

Metal Screw gate w/culvert outlet
~~looking even in steel~~

GPS# R080719C

TAG# A0003081

Photo 222
with Bob

Whittaker Measuring Device

4' Cippolletti with wood edge needs reset

Photo 23 Whittaker Diversion #3 - culvert with slide gate
GPS# R080720A TAG# A0003082

Photo 25 Measuring Device 4' wood cippolletti needs
with Bob New edge & slightly
tilted

Photo 24 Slavin ~~Clark~~ diversion #2 - concrete culvert with
end of metal gate

Roll GPS# R080720B

TAG# A0003083

Photo 1 new Roll

Slavin measuring device - Tilted & worn out - wood
Replace

Photo #2 Whittaker Div. #4 - culvert + Screwgate
Lith Dds GPS# R080721A TAG# A0003084

Photo 3 Cippolatti Weir - Tilted wood with metal Facing, 4'

Photo 4 Whittaker #5
Culvert + SCREW GATE
GPS# R080721B TAG# A0003085

Photo 5 4' Cippolatti Weir tilted wood edge needs reset new edge

Photo 6  Carl Ellsworth Diversion - Concrete - double opening

GPS# R080721C TAG# A0003086

Photo 7 Tyler Diversion - concrete - small opening opposite Ellsworth

Photo 8 Ellsworth Weir - 6' Cippolatti - probably OK

Tyler Weir - Needs complete rebuild 

TAG# A00003064
GPS# R080716A

Texas Creek #1

Mike
Larkin - P+G
Z

On "normal" year No
cuts made on
Tex Creek

photo #6+7

Carl Ellsworth

3 Foot Cippolatti
Metal - Good Shape

photo 8+9

Texas Creek #2

wooden weir needs replaced

Carl Ellsworth

TAG# A0003066

GPS# R080716B

Photo 10+11

POD 12" culvert no lock

TAG# A0003069

GPS# R080717A

Photo 12

Alexander weir -

Photo 13

James Whitaker Durning - needs control & ~~main~~ structure

GPS# R080717B

TAG# A0003070

200 yards up from Alexander weir

Photo 14

~~Alexander~~ Moore Creek Ranch - Oueracker #1

Diversion off main ditch with upstream return

GPS# A030717C

TAG A0003071

Photo 15

Needs measuring device replaced

Photo 15

Oueracker #2

- Needs headgate & measuring device

GPS# R080718A

TAG# A0003072

Photo 16

Oueracker #3

24" Cippolatti - ok needs some
measuring device maintenance

Photo 17 - Bob &
Wren

Photo 18

Oueracker Diversion

GPS# R080718B

TAG# A0003073

Canvas dam on wood structure

Photo 19

Mitt Slavin High water Diversion - Canvas Dam & No
measuring device

Slavin Cont.

GPS# R080719A

TAG# A0003079

Photo
20

Clarks Diversion - allowance for weir boards

GPS# R080719B

TAG# A0003080

Photo 21

Clark Measuring Device - needs repair - wood 4'
+ reset Cippolletti

Photo 22

Whittaker #2

Metal Screw gate w/culvert outlet
~~looking across street~~

GPS# R080719C

TAG# A0003081

Photo 23

with Bob

Whittaker Measuring Device

4' Cippolletti with wood edge needs reset

Photo 24

Whittaker Diversion - culvert with slide gate

GPS# R080720A

TAG# A0003082

Photo 25

Measuring Device 4' wood cippolletti - needs
with Bob New edge & slightly
tilter

Photo 26
end of

Slavin

~~Clark~~ diversion #2 - concrete culvert with
metal gate

Roll

GPS# R080720B

TAG# A0003083

Photo 1 new Roll

Slavin measuring device - Tilted & worn out - wood
Replace

Photo #2
with Bob

Whittaker Div. #4 - culvert + screw gate
GPS# R080721A TAG# A0003084

Photo 3

Cippolatti Weir - Tilted, wood with metal Facing, 4'

Photo 4

Whittaker #5
Culvert + screw gate

GPS# R080721B

TAG# A0003085

Photo 5

4' Cippolatti weir tilted wood edge needs reset new edge

Photo 6  Carl Ellsworth Diversion - Concrete - double opening



GPS# R080721C

TAG# A0003086

Photo 7

Tyler Diversion - concrete - small opening opposite
Ellsworth

Photo 8

Ellsworth weir - 6' Cippolatti - probably OK



Tyler weir - Needs complete rebuild 

Memorandum

Date: January, 14, 1999

To: Harold W. Jones, Eastern

From: ^{RF}Bob Foster, Salmon

Re: alleged expansion

I have enclosed a map and photographs in an attempt to respond to Eva Selleck's and Larry Clarks's allegations of water right expansion by James Whittaker within the legal descriptions provided by Clark and Selleck.

If you compare the 1989 ASCS overflight with subsequent ASCS slides from 1993 and 1998 there appears to be an increase in acreage in sections 21, 22, 27, and 28 15N 26E.

The other concern we may need to address is the use of Big Timber Creek and Warm Springs on grounds not covered by these sources. The ditch from Big Timber Creek runs directly above the point of diversion on Warm Springs and there are slide gates in place, which could be used to divert Warm Springs water into the Big Timber Creek ditch or Big Timber Creek water into the Warm Springs delivery system. (see photos)

I have attempted to assemble the 1989 overflight for comparison, however the quality is not the best with difference in copies. I do feel there is an expansion in acreage which needs to be addressed before we proceed with the transfer applications.

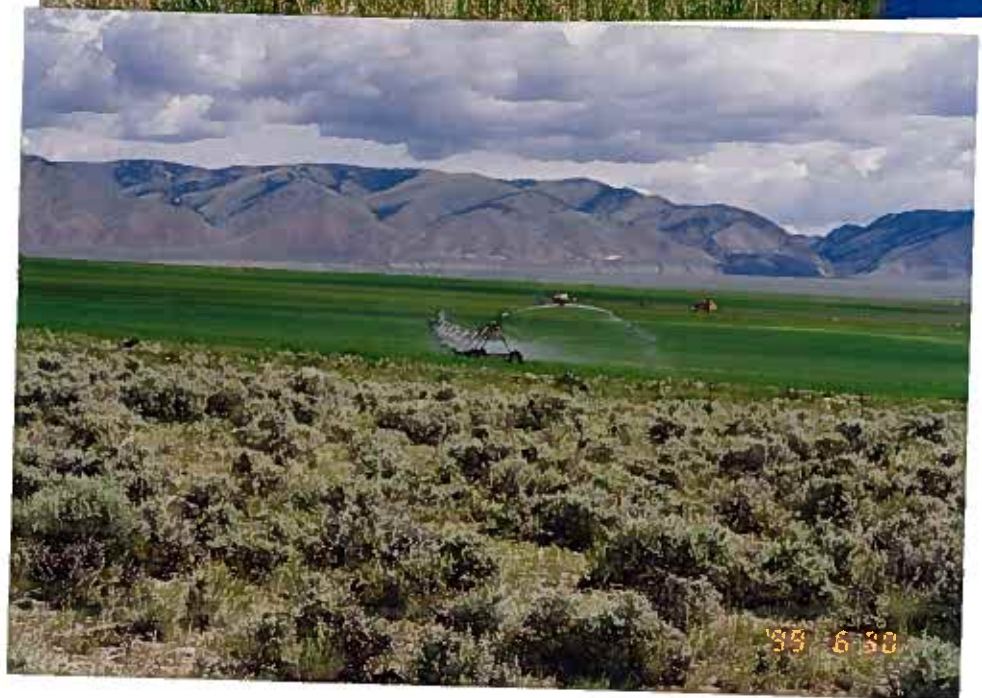
2.5"
 πR^2

64
 $\frac{50}{4}$

RECEIVED

JAN 15 1999

Department of Water Resources
Eastern Region















BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION FOR)
THE TRANSFER NO. 5243 AND 5244 IN THE) NOTICE OF
NAME OF JAMES OR PAULA WHITTAKER) PREHEARING CONFERENCE**

On March 30, 1998, applications for transfer No. 5243 and 5244 were filed in the name of James or Paula Whittaker. On May 4, 1998 transfer No. 5243 and 5244 were protested by Beva Lue Clark.

The Department has scheduled the matter for a prehearing conference at 10:00 a.m. on March 15, 1999, at the Idaho Dept of Water Resources in Idaho Falls, ID in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

Agenda items for this prehearing conference will include:

- 1. Identify spokesman and/or counsel representing the protestant.**
- 2. Review of the application.**
- 3. Identify issues of protest.**
- 4. Designate date for identifying witnesses.**
- 5. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference.**

The hearing will be conducted in a facility, which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten

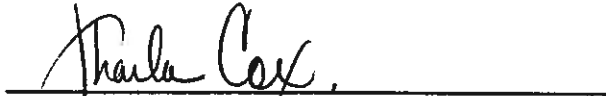
(10) days prior to the conference.

Dated this 25th day of February 1999.



RONALD D. CARLSON
Regional Manager

I hereby certify that on the 24th day of February 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed below:



SHARLA COX
Senior Secretary

CERTIFIED

James or Paula Whittaker
PO Box 240
Leadore ID 83464

Beva Clark
PO Box 8
Leadore ID 83464

Ray Rigby, Attorney
PO Box 250
Rexburg ID 83440

Kent Foster, Attorney
PO Box 50130
Idaho Falls ID 83405

March 30, 1999
Leadore, Idaho 83464

To Whom It May Concern:

I started working for James Whittaker in November of 1994 and am still employed with him to the present date.

I have irrigated everything under the Timber Creek Ditch every year since 1994. This field is known as the Badger Hole field and it is adjacent to Warm Springs.

The decree for this is Decree #74-1102, Date 4-1-1947, priority.

Sincerely,

Rod Taylor
Rod Taylor
Leadore, Idaho 83464

STATE OF IDAHO, COUNTY OF Lemhi

On this 29th day of March, 1999,
before me, a notary public in and for said State, personally appeared

Rod Taylor

known to me to be the person whose name
subscribed to the within instrument, and acknowledged
to me that he executed the same.

Lavinna Strand
Notary Public

Residing at Leadore, Idaho

Comm. Expires October 26, 1999

March 30, 1999
Leadore, Idaho 83464

To Whom It May Concern:

I irrigated everything under the Timber Creek Ditch in 1982, with a portable sprinkler outfit. I moved all the pipe on this field known as the Badger Hole field. This ground had just been broken out of the sage brush and irrigated for the first time. I was working for James Whittaker at this time.

This was irrigated with water from Decree # 74-1102, Date 4-1-1947, priority.

The Badger Hole Field is adjacent to Warm Springs.

Sincerely,

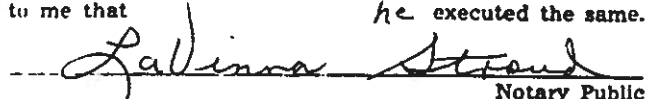


Kyle Anderson
Leadore, Idaho 83464

STATE OF IDAHO, COUNTY OF Lemhi
On this 29th day of March, 1999,
before me, a notary public in and for said State, personally appeared

Kyle J. Anderson

known to me to be the person whose name
subscribed to the within instrument, and acknowledged
to me that he executed the same.


Notary Public

Residing at Leadore, Idaho

Comm. Expires October 26, 1999

March 30, 1999
Leadore, Idaho 83434

To Whom It May Concern:

I worked for James Whittaker starting April 15, 1987 through 1994.

During this time I irrigated everything under the Timber Creek Ditch which is called the Badger Hole field every year. This irrigated with water from Decree #74-1102, Date 4-1-1947, priority. I irrigated this field every year for as long as the water held out. Some years I could get over it twice and some years I could only get over half of it.

The Badger Hole Field is adjacent to Warm Springs.

My father, Bruce Edlefsen, irrigated this same Badger Hole field for two years prior to my starting to work for Whittakers, years 1985 and 1986.

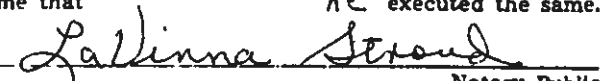
Sincerely,


Tony Edlefsen
Leadore, Idaho 83464

STATE OF IDAHO, COUNTY OF Lemhi
On this 29th day of March, 1999.
before me, a notary public in and for said State, personally appeared

Tony Edlefsen

known to me to be the person whose name
subscribed to the within instrument, and acknowledged
to me that he executed the same.


Notary Public

Residing at Leadore, Idaho
Comm. Expires October 26, 1999

To whom it may Concern

I went to work for Bob
Adams in september of 1983, and
moved cattle around Warm Springs
At that time everything under the
timber creek ditch was under
cultivation, I moved cattle by the
warm springs every year from 1986
untill 1995

James C Malcom

STATE OF IDAHO, COUNTY OF Lemhi

On this 29th day of March, 1999,
before me, a notary public in and for said State, personally appeared

James C. Malcom

known to me to be the person whose name
subscribed to the within instrument, and acknowledged
to me that he executed the same.

Lavinna Stroud

Notary Public

Residing at Leadore, Idaho

Comm. Expires October 26, 1999

RECEIVED

SEP 09 1999

Department of Water Resources
Eastern Region

RECEIVED

AUG 23 1999

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF)
WATER WITHOUT A VALID RIGHT ON) **CONSENT ORDER**
LANDS OWNED OR CONTROLLED)
BY JAMES WHITTAKER)
_____)

The Director of the Idaho Department of Water Resources (Department) is authorized to commence an administrative enforcement action, pursuant to Sections 42-351(1) and 42-1701B, Idaho Code, to prohibit the illegal diversion or use of water. An enforcement action may be brought if the Department determines on the basis of available information that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having a valid right to do so, or is applying water or has applied water not in conformance with a valid water right. Pursuant to the statutory authority provided, the director hereby enters into the following Consent Order with James Whittaker regarding certain diversions of water allegedly made without a water right or not in conformance with a valid water right.

NOW, THEREFORE, before the taking of any testimony herein, and without hearing or administrative adjudication of any issue of fact or law, and upon the consent of the parties, it is HEREBY STIPULATED AS FOLLOWS:

FINDINGS OF FACT

1. On March 23, 1999, the Department sent James Whittaker (Whittaker) a show cause letter in response to information received about the alleged diversion of water without a water right for use on four (4) specific properties owned by Whittaker.

2. Whittaker responded to the March 23, 1999 letter by visiting the Department's Idaho Falls office to explain the status of his water usage. Whittaker advised the Department that he no longer irrigated one of the four properties identified in the show cause letter as the former place of use under approved Water Right Transfer No. 4071. Whittaker, however, had taken no action to bring the remaining three alleged violations into compliance.

3. On June 30 and July 8, 1999, personnel from the Department conducted on-site examinations of the Whittaker properties. Based upon the two on-site examinations, the Department found the following three properties, or portions thereof, being irrigated without a water right:

- a. **Part of the Warm Springs Pivot.** This system covers portions of the SW1/4 Sec. 22, the NWNW Sec. 27, the SESE Sec. 21 and the NENE Sec. 28, T15N R26E, B.M. The portion of the pivot that has no recorded water right is the SWSW Sec. 22 (20 acres approximately), SESE Sec. 21 (20 acres approximately) and the NENE Sec. 28 (10 acres approximately).
- b. **A tract of ground adjacent to the Big Timber Creek Ditch.** The place of use being irrigated covers portions of the NWNW, SWNW, SENW and NESW of Sec. 27, T15N R26E, on approximately 51 acres.
- c. **A large pivot principally in the NW1/4 Sec. 22 and E1/2NE1/4 Sec. 21, T15N R26E.** Approved Water Right Transfer No. 4071 limits acres irrigated to 195, but the Farm Service Agency air photo shows that at least 210 acres are irrigated. Also, the place of use does not match the limits of Transfer No. 4071.

4. On July 23, 1999, the Department mailed by certified mail a Notice of Violation (NOV) to Whittaker identifying the three alleged violations set out in Finding of Fact No. 3 above. On July 27, 1999, the Department received a return receipt showing service of the NOV on Whittaker. The NOV included an order directing Whittaker to immediately cease the irrigation of the places of use described in the NOV without a water right. The NOV further provided Whittaker with the opportunity to request a compliance conference with the Department within fifteen (15) days of the receipt of the NOV.

5. On July 26, 1999, Whittaker made a request for a compliance conference on the alleged violations. Whittaker met with Eastern Region Manager Ronald Carlson and Water Rights Supervisor Harold Jones in the Department's Idaho Falls Office on July 28, 1999. Department Director Karl J. Dreher continued the compliance conference on August 4, 1999, at the Department's State Office in Boise. Also attending the continuation of the conference, in addition to Whittaker, were State Senator Don M. Burtenshaw, Department Administrator Norman C. Young, and Deputy Attorney General Phillip J. Rassier.

6. Participants at the compliance conference reviewed the present water rights owned by Whittaker that are appurtenant to approximately one-half of the lands covered by the Warm Springs Pivot located in portions of Sections 21, 22, 27 and 28, T15N R26E, and to most of the lands covered by the larger Whittaker pivot located north of the Warm Springs Pivot irrigating portions of Sections 21 and 22, T15N R26E, B.M. The participants also discussed the potential for Whittaker filing a late enlargement-in-use or "expansion" claim in the pending Snake River Basin Adjudication (SRBA) under

the provisions of Section 42-1426, Idaho Code, to cover the irrigation of approximately 51 additional acres under Big Timber Creek decreed water right no. 74-01102. This latter acreage is generally located adjacent to Big Timber Creek Ditch on the northeast side of the ditch in Section 27, T15N R26E. Whittaker states that the irrigation of this expanded acreage began in 1982.

7. Following a discussion of alternatives, Whittaker proposed at the compliance conference that the three violations identified in the NOV be addressed in the following manner:

a. **The Warm Springs Pivot.** Whittaker requested that he be allowed to continue operating the Warm Springs Pivot until September 10, 1999, when he intends to discontinue operating the pivot for this irrigation season. In order to mitigate for the irrigation of the approximately 50 acres under the Warm Springs Pivot that are not covered by a water right Whittaker offered to immediately stop irrigating 80 acres of land presently irrigated with water diverted from Texas Creek under decreed water rights 74-00096, 74-00097, 74-00138, and 74-00139. The most significant of these Texas Creek rights for the proposed mitigation is right no. 74-00097 with a priority date of June 1, 1904 in the amount of 0.96 cfs. The principal Warm Springs Creek right supplying water to this pivot is right no. 74-00378B with a priority date of June 1, 1884 in the amount of 1.27 cfs.

b. **The tract of ground adjacent to the Big Timber Creek Ditch.** This tract of approximately 51 acres is located adjacent to Big Timber Creek Ditch on the northeast side of the ditch in Section 27, T15N R26E. Whittaker intends to file a late enlargement-in-use or "expansion" claim under decreed water right 74-01102 in the SRBA under the provisions of Section 42-1426, Idaho Code. The Warm Springs Pivot covers approximately 10 acres of this 51-acre tract. Whittaker intends to file a late claim in the SRBA by August 18, 1999. Because of the junior priority date to be assigned to expanded-use rights, the approximately 41 acres not covered by the Warm Springs Pivot will not be irrigated during the remainder of this irrigation season.

c. **The large pivot in Sec. 22 and Sec. 21, T15N R26E.** Whittaker stated that he has addressed the alleged violation involving the irrigation of 15 excess acres under this pivot by shutting down the end gun on the pivot.

8. Whittaker has agreed to the imposition of a civil penalty in the amount of \$3,000.00 for the alleged violations. The Department has agreed to suspend the full amount of the civil penalty, provided that the penalty shall be reinstated if Whittaker does not comply with the terms of this Consent Order.

9. Failure of Whittaker to comply with any of the terms of this Consent Order, may further cause the Department to seek and obtain, in an appropriate district court, specific performance of this order and such other relief as authorized by law.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, authorizing the director of the Department to initiate an administrative enforcement action to prohibit the illegal diversion or use of water provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-1701B, Idaho Code, authorizing the director of the Department to enter into a consent order to resolve an administrative enforcement action provides, in pertinent part, as follows:

(4) Compliance conference and consent order. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstance of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty. The consent order shall be effective immediately upon signing by both parties and shall preclude a civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and other relief as authorized by law.

3. The remedies proposed by Whittaker and agreed to by the Department under the provisions of this Consent Order satisfactorily address the three alleged water allocation violations of law identified in the July 23, 1999 Notice of Violation.

ORDER

Based on the foregoing Findings of Facts and Conclusions of Law, and by the agreement of the parties,

IT IS HEREBY ORDERED as follows:

1. James Whittaker shall take the following actions to address the three alleged water allocation violations of law identified in the July 23, 1999 Notice of Violation:

a. **The Warm Springs Pivot.** Whittaker shall be allowed to continue operating the Warm Springs Pivot until September 10, 1999. In order to mitigate for the irrigation of the approximately 50 acres under the Warm Springs Pivot that are not covered by a water right Whittaker shall immediately discontinue irrigating the 80 acres of land presently irrigated with water diverted from Texas Creek under decreed water rights 74-00096, 74-00097, 74-00138, and 74-00139. These lands shall not be irrigated from any source during the remainder of the present irrigation season. Whittaker shall discontinue the operation of the Warm Springs Pivot prior to September 10, 1999, if the Watermaster cuts the Warm Springs Creek water rights relied upon to supply water to the land, or if the Watermaster cuts the Texas Creek water rights relied upon as mitigation under the terms of this Consent Order.

b. **The tract of ground adjacent to the Big Timber Creek Ditch.** Whittaker shall file a late claim in the SRBA claiming a water right under the provisions of Section 42-1426, Idaho Code, for this tract of approximately 51 acres of land by August 18, 1999. Because of the junior priority date assigned to expanded-use rights, the approximately 41 acres not covered by the Warm Springs Pivot shall not be irrigated during the remainder of the 1999 irrigation season.

c. **The large pivot in Sec. 22 and Sec. 21, T15N R26E.** Whittaker has adequately addressed this alleged violation involving the irrigation of 15 excess acres under the pivot by shutting down the end gun on the pivot. Whittaker shall only operate the pivot when the appurtenant water rights being used are in priority.

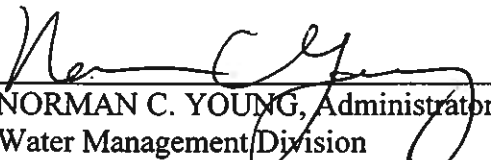
2. A civil penalty in the amount of \$3,000.00 is imposed upon Whittaker for the violations alleged in the July 23, 1999, Notice of Violation. The Department shall

suspend the full amount of the civil penalty, provided that the penalty shall be reinstated if Whittaker does not comply with the terms of this consent order.

3. Failure of Whittaker to comply with any of the terms of this Consent Order, shall further constitute cause for the Department to commence and prosecute in the district court an action for specific performance of this order and for such other relief as may be authorized by law.

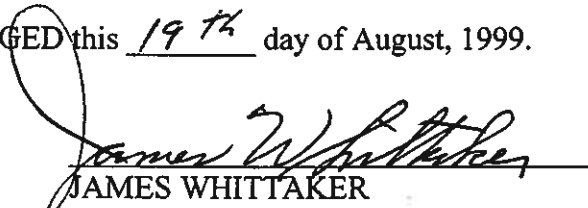
ENTERED this 13th day of August, 1999.

KARL J. DREHER, Director

By 
NORMAN C. YOUNG, Administrator
Water Management Division

James Whittaker, without confirming or conceding the validity of any of the water allocation violations herein described, hereby acknowledges full acceptance and consent to the terms and conditions of this Consent Order. The Consent Order shall be effective upon execution by the parties.

SIGNED AND ACKNOWLEDGED this 19th day of August, 1999.


JAMES WHITTAKER

March 30, 2010

PAULA J and JAMES WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464

RE: Application for Transfer 66665

Dear Applicant(s):

We sent you a letter in January requesting information on what you intend to do with this protested application. To date we have not had any response. In 30 days from the date of this letter we will cancel this transfer without some action on your part.

Please feel free to contact this office if you have any questions.

Sincerely,

Dave Carlson
IDWR-Eastern Region

January 11, 2010

PAULA J And JAMES WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464

RE: Application for Transfer 66665

Dear Applicant(s):

About ten years ago you filed an application for transfer on water rights 74-73A and 74-117A out of Purcell Creek. That transfer was protested and remains unapproved. Water rights 74-96 and 74-106 already cover the same irrigated acres as the change in place of use on this transfer. Review the transfer and see how you would like to proceed. The south pivot has some ground being irrigated with out a water right And you need to correct that. This transfer can not accomplish that change and could be withdrawn. Enclosed is a Withdrawal form.

Please feel free to contact this office if you have any questions.

Sincerely,

Dave Carlson
Eastern Region-IDWR