

**STARTING
LEFT
SIDE OF
FILE**

250 fee

Page 1 of 10STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESRECEIVED Transfer No. 69908

FEB 25 2003

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Department of Water Resources

Name of Applicant BEAR LAKE HOLDINGS c/o Conrad Nebeker Phone 208-945-2490Post Office address P.O. Box 182 St. Charles ID 83272

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
- We want to change the nature of use of part of our irrigation right to domestic use for 17 homes.

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
part <u>11-7477</u>	<u>3/01/1894</u>	<u>0.98 cfs</u>	<u>Domestic</u>	<u>1-1</u> to <u>12-31</u>
<u>11-7493</u>				to
				to
				to

2. Total amount of water being transferred
- 0.98
- cubic feet per second and/or
- 15.2
- acre-feet per annum.

3. Source of water
- St Charles Creek
- tributary to
- Bear Lake

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		NE	SE	13	15S	43E	Bear Lake	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	44E	18			L-3					L-4	L-4								
					D					D	D								

SCANNED
JUN 22 2010

Total Acres _____

\$ 250 fee

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No.

Transfer No. 69908

FEB 25 2003

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Department of Water Resources

Name of Applicant BEAR LAKE HOLDINGS C/O Conrad Nebecker Phone 208-945-2490

Post Office address P.O. Box 182 St. Charles ID 83272

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 We want to change the nature of use of part of our irrigation right to domestic use for 17 homes.

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 |
|--------------------|-----------|--------------------|---------------|---------------|
| 11-7477
11-7493 | 3/01/1894 | 0.98 cfs | Domestic | 1-1 to 12-31 |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 0.98 cubic feet per second and/or 15.2 acre-feet per annum.
3. Source of water ST Charles Creek tributary to Bear Lake
4. Point(s) of Diversion:

[illegible]

5. Lands irrigated or place of use:

[illegible]

Total Acres _____

PART 1

6. General Information:

a. Description of diversion system, 2 submersible pumps placed in a holding pond attached to a 6" PVC line that takes water to the development site

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes ☒ 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: this land will become dry pasture instead of irrigated pasture

d. Remarks: We are using the figure of 800gpd/home, year-round. This yields 15.2 ac-ft. Consumptive use per acre is 2.5 af in our area. $15.2 \text{ af} / 2.5 \text{ af/acre} = 6 \text{ acres}$ that will need to be dried up.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20 _____.

For the Director

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 11-7477

WATER RIGHT NUMBER: 11-7477

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BEAR LAKE HOLDINGS LLC 1750 KERSHAW ST OGDEN, UT 84403 (801) 621-2440
Original Owner	PATIENCE CLARK PAYNE ST CHARLES, ID 83272
Representative	CONRAD H NEBEKER 1750 KERSHAW ST OGDEN, UT 84403 (208) 621-2440

Priority Date: 03/01/1894

Basis: Decreed

Status: Active

Source

ST CHARLES CREEK

Tributary

BEAR LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15 to 07/15	6.640 CFS	183.00 AF
IRRIGATION	08/15 to 09/15	6.640 CFS	183.00 AF
	<u>Total Diversion:</u>	6.640 CFS	183.00 AF

Location of Point(s) of Diversion

ST CHARLES CREEK

NE1/4SE1/4

Sec. 13, Twp 15S, Rge 43E, B.M.

BEAR LAKE County

Place of Use IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S 44E 18			X					X									
			L 3					L 4									

Conditions of Approval:Remarks:

- General DECREE GIVEN CLAIM 11-4005.
P/U INCORRECTLY DESCRIBED. AC. IRR. = 122.38.

Comments:

- cclark 10/30/2001 Ownership Change

Comment: Water right 11-4005 was split into rights 11-7477 and 11-7478. Right 11-4005 was decreed in the court case of St. Charles Irrigation Company vs. Keith Higginson for 13.27 cfs, 366 af, and 122.38 ac within the larger place of use described on the right. Though the owners of 11-7478 own more than half of the irrigated acres, the owners of both new rights specified that the parent right be split in half. **Therefore, each right now covers 6.64 cfs on 61.19 acres even though the owner of right 11-7477 owns approximately 40.78 ac within the original place of use.** The owner of 11-7477 has been notified that 61.19 acres will need to be irrigated under the new right to avoid forfeiture.

Dates and Other Information:

Licensed Date:
Decreed Date: 1/4/1974
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Formal Action Date:
State or Federal:
Owner Name Connector:
Water District Number:

Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.98 cfs for Irrigation purposes from 4-15 to 7-15
 (cfs/ac-ft)
 amount 0.98 cfs for " purposes from 8-15 to 9-15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
				<u>NE SE 13</u>	<u>15S</u>	<u>43E</u>	<u>Bear Lake</u>	

3. Lands irrigated or place of use:

Twp	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	
<u>15S</u>	<u>44E</u>	<u>18</u>			<u>6</u>														<u>6</u>
					<u>L-3</u>														

Total Acres 6

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 5.66 cfs for Irrigation purposes from 4-15 to 7-15
 (cfs/ac-ft)
 amount 5.66 for " purposes from 8-15 to 9-15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

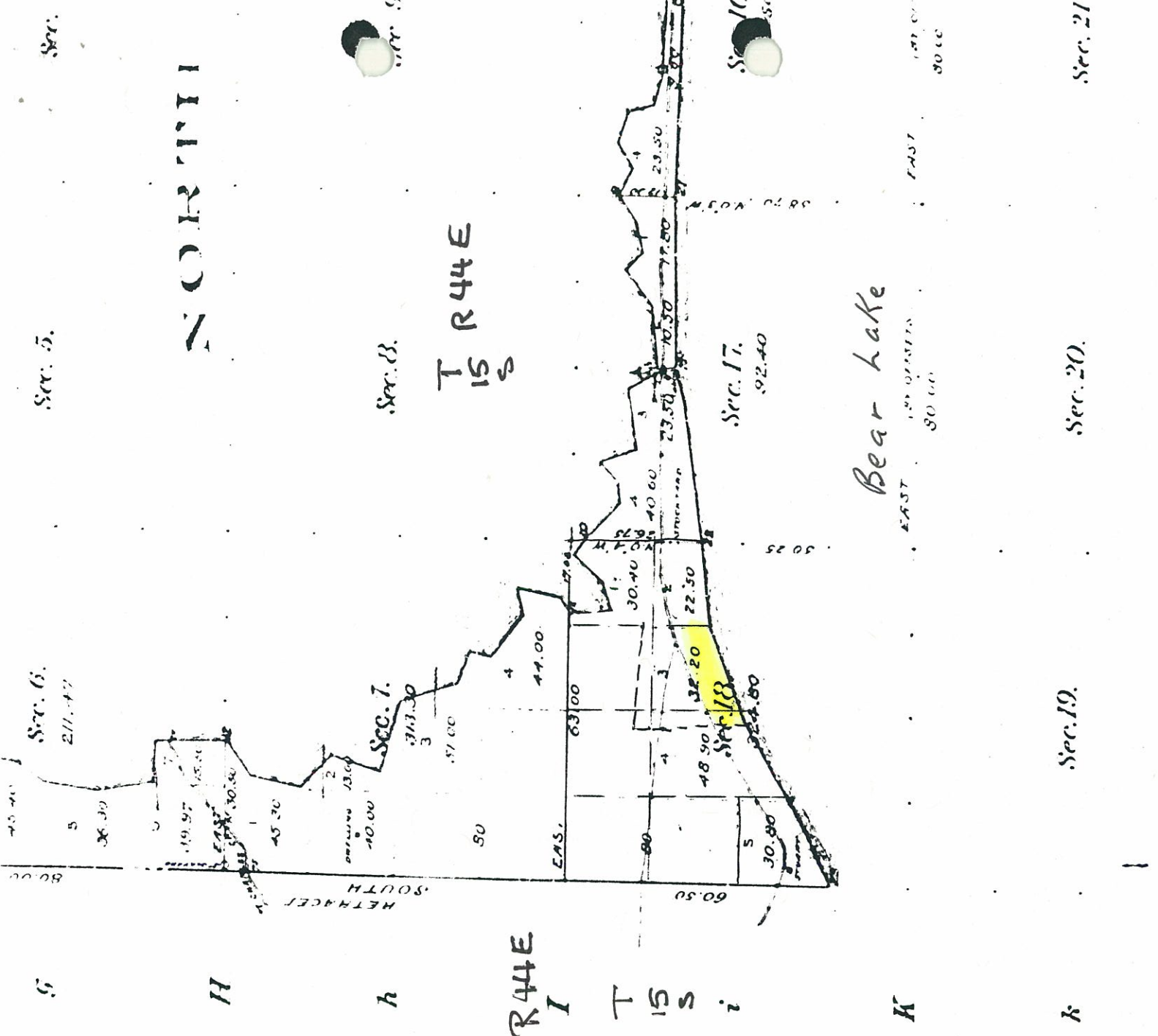
2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
				<u>NE SE 13</u>	<u>15S</u>	<u>43E</u>	<u>Bear Lake</u>	

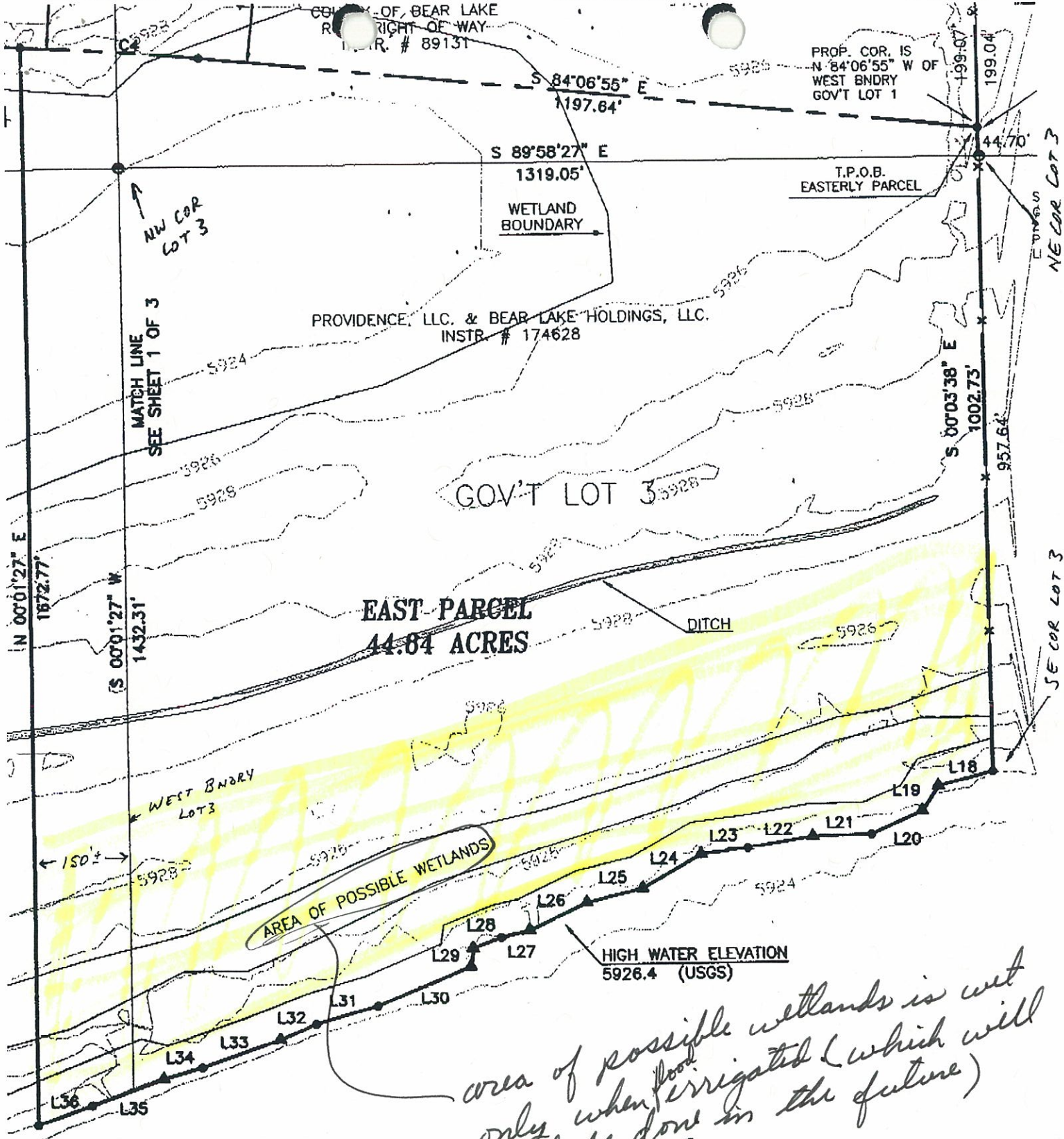
3. Lands irrigated or place of use:

Twp	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	
<u>15S</u>	<u>44E</u>	<u>18</u>			<u>X</u>					<u>X</u>									<u>34.78</u>
					<u>L-3</u>					<u>L-4</u>									

Total Acres 34.78



page 5 of 10
T 69 908



area of possible wetlands is wet only when irrigated (which will not be done in the future)

BEAR LAKE

page 6 of 10
T 69908



SUMMARY TABLE					
COMP.	TYPE	SEA	AGE	CHAS	LAB
10	10000	10000	10000	10000	10000
20	20000	20000	20000	20000	20000
30	30000	30000	30000	30000	30000

1

LAND SURVEYOR
A. A. HUDSON
AND
ASSOCIATES
CONSULTING CIVIL ENGINEERS

page 7 of 10
T 69908



WEST QUARTER CORNER
SECTION 18
FND 5/8" REBAR (LS 9163)
CPF INSTR. # 173603

NORTHWEST CORNER
SECTION 18
FND 5/8" REBAR (LS 9163)
CPF INSTR. # 173604

NORTH 1/4 COR. SEC 18
FND GLO BRASS CAP
1943
CPF INSTR. # 174552

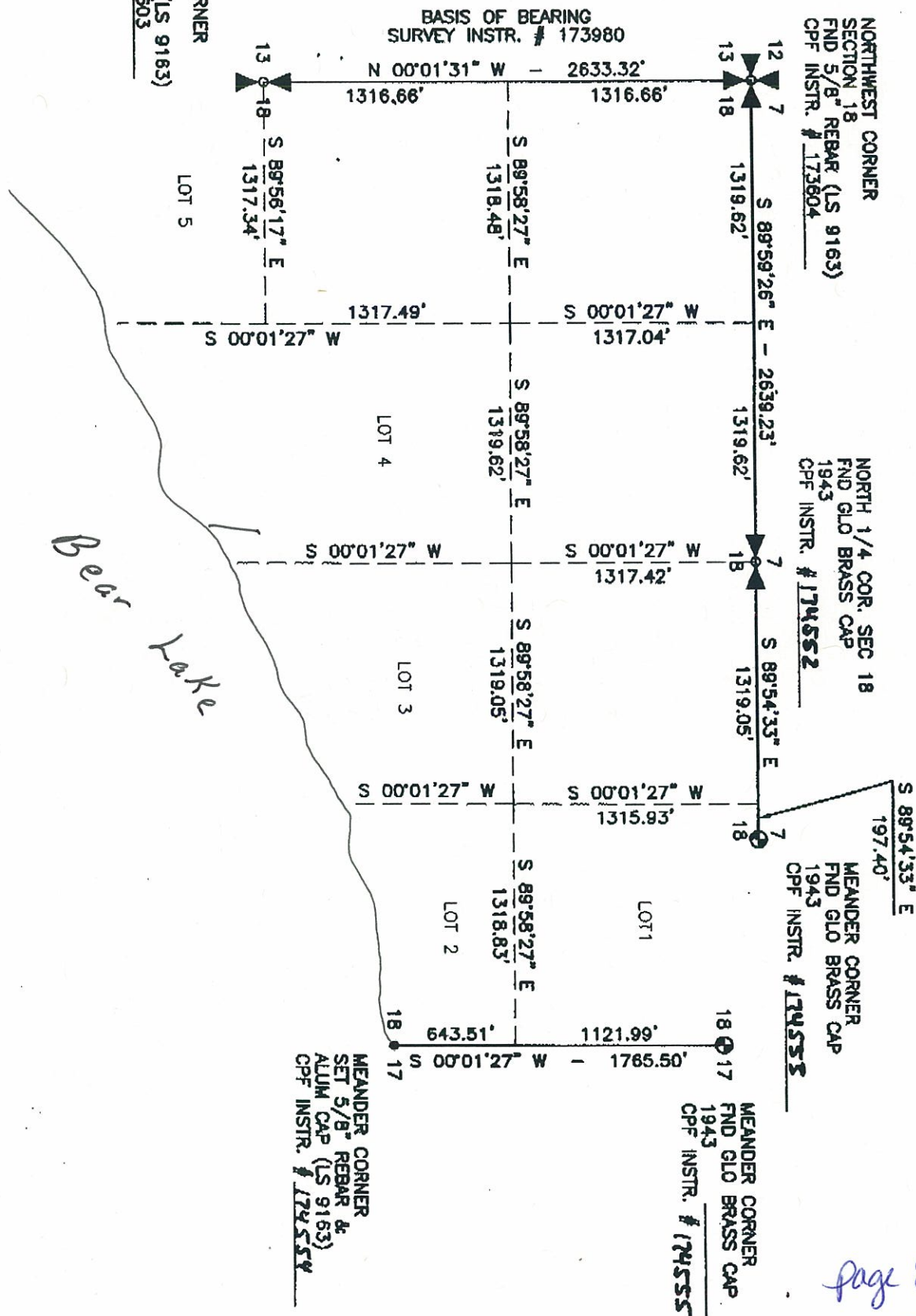
S 89°54'33" E
197.40'
MEANDER CORNER
FND GLO BRASS CAP
1943
CPF INSTR. # 174555
7

MEANDER CORNER
FND GLO BRASS CAP
1943
CPF INSTR. # 174555

MEANDER CORNER
SET 5/8" REBAR &
ALUM CAP (LS 9163)
CPF INSTR. # 174554

SECTION BREAKDOWN
SECTION 18
(NOT TO SCALE)

BASIS OF BEARING
SURVEY INSTR. # 173980





APPLICATION FOR TRANSFER OF WATER RIGHT PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.

*No change in point of diversion or
place of use - Lots are to be along
the shore of Bear Lake. See attached
maps from Alex Hudson.
Area of lots marked in yellow.*

A large grid is provided for drawing a map. The grid consists of 10 columns and 10 rows of squares. The grid is used to draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. The grid is used to draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1.

Scale: 2 inches equal 1 mile. Draw plan in ink.

PART 3

B. CHANGES IN NATURE OF USE

1.

New Nature of Use

Amount(cfs/af-ft)

Hours/days/year

Period of Use

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.

(Signature of Applicant)

Subscribed and sworn to before me this 10 day of May, 20 02

(Notary Public)

NOTARY PUBLIC
PEGGY HARROP
4286 Harrison Blvd.
Ogden, Utah 84403
Commission Expires
August 15, 2005
STATE OF UTAH

My commission expires

8/15/05

FOR DEPARTMENT USE ONLY

Transfer contains

10

pages and

attachments

Received by

HWT

Date

5-20-02

Protest filed by

Prelim. Check by

KCW

Fee

\$250.00

Receipted by

HWT #EG2769

Date

Published in

News Examiner

Copies of protest forwarded by

Pub. Dates

May 29 & June 5, 2002

Hearing held by

Date

Watermaster recommendations requested on

Recommended for

☒ approval

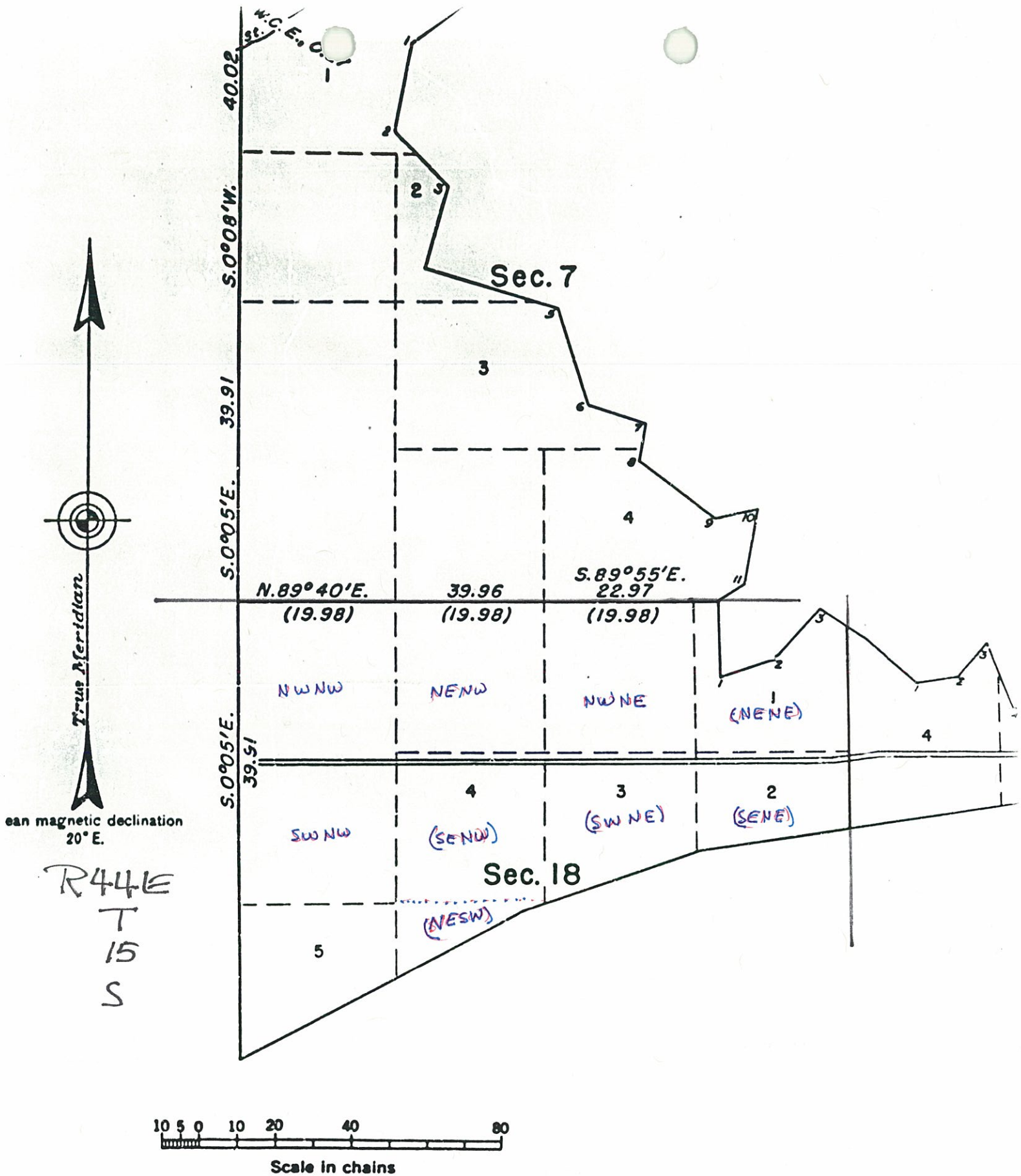
☐ denial

received

by

RDC

Copy of transfer sent to lien holder _____



PARCEL DESCRIPTION:

T-7319 F. LOTS 3, 4
T-7320 F. NONE
12-15-44
56.25/AC.

Sec - Twp - Rge

PEARL LAKE HOLDINGS, LLC

1750 KERSHAW
OGDEN, UT 84403

For any questions, please notify the Assessor's Office immediately.

Assessor's Telephone Number: (208) 945-3155

PARCEL ADDRESS:

Appeals of your property value must be filed in writing, on a form provided by the County, by:

Tax Code Area:

Parcel Number: 3546-00
STATE #: 15644E181200

ASSESSED VALUE OF YOUR PROPERTY

CURRENT DESCRIPTION	LOTS/ACRES	LAST YEAR'S VALUE	CURRENT YEAR'S VALUE
1. OTHER RURAL LAND	56.25		337,590
Bear Lake RECEIVED MAY 20 2002 Department of Water Resources Eastern Region			
SUBTOTAL: LESS HOMEOWNERS EXEMPTION: NET TAXABLE PROPERTY VALUE:	56.25		337,590

These values may not include personal property values. Taxes are based on the values shown on this Notice and on the Budgets of the taxing districts.

ESTIMATED PROPERTY TAXES

TAXING DISTRICTS	LAST YEAR'S TAXES	CURRENT YEAR'S ESTIMATED TAXES	PHONE NUMBER	DATE OF PUBLIC BUDGET HEARING
COUNTY	.00	1,552.38	(208) 945-2212	09/04/2001
COUNTY LIBRARY	.00	139.62	(208) 847-1664	09/12/2001
ST. CHARLES CEM.	.00	80.53	(208) 945-2322	NO RESPONSE
SCHOOL DISTRICT #43	.00	1,458.55	(208) 945-2891	04/12/2001
SCHOOL #33 BOND	.00	.00	(208) 945-2891	NO RESPONSE
B.L. COUNTY FIRE	.00	183.93	(208) 847-2287	NO RESPONSE
SUBTOTAL:	.00	3,414.99		
FEES:	.00	.00		
TOTAL PROPERTY TAXES & FEES:	.00	3,414.99		

THIS IS NOT A BILL. DO NOT PAY.
See the back of this Notice for details.

ATTACHMENT T 69908
2 OF 3

16 July 2001

Attn Harold Jones

RECEIVED
MAY 20 2002
Department of Water Resources
Eastern Region

Please let me know if
any further information is
needed.

I'll check with you in
a week

Thanks

Conrad Nebeker

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 11-7477

WATER RIGHT NUMBER: 11-7477

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BEAR LAKE HOLDINGS LLC 1750 KERSHAW ST OGDEN, UT 84403 (801) 621-2440
Original Owner	PATIENCE CLARK PAYNE SAINT CHARLES, ID 83272
Representative	CONRAD H NEBEKER 1750 KERSHAW ST OGDEN, UT 84403 (208) 621-2440

Priority Date: 03/01/1894

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
ST CHARLES CREEK	BEAR LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15 to 07/15	6.640 CFS	183.00 AF
IRRIGATION	08/15 to 09/15	6.640 CFS	183.00 AF
	<u>Total Diversion:</u>	6.640 CFS	183.00 AF

Location of Point(s) of Diversion

ST CHARLES CREEK	NE1/4SE1/4	Sec. 13, Twp 15S, Rge 43E, B.M.
BEAR LAKE County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	44E	18			X					X									
					L 3					L 4									

Conditions of Approval:Remarks:

- General DECREE GIVEN CLAIM 11-4005.
P/U INCORRECTLY DESCRIBED. AC. IRR. = 122.38.

MICROFILMED

DEC 12 2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 11-7477

Comments:

1. cclark 10/30/2001 Ownership Change

Comment: Water right 11-4005 was split into rights 11-7477 and 11-7478. Right 11-4005 was decreed in the court case of St. Charles Irrigation Company vs. Keith Higginson for 13.27 cfs, 366 af, and 122.38 ac within the larger place of use described on the right. Though the owners of 11-7478 own more than half of the irrigated acres, the owners of both new rights specified that the parent right be split in half. Therefore, each right now covers 6.64 cfs on 61.19 acres even though the owner of right 11-7477 owns approximately 40.78 ac within the original place of use. The owner of 11-7477 has been notified that 61.19 acres will need to be irrigated under the new right to avoid forfeiture.

Dates and Other Information:

Licensed Date:

Decreed Date: 1/4/1974

Water Supply Bank Enrollment Accepted:

Water Supply Bank Enrollment Removed:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Decree Defendant:

Decree Plaintiff:

Civil Case Number:

Judicial District:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

MICROFILMED
DEC 12 2001

**STARTING
RIGHT
SIDE OF
FILE**

MEMORANDUM

Date: July 23, 2003

To: Transfer No. 69908
WR File No. 11-7477

From: Jeff Peppersack

Re: Office Visit by Conrad Nebeker

Conrad Nebeker came to Boise to discuss his transfer filing. The transfer proposes to change the nature of use of a right from St. Charles Creek from irrigation to domestic use. Issues with the right include change in period of use from irrigation season to year-round use for a surface water source, a question of forfeiture, and possible change from surface water to ground water. The transfer, as filed, does not indicate a change from surface water to ground water but it became evident from discussion that Mr. Nebeker intends to use ground water for his development. I explained that a transfer from surface to ground water may not be approved unless it can be demonstrated that there is an immediate and direct hydraulic connection.

An application for a new ground water appropriation is pending and protested for essentially the same use as the transfer. Since the new appropriation is within the Bear River GWMA and subject to the GWMA plan, Mr. Nebeker indicated that he intends to use the surface water right as mitigation for the new appropriation from ground water. He also indicated that he would prefer to just offer to abandon the surface water right as mitigation rather than transfer the right to a mitigation use. Mr. Nebeker may wish to withdraw his pending transfer.

The question of forfeiture was discussed relative to the pending transfer. Apparently the issue arose due to some phone calls received by Eastern region (see file). Mr. Nebeker was sent a letter regarding the need for evidence of recent irrigation or defenses to forfeiture. Mr. Nebeker provided affidavits and aerial photos as evidence of irrigation. The affidavits are somewhat unclear regarding the exact location within the property owned by Mr. Nebeker (some of the property is covered by canal shares) and the photo for 1998 is not real clear. The photos are copies from FSA, so Mr. Nebeker plans to supplement the record with a letter from FSA regarding the date and location of the photos. The evidence provided may be good enough to show that forfeiture should not apply. Mr. Nebeker may try to supplement the evidence to strengthen his case for mitigation.

To complicate the matter, Mr. Nebeker was deeded $\frac{1}{2}$ of the original water right for a total of 6.64 cfs on 61 acres and he owns only 41 acres. Any forfeiture review should consider the original place of use prior to the split of ownership.

I told Mr. Nebeker that, since his application for ground water is protested, he needs to continue working to resolve the protest or go to hearing. He plans to meet with Eastern Region to find out how to proceed with the application.

Conrad H. Nebeker, MD
Bear Lake Holdings
PO Box 182
1171 East Shore Rd.
St. Charles, ID 83272

RECEIVED

JUL 21 2003

Department of Water Resources

Jeff Peppersack
Water Rights Permits Section Manager
Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Fax: 208-327-7866
Voice: 208-327-7900

Date: 7/19/03

Pages: 3

Re: Application 69908 and Water Right 11-7477

Dear Mr. Peppersack,

In response to your letter dated June 23, 2003, we submit partial evidence that the property was irrigated. I will submit further evidence in person to you July 23, 2003.

We have faxed this to you to ensure that we deliver at least some evidence within the required 30-day period ending July 23, 2003.

I have also included an outline of correspondence with you office in preparation for our meeting July 23.

Regards,


Conrad H. Nebeker, MD

Included:

Fax cover, 1 page

Water right, 1 page

Affidavits, 2 pages

Outline of correspondence with IDWR on these matters, 2 pages.

Page 1

10/18/2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 11-4005

WATER RIGHT NUMBER: 11-4005

Owner Type Name and Address
Current Owner PATIENCE CLARK PAYNE
 SAINT CHARLES, ID 83272

Priority Date: 03/01/1894
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>			
ST CHARLES CREEK	BEAR LAKE			
<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/15 to	7/15	3 <i>ms</i> .	366.00 AF
IRRIGATION	8/15 to	9/15	1 <i>ms</i> .	366.00 AF
	<u>Total Diversion:</u>		13.270 CFS	366.00 AF

Location of Point(s) of Diversion
ST CHARLES CREEK NE1/4SE1/4 Sec. 13, Twp 15S, Rge 43E, B.M.
BEAR LAKE County

Place of Use
IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	44E	18			X				X	X		X							
					L3				L4		L5								

Total Acres: 0

Conditions of Approval:Remarks:

1. General DECREE GIVEN CLAIM 11-4005,^^ P/U INCORRECTLY DESCRIBED. AC. IRR. =
 122.36,^^

Dates and Other Information:

Licensed Date:
Decreed Date: 1/4/1974

AFFIDAVIT OF REAL ESTATE IRRIGATION

STATE OF IDAHO
COUNTY OF BEAR LAKE ss.:

Glayde Erickson being duly sworn, deposes and says:

My residence address is 55 South 1 East St Charles Idaho 83272

For many years up to and including the summer growing season of 1998 and spring growing season of 1999, Charles Hulme irrigated the land, and I cut hay on all the cropland on Charles Hulme's property including land listed in the SWNE Section 18 T15S R44E and more particularly designated on the attached "Exhibit A—Area to be removed from Irrigation."

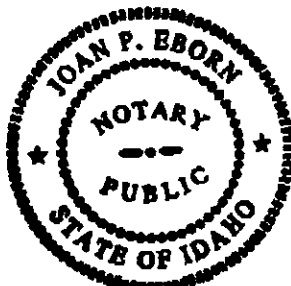
There has been irrigation water on the above described land every year for over 35 years up to and including 1999.

Glayde Erickson
Glayde Erickson

Sworn to before me this

16th day of July, 2003.

Joan P. Eborn
Notary Public



AFFIDAVIT OF REAL ESTATE IRRIGATION

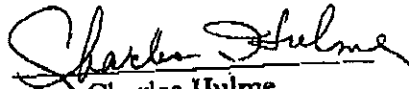
STATE OF IDAHO
COUNTY OF BEAR LAKE ss.:

Charles Hulme being duly sworn, deposes and says:

My residence address is 15 So. MAIN Bloomington Idaho 83223. I am the former owner of certain real estate along the north shore of Bear Lake, ID.

For many years up to and including the summer growing season of 1998, I irrigated the land listed in the SWNE Section 18 T15S R44E and more particularly designated on the attached "Exhibit A—Area to be removed from Irrigation."

There has been irrigation water on the above described land every year for over 35 years.


Charles Hulme

Sworn to before me this

19th day of June, 2003.
Notary Public

Conrad H. Nebeker, MD
Bear Lake Holdings
PO Box 182
1171 East Shore Rd.
St. Charles, ID 83272

Jeff Peppersack
Water Rights Permits Section Manager
Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

7/19/03

Dear Mr. Peppersack,

This letter provides a review of the history of our correspondence regarding our rights and applications.

DIVISION AND TRANSFER OF HULME RIGHT (11-4005) TO BEAR LAKE HOLDINGS (11-7477)

January 2, 2000: I bought the Charles Hulme Ranch primarily for its excellent water rights number 11-4005. I divided this property and its water rights with my partner.

November 26, 2001: Cynthia Bridge Clark notified us that you had recorded the division of water of decree 11-4005 into 11-7477 and 11-7478. 11-7477 is pertinent to the property that I now control.

APPLICATION FOR MULTIPLE DOMESTIC USE WELL PERMIT (11-7483)

January 4, 2001: the Eastern Region received our application for transfer of 3 cfs of surface to 1 cfs of underground water.

January 12, 2001: Skip Jones returned to me the application with the check because he had "no viable way" to make the requested transfer. He also remarked that decree 11-4005 might have excessive water for the number of acres and suggested that I talk to Pacific Corp. about using that water right for a mitigation item so that they would not protest an application for a new subdivision. Shortly thereafter we pursued negotiations with Pacific Corp.

February 2, 2002: Your office received our new application #11-7483 for a multiple domestic use well permit.

April 2, 2002: Skip Jones notified us that, relative to application #11-7483, we would have to await the establishment of criteria for application approval from the Bear River Groundwater Management Area advisory board.

April 4, 2002: Skip Jones sent us copies of the protests and suggested that we discuss the concerns of the protestants.

Feb 25, 2003, The Bear River Groundwater Management Area's Ground Water Management Plan was adopted.

April 17, 2003: Skip Jones notified us of the opportunity to develop a mitigation plan. We responded by telephone and in writing within the 60-day period that we intended to develop a mitigation plan.

June 28, 2003: We received a letter from Skip Jones dated 6/24/2003 that we had 120 days for the receipt of the letter to provide a mitigation plan for application #11-7483 to his office.

APPLICATION FOR TRANSFER OF SURFACE FOR 6 ACRES TO UNDERGROUND FOR 17 HOMES (69908)

June 28, 2002: Skip Jones notified us that application for transfer #69908 for 6 acres of surface to underground water use for up to 17 homes had finished the public advertisement cycle with no protests. He notified us that we would receive a final answer 6-8 months from that date.

June 16, 2003: Skip Jones wrote to us that we needed to provide evidence of recent irrigation on the 6 acres proposed to be dried up under application #69908.

June 23, 2003: Notified us that we had 30 days to provide evidence of irrigation of the 6 acres or apply for an extension.

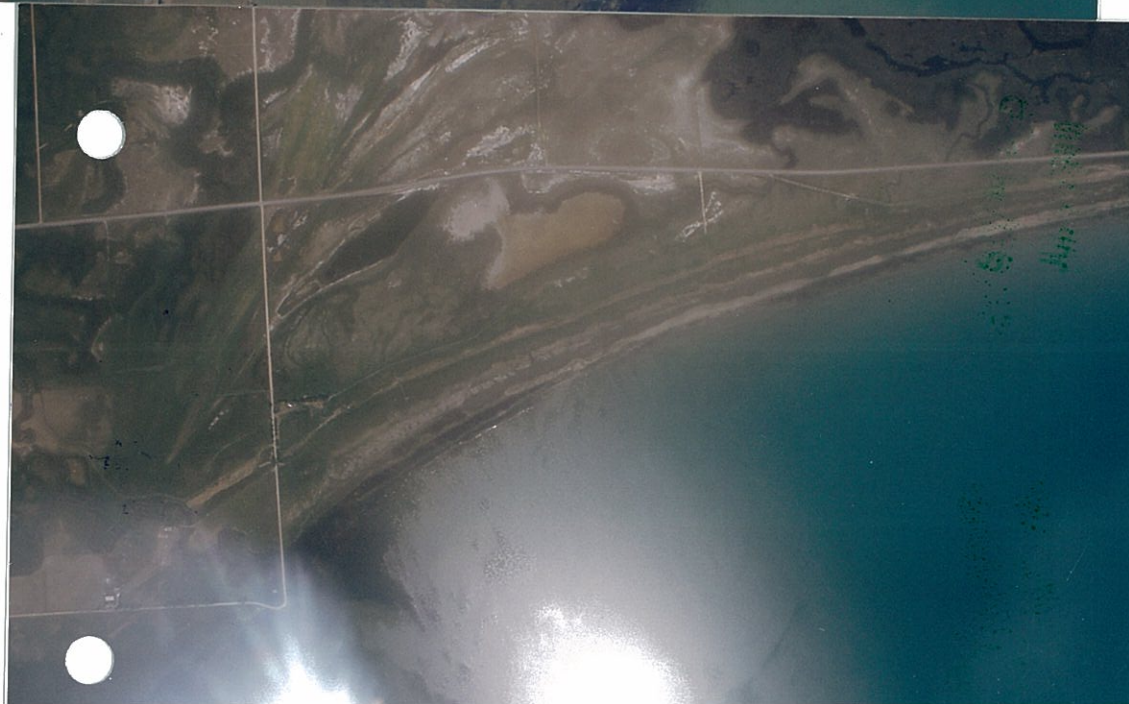
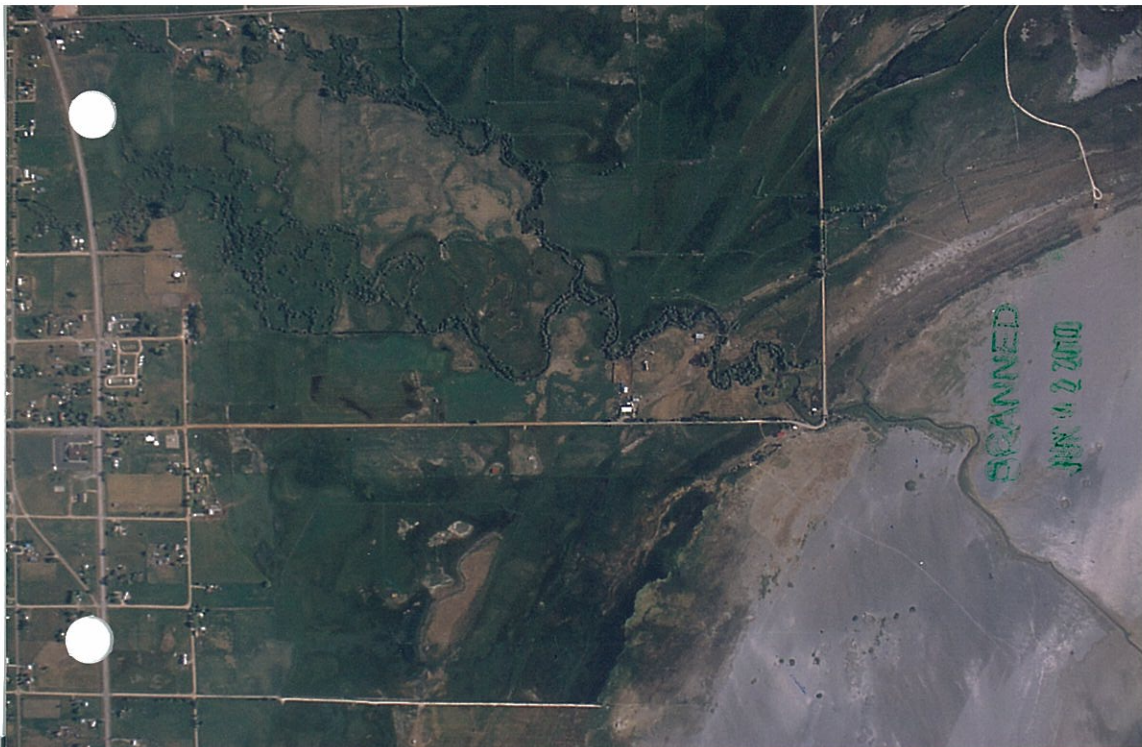
July 19, 2003: I faxed affidavits supporting the contention that the property has been irrigated.

July 23, 2003: I will have delivered you to affidavits and aerial photographs that support the claim that the entire property including the 6 acres has been irrigated.

I look forward to meeting you on Wednesday.

Regards,


Conrad H. Nebeker



2002

155529, 911042, 01-002
2

Page # 2 # 71

155529, 911042, 01-001
1

1997
616

1998

616

200-10, 240116, 625



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 23, 2003

BEAR LAKE HOLDINGS
C/O CONRAD NEBEKER
PO BOX 182
ST CHARLES ID 83272

RE: Application for Transfer 69908 - Water Right No. 11-7477

Dear Mr. Nebeker:

The Department of Water Resources is currently reviewing your application for transfer of water rights. Preliminary review of the application indicates that additional information is required to support your application. In a letter dated June 16, Harold Jones from our Eastern Region office requested evidence of irrigation of the parcel containing the six (6) acres being used in the transfer application. To date, we have not received the requested evidence.

For any application for transfer, the Department must determine the validity of the water right(s), or part thereof, proposed to be changed. Section 42-222, *Idaho Code*, provides that "All rights to the use of water ... shall be lost through nonuse or forfeiture by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated..." Please provide documentation demonstrating that the water right (or part thereof) proposed for transfer has not been lost through nonuse or forfeiture by a failure to apply it for irrigation use for the benefit of growing crops. Examples of appropriate documentation include power records for pumps used to divert water under a right, Farm Service Agency (FSA) crop production records, receipts or other evidence of expenditures or revenue from the use of water under the right, and adequate affidavits of objective persons having actual knowledge of the uses of water under the right. Alternatively, if the right has not been used for a five (5) year period, please provide information showing that exceptions or defenses to forfeiture are applicable. Exceptions or defenses to forfeiture include those set forth in Section 42-223, *Idaho Code*; extensions provided for in Section 42-222, *Idaho Code*; and case law relating to factors such as resumption of use, unavailability of water when needed, or non-use when other water is available.

The Department will hold further processing of your application for 30 days to allow submittal of the required information. Additional time may be granted by the Department upon receipt of a written request and sufficient justification for an extension. After that time, if adequate information is not received, the Department will issue a preliminary order to reject or deny the application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', written over the printed name.

JEFF PEPPERSACK
Water Right Permits Section Manager

JP:klt

MEMORANDUM

Date: June 20, 2003
To: Transfer 69908
From: Sharla
Re: Historical Beneficial Use

On this date Conrad Nebeker called me in regards to the resumption of irrigation to protect his right from the forfeiture issue. By the time he had called, Skip Jones had already contacted me to tell me about the two phone calls he received this morning (documented in his 6/20 comment). Mr. Nebeker was in the process of opening a ditch that had not been used for some time to allow irrigation and thereby resolve an issue of forfeiture. Mr. Nebeker has a notarized affidavit from someone claiming irrigation took place in 1998 and this year is the end of the 5-year non-use period. The neighbors as well as the Dept. of Fish & Game have concerns over his resumption of use of water at this point.

In his phone conversation with me, Mr. Nebeker stated that he did not really WANT to divert water this year, but felt it was the only way to squelch the issue of forfeiture. He was calling to request that the department issue him a letter stating that we would allow him to not divert water again this year without declaring the right forfeited for non-use. Because I already knew about the phone calls that had gone on this morning at Eastern, I knew that non-use may have been longer than five years already. I informed Mr. Nebeker that a notarized affidavit was not sufficient as proof of irrigation and because we have reason to believe it has been longer than five years already, we would require evidence such as crop reports or aerial photos prior to and up to 1998 before such a proposal would even be considered by the department. Mr. Nebeker was angry at this point and said he would see what he could find and hung up.

This afternoon I received a call from Dick Sculley (Fish and Game). Mr. Nebeker had spoken with him and evidently asked that he call me to confirm Fish and Games desire to not have Mr. Nebeker divert water. Mr. Sculley indicated that several neighbors have told him that it has been about 10 years since Mr. Nebeker diverted water. I told Mr. Sculley that the ball is in Mr. Nebekers court to prove irrigation prior to and up to 1998.

MEMORANDUM

Date: June 20, 2003
To: Transfer 69908
From: hjones
Re: Irrigation resumption

I received two phone calls today that informed the Dept that the applicant is attempting to resume irrigation of the property listed in this transfer. One caller would not be identified, the other was Dick Sculley. Dick is the Regional Fish Biologist in the Pocatello office of IDFG.

It appears the applicant has received my letter requiring evidence of irrigation during the last 5 years. This is required by the Transfer memo when changing the nature of use. It appears there may not have been any irrigation for many years on this property and this attempt to irrigate today may be the first time this water has been utilized for some time.



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 16, 2003

Bear Lake Holdings
C/O Conrad Nebeker
PO Box 182
St Charles ID 83272

Mr. Nebeker:

Our Boise office is processing your application for transfer #69908. This application proposes to dry up 6 acres of irrigated ground and use that water for domestic purposes for up to 17 homes.

I have been asked to request evidence of recent irrigation use on the 6 acres listed in the SWNE Section 18 T15S R44E.

As you can see from the Nov 26, 2001 letter (copy enclosed) you were advised by Cynthia Clark that your right 11-7477 could be forfeited or lost if irrigation of the listed place of use was not done for 5 or more consecutive years.

Therefore we will need evidence, such as crop records, notarized affidavits or air photos which show recent irrigation of the parcel containing the 6 acres to be used in the transfer application.

I will need your to respond within 30 days of receipt of this letter. Please send all information to Sharla Curtis, C/O IDWR, 1301 N Orchard St, Boise ID 83706.

Sincerely,

Harold W Jones
Water Right Supervisor

HWJ:sc

TRANSFER REVIEW SHEET

Trans # 69908Date Reviewed 2/6/2003

Right No(s) *

Split?

11-7477
Y N Y N Y N Y N Y N Y NAREA OF CONCERN: No/Yes NO

PURPOSE OF TRANSFER FOR EACH RIGHT:

Change p/d
Add p/dChange use period
Change nature of use

Change p/u

RightID's of From & To records correct? Y N (resolve with S.O.)

Check for Partial Decree issuance, etc. since time of application's entry

PROOF OF OWNERSHIP COMPLETE FOR OLD & NEW P/U Y Lien Holder Release NA

GROUNDWATER:

DRILLING PERMIT

All wells - 046
DP upgrade req'd Y N (contact GW)
WMD - North/East/West
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 067

WMD

≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M or 01Q

SUPPLEMENTAL

- 065-104 (where irrigation is the only use)

SUPPLEMENTAL

- 100-105 (where there are other uses besides irrigation)

WITHIN ESPA

- 113-114-116 (mitigation)
- 115 (meas. Device)

USES:

STORAGE - 18C-R02-01P-18B-NA
IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)
Volume only - R58/R59/R60/R61
STOCKWATER - R37 (all BLM/USFS)
MINING - 054-106
FISH PROP - 029 (70's basins only)-007-122-106
HEAT/COOL - R07 (injection well)
FIRE PROT. - 077
DAIRY - 082 (zoning if a concern)-106-WD8

SURFACE WATER:

WD

≤ 0.20 cfs/others - R05 (WD# 11) WM comments rec'd
> 0.20 cfs - R02, 01P or No MD
- R43

WD, SPRINGS/SINK, INACTIVE WD & REST OF STATE

≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M or 01Q

STANDARD SEASON

4/1 to 10/31 (use X61 if extended season)

STANDARD VOLUME

3.5 af/ac

CONSUMPTIVE USE VOLUME

af/ac

USES:

POWER - 17H-17K (+uses)-025-106
MUNICIPAL
Restricted area - 022-075 RAFN - 007-109-X64
Irr., GW supp to SW - 102
DOMESTIC
Surface water - WB5 (Big Wood or Boise above Star Bridge)
- 27A (Payette River)
>1 in restricted area - 070-071-075 (no parks/common areas, etc)
Irr use listed separate - WB5

MISC CONDITIONS/REMARKS:

T07 - 1 yr to develop
T08 - comply or rescind
T17 - >1 pd, measure all (use w/ WB4)
T18 - Special T17 & R43 combined -
multiple pds in WD

Protested - 020-X19

Water Quality - 106-R07

X27 - Number of acres/season in ppu

X35 - Combined totals of multiple rts

X49 - measure p/d's (source chg'd to orig trib)
X51 - 2+ yrs to develop
X53 - Use ltd to orig. source availability
X54 - forfeited ac/rate (used rarely)
X55 - (transfer shrinks total water to less ac)
004 - no right-of-way
X58 - pending claim (statutory or AJ b/u claim)
X61 - extended irr season
X62 - replaces N11 and N13
X63 - replaces C12
WB4 - + p/ds, cfs & afa (used with T17)
WD8 - land application of waste water
01Q - used instead of 01M when there's another meas. Cond (i.e. T17 & 01M)

Apply one to chg'd & unchg'd

rts that are subject to SRBA:

T09 - on-going SRBA (no Dir Rpt
or Recomm yet)T19 - replaces C18
(if at Recommendation
or Partial Decree stage)T20 - use only on unchg'd rts
not subject to SRBAunchanged

OTHER CONDITIONS/REMARKS

DEQ condition

COMMENTS

Database files updated DE Approval form printed DE Shape files created DE

Special Mailing Instructions (cc's, etc)

Final database update after approval DE * Comment to WR No(s).

MEMORANDUM

Date: February 21, 2003
To: Transfer 69908
From: dcarlson
Re: transfer evaluation

RECEIVED

FEB 25 2003

Department of Water Resources

This transfer proposes to change the nature of use to year round domestic use of St Johns Creek. This use will be inside and outside domestic use of the surface water. A well permit is also being filed on. This is for a 17 home subdivision

Authority to File:

Applicant provided tax notices and is the Decreed owner of record

Water Right Validity:

This water right was decree in 1974.

Forfeiture is not an issue.

Injury to Other Water Rights:

No injury issues identified. No protests

Enlargement of Use:

There is no evidence of enlargement of use.

Local Public Interest:

No issues identified.

Beneficial Use / Conservation of Water Resources:

No issue identified.

Review of the application finds there is not clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

The application was advertised, with no protests.

80669 #1

1200

- JUL 19 2002

5. Amount of land &/or water transferred:

a. ~~1~~ All of right.

- b. ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
- c. Map for remainder of right? ☐ Yes ☒ No
- d. ☒ Check description of point(s) of diversion.
- e. ☒ Check description of place of use
- f. ☒ Check map (shows p.d. and p.u. after transfer).
- g. ☒ Check for correct signature, notarization, and fee.
- h. ☒ Check proof of ownership of right &/or land from which water is transferred.
- i. ☒ Check for expansion in use of right. Comments _____

j. ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) _____

k. ☒ Is use within a Watermaster District? ☐ Yes ☒ No

* Send Copy to _____

If yes, what district? _____

PROCESSING REVIEW BY: _____

* Sent Copy to DEQ _____ in Pocahontas

1. Watermaster recommendation requested on _____ Received on _____

2. Reviewed by Adjudication Staff? ☐ Yes ☐ No
3. Is transfer published correctly? ☒ Yes ☐ No
4. Protest received? ☐ Yes ☒ No

1. ☒ Approve

2. ☐ Deny

3. Conditions*

4. By RDC Date 7/12/02



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 28, 2002

RECEIVED

JUL 19 2002

Department of Water Resources

Conrad Nebeker
PO Box 182
St. Charles, Idaho 83272

Mr. Nebeker:

Your application for transfer # 69908 in the name of Bear Lake Holdings has finished the public advertisement cycle with no protests and will be reviewed by the Regional Supervisor in the next 7 days.

At that point the application will be sent to our Boise office for final review. Since our backlog is so large this could take 6-8 months before a final answer is received.

Sincerely,

Harold W. Jones
Water Resource Supervisor

HWJ/clk



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED
JUN 13 2002
Department of Water Resources
Eastern Region

224 South Arthur • Pocatello, Idaho 83204-3202 • (208) 236-6160

Dirk Kempthorne, Governor
C. Stephen Allred, Director

Idaho Department of Water Resources
Howard W. Jones, Water Rights Supervisor
900 North Skyline, Suite A
Idaho Falls, ID 83402-1718

June 12, 2002

RE: Slate Mountain Water Association and Bear lake Holdings

Dear ~~Mr. Jones~~:

The Department of Environmental Quality has reviewed the document from the above referenced party asking us to consider potential impacts of a proposed expanded land development activities. We have the following comments:

Slate Mountain Water Association, Application for Permit #29-13355

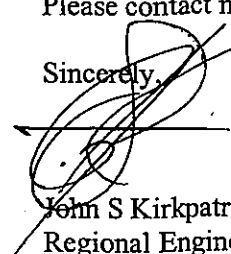
If requested by the District Health Department we will require the submittal of plans and specification for construction of water services for the proposed construction.

Bear Lake Holdings, Application for Transfer #69908

We will require the submittal for plans and specification for water services for the proposed construction. These plans will need to outline a plan that show how the installed system will meet the requirement of the enhanced surface water treatment rule. For more information on these rule and the associated requirements please consult our website that is located at www2.state.id.us/deq.

Please contact me if you have questions or need more information.

Sincerely,


John S Kirkpatrick
Regional Engineering Manager

Enclosures (1)

CC: Steve Pew, District 6 Health Dept Pocatello
File: Bear Lake County P/S FY02 & Bannock County P/S FY02p

PUBLICATION

RECEIVED

JUN 10 2002

Department of Water Resources
Eastern Region

Noosman

being duly sworn,

for of THE
paper published at Mont-
pelier and State of Idaho; and
general circulation in the
city of Montpelier; that the
attached hereto, was pub-
lished for 2 con-
secutive entire issue of said paper
publication, and was published
as a supplement; that said
paper regularly published for more
than 10 weeks prior to the date of
publication.

the issue beginning with

2002
....., 19....., and ending

5 2002
....., 19.....

Noosman

Witness me this 5th day

of 2002

at Bozeman

residing at Montpelier, Idaho

August 28 19 2003

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 69908**

BEAR LAKE HOLDINGS,
P.O. BOX 182, C/O CONRAD
NEBEKER, ST CHARLES ID
83272, has filed Application No.
69908 for changes to the follow-
ing water rights within BEAR
LAKE County:

Right No. 11-7477

Priority 3/1/1894

Source ST CHARLES CREEK

Use IRRIGATION (40.78

acres) 6.64 CFS 183.0 AFA

Total Amount 6.64 CFS 183.0

AFA

Point(s) of Diversion NESE

S13 T15S R43E

Place of Use S18 T15S R44E

The purpose of the transfer is to
change a portion of the above
rights as follows:

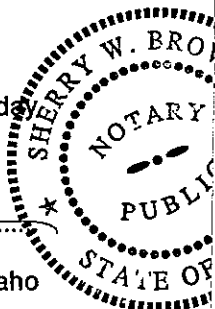
The applicant proposes to dry
up 6 acres in L-3 and use 0.98 cfs
of water for domestic use. This
will be for up to 17 homes in Lots
3 and 4 SEC 18 T15S R44E.

Protests may be submitted
based on the criteria of Sec 42-
222, Idaho Code.

Any protest against the pro-
posed change must be filed with
the Department of Water
Resources, Eastern Region, 900
N Skyline Dr. Ste A, Idaho Falls
ID 83402 together with a protest
fee of \$25.00 for each application
on or before June 17, 2002. The
protestant must also send a copy
of the protest to the applicant.

KARL J DREHER,
Director

Publish May 29 and June 5,
2002 — Legal No. 6401.





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION
May 22, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

BEAR LAKE HOLDINGS
P. O. BOX 182, C/O CONRAD NEBEKER
ST CHARLES ID 83272

RE: Application for Transfer No 69908
Water Right No(s) 11-7477

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right transfer application. Please refer to the above referenced transfer number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the News Examiner on May 29 and June 5, 2002. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the 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., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 22, 2002

Jody L Williams
Kruse Landa & Maycock LLC
50 W Broadway 8th Floor
Salt Lake City UT 84101

RE: Application for Transfer 69908
Water Right Number(s) 11-7477

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can complete the processing of an unprotested application as soon as the protest period is past; therefore, your prompt response to this request is appreciated. If your agency desires to file a formal protest against the approval of this application, your written protest along with a \$25.00 filing fee must be received in this office by June 17, 2002.

Please contact this office if you have any questions regarding the application.

Sincerely,


Harold W Jones
Water Right Supervisor

Enclosure

HWJ:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 22, 2002

STATE OF IDAHO
DEPT OF FISH & GAME
1345 BARTON RD
POCATELLO, ID 83204

RE: Application for Transfer 69908
Water Right Number(s) 11-7477

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can complete the processing of an unprotested application as soon as the protest period is past; therefore, your prompt response to this request is appreciated. If your agency desires to file a formal protest against the approval of this application, your written protest along with a \$25.00 filing fee must be received in this office by June 17, 2002.

Please contact this office if you have any questions regarding the application.

Sincerely,

Harold W Jones
Water Right Supervisor

Enclosure

HWJ:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 22, 2002

State of Idaho
Dept of Environmental Quality
224 S Arthur
Pocatello Id 83204

RE: Application for Permit #29-13355 and Application for Transfer #69908

Dear Sir:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. The last date of protest is June 17, 2002, and we are required to take final action shortly thereafter.

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

Respectfully submitted,

A handwritten signature in black ink that reads "Harold W. Jones". The signature is written in a cursive, flowing style.

Harold W. Jones
Water Right Supervisor

HWJ: sc

Enc.



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 22, 2002

Legal Notice Department
NEWS-EXAMINER
PO BOX 278
MONTPELIER ID 83254

RE: Transfer No. 69908
Water Right No(s). 11-7477

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before June 17, 2002. Your cooperation is appreciated.

Sincerely

Sharla Cox
Administrative Assistant

*Mailed
5/22/02
sc*

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

TRANSFER NO. 69908

BEAR LAKE HOLDINGS, P. O. BOX 182, C/O CONRAD NEBEKER, ST CHARLES ID 83272, has filed Application No. 69908 for changes to the following water rights within BEAR LAKE County:

Right No. 11-7477

Priority 3/1/1894

Source ST CHARLES CREEK

Use IRRIGATION (40.78 acres) 6.64 CFS 183.0 AFA

Total Amount 6.64 CFS 183.0 AFA

Point(s) of Diversion NESE S13 T15S R43E

Place of Use S18 T15S R44E

The purpose of the transfer is to change a portion of the above rights as follows:

The applicant proposes to dry up 6 acres in L-3 and use 0.98 cfs of water for domestic use. This will be for up to 17 homes in Lots 3 and 4 SEC 18 T15S R44E.

Protests may be submitted based on the criteria of Sec 42-222, Idaho Code.

Any protest against the proposed change must be filed with the Department of Water Resources, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before June 17, 2002. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on May 29 and June 5, 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 26, 2001

MICHAEL NEBEKER
CONRAD H NEBEKER
BEAR LAKE HOLDINGS LLC
1750 KERSHAW ST
OGDEN UT 84403

RE: Change of Ownership for Water Right 11-7477

Dear Water Right Holder(s):

The department acknowledges receipt of correspondence changing ownership of Water Right No. 11-4005. This parent right was split into two new rights, 11-7477 and 11-7478, to show Bear Lake Holdings, LLC as the current owner of right 11-7477, and Providence, LLC as owner of right 11-7478. The department has modified its records to reflect the change in ownership and has enclosed a computer-generated report for your records.

A letter sent to you by the Department of Water Resources dated October 18, 2001, discussed the basis of the split due to the ownership change. Unless documentation is provided indicating the right should be divided differently, the department splits the right, including the flow rate, volume and acres of irrigation proportionately between the two parties based on the number of acres owned by each.

In this case, Conrad Nebeker provided documentation that Bear Lake Holdings, LLC and Providence, LLC had agreed to divide the water rights into equal parts. Water right 11-4005 was decreed for a flow rate of 13.27 cubic feet per second (cfs), a diversion volume of 366.0 acre feet (af), and 122.38 acres for irrigation. Based on the agreement between the two parties, the new rights each describe half of the original water right with a flow rate of 6.64 cfs and a diversion volume of 183.0 af, for irrigation on 61.19 acres.

As discussed in the October 18, 2001 letter, Bear Lake Holdings owns approximately 40.79 acres within the original place of use. Please note that according to section 42-222, Idaho Code, water can be lost or forfeited if, for five consecutive years, it is not put to the beneficial use for which it was appropriated. Therefore, 61.19 acres will ultimately need to be irrigated under water right 11-7477 to avoid forfeiture of a portion

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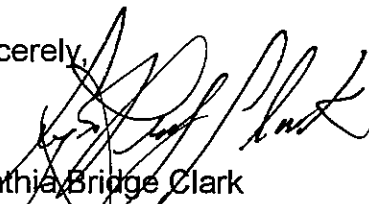
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or all of the water right. A transfer may be necessary to change the place of use or nature of use of the water associated with this right.

The place of use for each new right was based on the proof of ownership documentation provided by the applicants. Review of the documentation indicated that Bear Lake Holdings, LLC owns approximately 40.78 acres in Lots 3 and 4, while Providence, LLC owns approximately 120.95 acres in Lots 4 and 5, and in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of T15S R44E Section 18. Again, the new water rights each allow for irrigation of 61.19 acres within the defined place of use. The location of the place of use for each right is identified on the enclosed proof report and is identified only by the corresponding quarter quarter within T15S R44E Section 18.

Please feel free to contact me at 208-327-7898 or send e-mail to cclark@idwr.state.id.us if you have any questions regarding this matter.

Sincerely,



Cynthia Bridge Clark
Associate Engineer
Water Right Permits Section

Enclosure

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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

June 1, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

BEAR LAKE HOLDINGS LLC
C/O MICHAEL NEBEKER
2752 E 3025 N
LAYTON ID 84040

RE: Permit Application No. 11-7483 -- Bear Lake Holdings, Transfer Application No. 69908 -- Bear Lake Holdings

Dear Mr. Nebeker,

On February 19, 2010, I wrote to inquire about these related applications that were filed quite some time ago by Bear Lake Holdings by care of Conrad Nebeker. Enclosed is the February letter for your reference. In that letter I asked whether there was still intent on continuing forward with these applications and to provide a response within 60 days. To date IDWR has not received a response.

In taking a more thorough look thru the file I noted correspondence from Conrad Nebeker, dated September 29, 2003, instructing that any future correspondence be directed to Michael Nebeker, 2752 E 3025 N Layton, UT 84040. I am therefore writing to inquire whether there is still intent to continue forward with these applications. Please contact me within 30 days regarding these applications. If IDWR does not receive your response within that time, the Department will move to void the applications. If you need additional time to respond, or if you have any questions, please contact me at (208) 287-4949 or at nick.vandyke@idwr.idaho.gov. Additionally I have courtesy copied the address IDWR has on file for Bear Lake Holdings, LLC, which is also listed by the State of Utah's Business Entity Search - 1750 Kershaw St Ogden, UT 84403.

Sincerely,

Nicholas Van Dyke
Sr. Water Resource Agent

Enclosure(s)

cc: Bear Lake Holdings, LLC
1750 Kershaw St
Ogden UT 84403

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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

February 19, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

BEAR LAKE HOLDINGS LLC
CONRAD H NEBEKER
1750 KERSHAW ST
OGDEN UT 84403

RE: Permit Application No. 11-7483 – Bear Lake Holdings, Transfer Application No. 69908 – Bear Lake Holdings

Dear Mr. Nebeker,

I'm writing in regards to these related applications that were filed quite some time ago by Bear Lake Holdings by care of Conrad Nebeker. The permit application is for the authorization to develop domestic uses for 16 homes on the northern shore of Bear Lake near St. Charles Idaho. The transfer application proposes to change the nature of use for Right 11-7477 from irrigation to domestic purposes. As you are likely aware, the applications were advertised and the permit was subsequently protested by several parties. The most recent document in regards to the permit was the submittal of a "simplified method" for the mitigation plan of the permit. Similarly, the most recent document in the transfer file is a Department staff memorandum summarizing a meeting with Mr. Nebeker. The memorandum states that instead of converting the use of Right 11-7477 from irrigation to domestic (essentially duplicating the proposed uses under the permit), the irrigation would instead be abandoned with the intent of mitigating uses under the permit. There are also other matters addressed in the memorandum, including a mention that Mr. Nebeker may wish to withdraw the transfer.

I have been asked to continue processing these applications. It appears nearly seven years have passed since either has received any real attention from the Department, applicant, or protestant(s). Before I begin a more thorough and lengthy analysis of the proposal, I first would like to inquire if the intent is to still proceed with the project. Please contact me within 60 days regarding these applications. If IDWR does not receive your response within that time, the Department will move to void the applications. If you need additional time to respond, or if you have any question, please contact me at (208) 287-4949 or at nick.vandyke@idwr.idaho.gov.

Sincerely,

Nicholas Van Dyke
Sr. Water Resource Agent

SCANNED

JUN 2 2010

Enclosure