

Application for Transfer of Water Right.

STATE OF IDAHO,

County of Lemhi

}

ss.

John A. Wheeler

being first duly sworn, deposes and says:

That his name is John A. Wheeler; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is Salmon, Idaho

That he is the owner and using a certain water right of fifteen inches of the waters of Josee Creek

County of Lemhi, State of Idaho, decreed to part of a water right of 11 inches owned to John A. Wheeler and C.E. Nelson by decree of Judge J. H. Handcock, of the Fourth Judicial District of the State of Idaho, in and for the County of Lemhi, in the case of E. J. Andrews et al vs. John Martin et al, said decree bearing date of September 30, 1893

(or obtained by virtue of License No _____, issued by the State Engineer of the State of Idaho, dated _____), for the purpose of irrigating the following described lands situate, lying and being in the County of Lemhi and State of Idaho, to wit: SE 1/4 NW 1/4 - SE 1/4 of Sec. 14 - NW 1/4 NE 1/4 of Sec. 30 - NW 1/4 NW 1/4 of Sec. 29 in Twp. 22 North of Range 22 East of Boise Meridian.

and am the person (or corporation) to whom such right so issued, or have become the owner thereof in the following manner, i. e. By said decree of Court.

as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters are now diverted from said stream at Set No. 3 of Sec. 1, in Township 22 North of Range 21 East

and conducted to the above described lands through ditch known as the Wheeler and Nelson ditch, as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of the said fifteen inches of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Lemhi and State of Idaho, to wit: The SE 1/4 of the NW 1/4 of Sec. 6 in Township 21 North of Range 22 East

That his reasons for desiring to make such transfer are as follow

That he desires to sell and convey the said water rights of fifteen inches of the waters of Josee Creek to Christopher Ostander

History
of
transfers
for
Allocations
right
75-19D
and
SRBA claim
75-19G

MICROFILMED

the said Christopher Estrander
That he intends to divert and convey said fifteen inches of water to the tract
of land last above described in the following manner, to wit:
by a ditch to be taken from the Wheeler and Willis ditch at a point 25 rods west of the north
west corner of Township 21 North of Range 22 East and 25 rods and ten feet north of the north
of the north line of Township 21 North of Range 22 East.

as set forth upon the map hereto attached; and

That no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the State Engineer of the State of Idaho
shall issue to him the proper certificate authorizing such transfer, and give proper notice of the
same to the Water Commissioner of this Division, in accordance with the provisions of Section 11,
House Bill No. 146, of the Laws of the Seventh Session of the Legislature of the State of Idaho.

Subscribed and sworn to before me this

9th

day of

June

A. D. 1906

John H. Wheeler
W. C. Smith
Clerk of the District Court

STATE OF IDAHO,

County of Lemhi

} ss.

William J. Brown

and

Palmer Hanfull

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a
citizen of the United States and of the State of Idaho, residing at Salmon, Idaho;
that he is a user of water from June Creek, County of Lemhi,
State of Idaho; that he has ~~read or~~ heard read the foregoing affidavit and petition of
John A. Wheeler, and is familiar with its allegations, and with the water right and
lands therein mentioned and described and is not in any way interested in either, nor in any way re-
lated to said petitioner; that the statements and allegations therein made are true of his own knowl-
edge; and that no one will be injured by the granting of the certificate authorizing the transfer there-
in petitioned.

Subscribed and sworn to before me this

9th

day of

June

_____, A. D. 1906

William J. Brown
Palmer Hanfull
W. C. Smith
Clerk of the District Court

STATE OF IDAHO.

County of Lemhi

} ss.

I, Francis M. Singler

, Wastermaster of June Creek

County of Lemhi

, State of Idaho, whose postoffice address is Salmon,

Idaho

, have ~~read or~~ heard read the foregoing affidavit and petition of

John H. Wheeler, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Engineer will issue the certificate of transfer as petitioned; ~~or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons:~~

Isaac M. Langley

Watermaster.
of Jesse Creek Land
County - Idaho

Albion, Idaho - Jan. 30, 1907

Notice having been duly published for thirty days of the intention of the above named John H. Wheeler to apply to the State Engineer of the State of Idaho for a certificate authorizing the transfer of water as set forth in his affidavit and petition herein, and an opportunity having been given to any and all persons opposing said transfer to present their objections in a public hearing before ~~me~~ at my authorized agent at Salmon, Idaho, on January 25th, 1907, according to the terms of said notice;

And it not appearing at said hearing that any one would be materially injured by such transfer:

I hereby recommend that the said State Engineer of the State of Idaho issue his certificate to said applicant, authorizing the transfer as prayed for in his petition; ~~or (and it appearing at said hearing that the following injuries would be sustained by others if such transfer is permitted~~

~~I hereby recommend that the State Engineer do not issue the certificate authorizing the transfer sought hereinabove.~~

Frank Riblett

Commissioner of Water Division No. 2

By _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant Dale T. Smedley Phone 876-3389Post office address Rt. #1, Morgan, Utah 84050**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by:

a. Decree to John Wheeler & C. C. Willis (Name)
in case of E. T. Andrews & W. S. Andrews vs John Martin, et al
dated 9-30-1893 in 5th Dist. Court county of Lemhi
(Name of court)

b. License No. _____ issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant

3. Source of water Jesse Creek tributary to Salmon River4. Date of priority 1868

5. Water is used for the following purposes:

amount 3.60 for irrigation purposes from Apr. 1 to Nov. 1
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day -- both dates inclusive)

6. Total amount of water under right: a. 3.60 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 1
Township 21N Range 21E B.M. in Lemhi County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
22N	22E	31									X	X	X	X					160
		30	X												X				80
		29					X				X	X	X						160
		19													X			X	80

Total number of acres to be irrigated 480

9. Describe any other water rights used for the same purposes as described above

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. 0.30 cubic feet per second
&/or
b. 127.94 acre feet per annum
2. Point of diversion SW 1/4 NE 1/4, Section 1 Township 21N
Range 21E, B.M., Lemhi County
Additional points _____

3. Place of use:

TWP.	RANGE	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	
22N	22E	31												39.99					39.99

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion
- a. Amount of water to be diverted 0.30 c.f.s. &/or 127.94 acre feet
- b. Point(s) of diversion SE 1/4 SW 1/4, Section 2 Township 21N
Range 21E, B.M., Lemhi County
Additional points NE 1/4 NE 1/4, Sec. 10, T. 21N, R. 21E, B.M. (0.20 to be
diverted from Chips Creek at the first listed point and 0.10 to be diverted
to Pollard Ck. at the second listed point
- c. Description of diverting works headbox and pipeline in springs at point of diversion
- d. Describe the reasons for applying for a change in the point(s) of diversion to apply water for better irrigation use

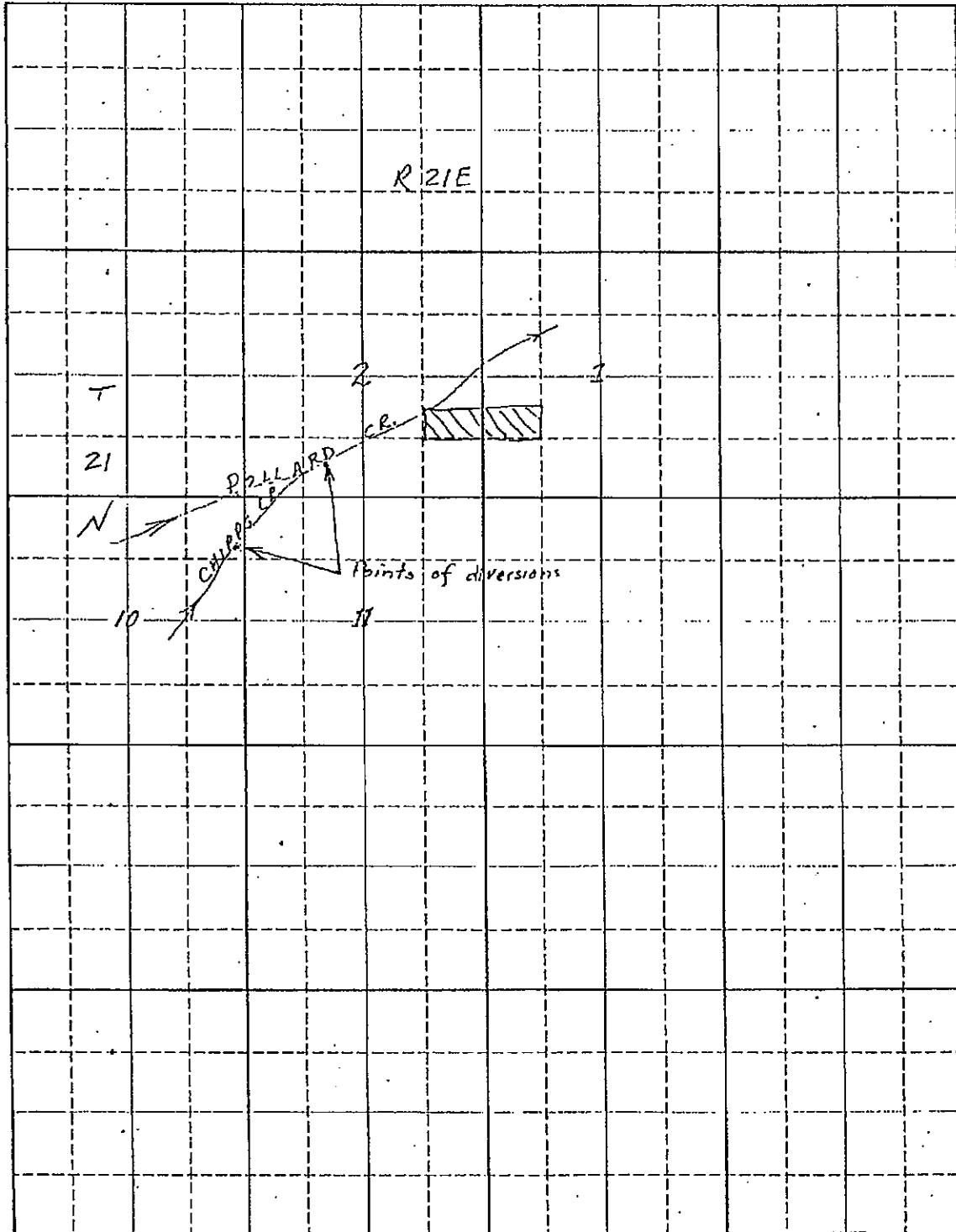
2. Change in place of use

- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	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	
21N	21E	1											20						20
		2													20				20

Total number of acres to be irrigated 40

3. Draw a map indicating the point(s) of diversion and/or the new land to be surveyed. Show clearly the land involved by section, township and range number.



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

4. Remarks _____

I hereby assert that no one will be injured by such change and 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.

Dale J. Smalley
(Signature of applicant)

Subscribed and sworn to before me this 1st day of October, 19 79.

Allen Shaw
(Notary public)

My commission expires 6/15/81

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 75-0019 and said application is hereby APPROVED, subject to the following limitations and conditions:
pursuant to MEMORANDUM DECISION AND ORDER

Witness my hand this 30th day of June, 19 81.

D. J. Hunsaker
Director

FOR DEPARTMENT USE ONLY

Received by OW Date 10-01-79

Prelim. check by LDJ Fee \$35.00

Received by OW Date 10-01-79

Published in Recorder-Herald

Pub. dates 10/11 & 10/18/79

Watermaster recommendation requested on 10-9-79

rec'd. 10/23/79

Protest filed by Shawman & Smith
Sped. Inmate, Sheriff's Dept, Los Angeles, Cal.
Robert L. Brockman, and David L. Brockman,
San Bernardino, John Joseph

Copies of protest forwarded by OW

Hearing held by _____ Date _____

Recommended for approval denial

by _____

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

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF }
APPLICATION FOR TRANSFER NO. 75-0019 IN THE }
NAME OF DALE T. SMEDLEY }

MEMORANDUM DECISION
AND ORDER

On October 1, 1979, Dale T. Smedley applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Jesse Creek tributary to the Salmon River. The right sought to be changed is evidenced by a decree to John Wheeler and C. C. Willis in the case of E. T. Andrews and W. S. Andrews vs. John Martin, et al dated September 30, 1893 in the Fifth Judicial Court, County of Lemhi. The right was decreed for 3.60 cubic feet per second with the priority date of 1868, designating the point of diversion to be within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, Twp. 21N, Rge. 21E B.M., Lemhi County. The water was decreed for the irrigation of 480 acres within the SW $\frac{1}{4}$ of Sec. 31; NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30; the NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29; the E $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19, Twp. 22N, Rge. 22E B.M., Lemhi County. The portion of the right that is proposed to be changed is 0.30 cubic feet per second of water used for the irrigation of 39.99 acres of land located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 31, Twp. 22N, Rge. 22E B.M. ^{1/2 acres of Irrigation have} That portion of the right is proposed to be diverted within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2 and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, Twp. 21N, Rge. 21E, B.M. for the irrigation of 20 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1, and 20 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, Twp. 21N, Rge. 21E B.M., Lemhi County.

Notice of this application was published on October 11 and 18, 1979 in the Recorder-Herald of Salmon, Idaho. On October 19, 1979, the Department received the initial protest against approval of this application from the estate of Walter L. Blackadar, deceased and Shirley C. Blackadar. A second protest was received on October 24, 1979 from the City of Salmon and a third on October 26, 1979 from Carl T. Gaver and Margaret Gaver. On October 29, 1979, additional protests were received from Nan Blackadar, Sue Blackadar and Robert L. Blackadar. The Department received the final protest on October 30, 1979 from John Bryant.

The protests indicated that if the application for transfer was granted it would result in a change in the nature of use, would adversely affect existing water rights and that the major portion of the right sought to be changed had been abandoned or forfeited through nonuse.

On October 24, 1980, the Department of Water Resources conducted a hearing in this matter at the Lemhi County Courthouse in Salmon, Idaho. The applicant was present and was represented by James C. Herndon, Attorney at Law. Mr. and Mrs. Gaver were present along with representatives of the City of Salmon and were represented by Fred Snook, Jr., Attorney at Law. John Bryant and the Blackadar family were present and represented by Sherman F. Furey, Jr., Attorney at Law.

Prior to proceeding with testimony counsel for the parties involved stipulated that the Department of Water Resources conduct a field examination to determine if there is transmission loss in that reach of Pollard Creek between Smedley's point of diversion and the diversion for the city ditch. It was also stipulated that no more than four acres had been irrigated by John Reddington under right 75-0019 for at least the past ten consecutive years. The applicant and the objectors agreed to waive their right to a proposed decision and to allow the Director to issue a final decision on the matter based upon the testimony and evidence presented at the hearing, the findings of the field exam to be conducted by the Department and the Director's understanding of the law.

REVIEW OF EVIDENCE AND TESTIMONY

Exhibits submitted at hearing.

- 1) Applicant's Exhibit No. 1 - illustration of diversion on Chipps, Pollard and Jesse Creek designating approximate locations and distances between diversions.
- 2) Applicant's Exhibit No. 2 - aerial photo of drainage for water district 75A, Jesse Creek, superimposed with U.S.G.S. 7½ minute series topographic map.
- 3) Applicant's Exhibit No. 3 - entitled warranty deed dated June 26, 1978.
- 4) Applicant's Exhibit No. 4 - entitled deed of water rights dated March 8, 1978.
- 5) Applicant's Exhibit No. 5 - entitled water district role for Water District 75A, Jesse Creek, dated from 1963 to 1980.

TESTIMONY

The applicant testified that the intent of the application was to transfer 7½ miner's inches to his Chipps Creek diversion and 7½ miner's inches to his Pollard Creek diversion. This water would then be used to facilitate a gravity flow irrigation system which he hopes to install. Furthermore, water diverted at these two points would be collected in a reservoir to supplement irrigation later in the year when water was short. He testified that both reservoirs would be less than 100 acre-feet in capacity and that none of the stored water would be used in the culinary

systems for the proposed subdivision. He also stated that of the 736 acres which he owns, around 350 are irrigable.

John Reddington, witness for the applicant and previous holder of the water right testified he had used the 15 miner's inches of water in question to irrigate 4 acres of land which consisted of a small orchard and pasture. He contended this quantity of water was necessary in order to irrigate the 4 acres because of the gravelly soil.

Witness Leon Manning, consultant for the applicant, testified the duty of water on the Reddington property could easily have been 15 miner's inches for the 4 acres traditionally irrigated. He stated the applicant could definitely use the 15 miner's inches of water requested by the transfer. It was his opinion that the Blackadar water rights and Gaver's domestic well would not be adversely affected by the proposed change of points of diversion. He was unable to determine what effect the transfer of 7 1/2 miner's inches to the applicant's Chipps Creek diversion would have on the water rights for the City of Salmon.

Virgil Schofield, watermaster for Water District 75A and witness for the applicant, testified that about 10 years ago, the City of Salmon changed their points of diversion to their present location on Chipps and Pollard Creeks. He also confirmed that during the winter and July and August, the city diverted all the water from Chipps Creek and that during these periods, the Blackadar and Reddington rights were filled with water rising in Pollard Creek below the city's diversion. He testified that in performing his duties as watermaster since 1962, it had been his experience that the City of Salmon did not require the entire flow of Chipps Creek in order to fill their first right and; therefore, the transfer of 7 1/2 miner's inches to Smedley's upper diversion would not adversely affect the city's right. He also testified that the city's rights were not measured until the water from all three creeks had been combined in the municipal system.

Protestant Carl Gaver testified he is the holder of 15 miner's inches of third right water with a priority of 1888. He has traditionally diverted this water from the city ditch about one-half mile upstream from the Reddington diversion and used the water to irrigate about 10 acres of land. However, he indicated his primary concern was the effect this transfer would have on his culinary well which has historically been recharged with the water remaining in the city ditch below his diversion. Mr. Gaver explained that during those periods prior to 1979 when the ditch was normally dry during the day there would be flows in the city ditch at night which recharged the shallow groundwater aquifer. However, in 1979, the city

modified its municipal system and initiated a storage procedure which stopped the nightly flows in the city ditch and in August his well went dry. Mr. Gaver described his well as consisting of a two-inch galvanized pipe, 23 feet deep and located about 60 feet from the bank of the city ditch.

Protestant Robert Blackadar testified that an 1868 priority right for 65 1/3 miner's inches is appurtenant to the Blackadar Ranch. He stated in 1966 his father, the late Walter Blackadar, initiated procedures to move their point of diversion to its present location. This was completed in 1974. He testified it was his belief the soil types and textures were similar to those found on the Reddington property and that it had been his experience you could irrigate 135 acres of land with 150 miner's inches of water. Mr. Blackadar stated his primary objection to the proposed transfer was that the percent of loss in the creek down to the Blackadar diversion would no longer be shared with the Reddington right.

Robert ^{Locks} Locks, county agent for Lemhi County and witness for the Blackadar Estate, testified the City of Salmon has a 10-inch diameter pipe which diverts water from Chipps Creek into Pollard Creek and a 12-inch diameter pipe which diverts the combined water of Chipps and Pollard Creeks into Jesse Creek. He stated the city does divert all the water from Chipps Creek during July and August, during the winter and quite often during those periods there is not sufficient water to fill the city's 12-inch pipe on Pollard Creek. Although the city also diverts water from Jesse Creek, he explained that Chipps and Pollard Creeks are the primary sources for the city's water.

William J. Cannon, mayor of the City of Salmon and witness for the city, testified that although the Pollard Creek pipeline can carry excess water which is released into Jesse Creek for downstream users there are periods of the year when there is not sufficient water in the creeks to meet the city's needs. He testified that to his knowledge the city's first right water has always been filled. He explained when there is insufficient water to fill all of the second water right, the remaining water is prorated among the owners of the second right water.

DEPARTMENT RECORDS OFFICIALLY NOTICED

- 1) Application for Transfer No. 75-0019 dated October 1, 1979.
- 2) Affidavit of publication dated October 19, 1979.
- 3) Letters of protest dated October 19, 24, 26, 29, and 30, 1979.
- 4) Notice of conference and/or hearing dated May 29, 1980.
- 5) Recess of hearing until July 19 and 20, signed May 29, 1980.
- 6) Stipulation waiving right to proposed decision dated June 25, 1980.

- 7) Field report, Department of Water Resources, dated October 8, 1980.
- 8) Decree in the matter of E. T. Andrews and W. S. Andrews vs. John Martin, et al dated September 30, 1893.
- 9) Decree in the matter of George G. Miller vs. Ernest Long, et al, dated June 19, 1925.
- 10) Decree in the matter of Ada P. Pope as executrix of the estate of Forest G. Pope, deceased vs. Ernest Long, et al, dated January 9, 1939.

FINDINGS OF FACT

- 1) The portion of water right No. 75-0019 which the applicant is requesting to transfer has been used on approximately 4 acres of ground during the past 10 years.
- 2) For many years, the domestic well of protestant Carl Gaver diverted water from the shallow groundwater aquifer which was artificially recharged by nighttime flows down the city ditch. These flows ceased when the City of Salmon installed their storage facility in 1979 and began storing water during periods of low demand through the municipal system.
- 3) The delivery system for the City of Salmon is capable of diverting water from Chipps and Pollard Creeks in excess of the amounts required to fill the water rights claimed by the city on Chipps, Pollard, and Jesse Creeks. These rights, while evidenced by decree, have never been transferred to change the decreed point of diversion, place of use or nature of use.
- 4) The City of Salmon has traditionally measured its right after the water from Chipps, Pollard and Jesse Creeks have been combined. Any excess water is discharged into Jesse Creek upstream from the city ditch diversion.
- 5) Water diverted from Chipps Creek above the city's diversion will not adversely affect any right held by the city provided there is water flowing past the city's Jesse Creek diversion.
- 6) A field exam conducted by personnel of the Department of Water Resources determined that there was no loss due to seepage between the points of diversion proposed in application for transfer 75-0019 and the city ditch diversion.
- 7) The approval of application for transfer 75-0019 as requested would result in an expansion of the use under the original right.

CONCLUSIONS OF LAW

- 1) The right being transferred by the applicant is limited to the quantity of water necessary for adequate irrigation of 4 acres.
- 2) Water rights on Chipps, Pollard and Jesse Creeks will not be adversely

affected by the establishment of the two points of diversion proposed by the applicant.

4) The applicant is entitled to the transfer he has requested subject to such conditions as are necessary to assure there will be no expansion in the use established under the original right.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Transfer No. 75-0019 is APPROVED subject to the following conditions:

1) Totalizing measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

2) Use of water under this transfer shall be subject to the control of the watermaster of State Water District 75A, Jesse Creek.

3) Diversion of water under this transfer will be limited to the quantity of water necessary for the irrigation of 4 acres and shall not exceed 12 acre-feet per annum.

Dated this 30th day of June, 1981.


A. KENNETH DUNN
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

75-19G in
SRBA

TRANSFER OF WATER RIGHT

TRANSFER NO. 4104
WATER RIGHT NO(S). 75-00019D/75-00021

This is to certify that: IDAHO ARROWHEAD WATER DISTRICT
1500 FULTON
SALMON ID 83467

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 75-00019D : DOMESTIC Priority: 06/01/1868	01/01 to 12/31	0.30 CFS	12.00 AF
Right No. 75-00021 : DOMESTIC Priority: 05/01/1883	01/01 to 12/31	0.10 CFS	42.17 AF
TOTAL:		0.40 CFS	56.17 AF

SOURCE

CHIPPS CREEK

TRIBUTARY OF

POLLARD CREEK

LOCATION OF POINT(S) OF DIVERSION:

SWNW , Sec. 11, Township 21N, Range 21E
LEMHI County

PLACE OF USE: DOMESTIC

TWN RGE SEC

21N 21E	1	NWSW		
	2	NESE	SWSE	SESE

CONDITIONS OF APPROVAL AND REMARKS

Right Nos. 75-00019D and 75-00020 are subject to the conditions of the Final Order in the matter of Application for Transfer No. 4104.

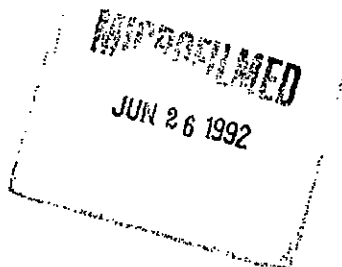
Dated this 20th day of

August, 1996

J. M. Saxton
Chief, Water Alloc. Bureau

TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Wheeler, John & Willis, C.C.	3.6		75-0019
	Wheeler, John H.	0.3		75-0019B
	Wheeler, John & Willis, C.C.	3.3		75-0019A
1932	Ruseill, Vincent P.	0.3		75-0019B
	Replaced by City of Salmon Transfer			
1932	City of Salmon			75-0019B
	Denied			
2239	Smedley, Dale T.	0.3		75-0019B
	Withdrawn			
2355	Smedley, Dale T.	0.3		75-0019B

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IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 4104 OF WATER)
RIGHT NOS. 75-00019D AND) **FINAL ORDER**
75-00021 IN THE NAME OF IDAHO)
ARROWHEAD WATER DISTRICT)
_____)

FINDINGS OF FACT

FINAL ORDER - Page 1

Point of diversion: Not described in decree
Place of use: Not described in decree

4. On October 8, 1907, the state engineer approved a change in the place of use for 0.30 cfs (15 miners inches) of water right no. 75-00019. The place of use was changed to the SE1/4NW1/4, Section 6, T21N, R22E, B.M. The water right transferred was referred to in the department files as the "Ostrander water" or the "Ostrander right."

5. On June 29, 1981, the Department approved application for transfer no. 2356, filed by Dale T. Smedley, for water right no. 75-00021 as follows:

Rate of flow: 0.10 cfs
Source: Chipps Creek
Use: Irrigation
Point of diversion: NE1/4NE1/4, Section 10, T21N, R21E, B.M.
Place of use: 40 acres within the NW1/4SW1/4, Section 1 and the
NE1/4SE1/4, Section 2, TS21N, R21E, B.M.

6. On June 30, 1981, the department approved application for transfer no. 2355, filed by Dale T. Smedley, for part of water right no. 75-00019. The water right sought to be transferred was the Ostrander right discussed in paragraph no. 4.

Ident no.: 75-00019D
Rate of flow: 0.30 cfs
Volume: 12 AF
Source: Chipps Creek and Pollard Creek
Use: Irrigation
Point of diversion: Chipps Creek - SE1/4SW1/4, Section 2, T21N,
R21E, B.M.
Pollard Creek - NE1/4NE1/4, Section 10, T21N,
R21E, B.M.
Place of use: Four acres within the NW1/4SW1/4, Section 1 and the
NE1/4SE1/4, Section 2, T21N, R21E, B.M.

The Snake River Basin Adjudication (SRBA) claim filed for this water right no. 75-0019D claims two (2) points of diversion.

7. Because of the identical place of use descriptions and simultaneous filing of application for transfer nos. 2355 and 2356, there is some question whether the place of use described by water right no. 75-00021 should have been limited to the four acres described by water right no. 75-00019D.

8. Application for transfer no. 4104 proposes to change water right no. 75-00019D as follows:

Ident no.: 75-00019D
Rate of flow: 0.30 cfs
Volume: 12 AF
Source: Chipps Creek
Use: Domestic
Priority: 1868
Point of div: SW1/4NW1/4, Section 11, T21N, R21E, B.M.
Place of use: NW1/4SW1/4, Section 1 and the NE1/4SE1/4, S1/2SE1/4, Section 2, T21N, R21E, B.M.

9. Application for transfer no. 4104 proposes to change water right no. 75-00021 as follows:

Ident no.: 75-00021
Rate of flow: 0.10 cfs
Volume: 42.17 AF
Source: Chipps Creek
Use: Domestic
Priority: May 1, 1883
Point of div: SW1/4NW1/4, Section 11, T21N, R21E, BM
Place of use: NW1/4SW1/4, Section 1 and the NE1/4SE1/4, S1/2SE1/4, Section 2, T21N, R21E, B.M.

10. On August 16, 1994, the department conducted a hearing in Salmon, Idaho on the application for transfer no. 4101, the matter now pending. The applicant was present and was represented by Kent Foster. Protestant City of Salmon was represented by Lanny Sloan. Intervenor Isley Investment, Inc., Billy B. Isley and Oliver Ranch Joint Venture (collectively referred to hereafter as "Isley") were represented by Jordan P. Smith. Protestant Dale C. Edwards was present and represented himself and Edgar Edwards. Protestant Robert L. Blackadar did not appear. Jordan Smith moved to continue the hearing due to the complex issues related to the ownership of the rights sought for transfer, and the hearing officer continued the hearing to allow time for the parties to research the questions of title.

11. On March 5, 1996, the Department conducted another hearing for the protests. The applicant was present and was represented by Kent Foster, attorney at law. Protestant City of Salmon was represented by John McKinney, attorney at law. Intervenor Isley Investment, Inc., Billy B. Isley and Oliver Ranch Joint Venture were represented by Billy Isley, a principle in both Isley Investments, Inc. and Oliver Ranch Joint Venture. Dale C. Edwards and Edgar Edwards represented themselves (both referred to hereafter as "Edwards"). Edgar Edwards agreed to be a spokesman for both himself and Dale C. Edwards.

12. At the beginning of the March 5, 1996 hearing, City of Salmon and Isley objected to the hearing on the basis that ownership of the water rights being considered for transfer had not been determined. The hearing officer noted their objection for the record but ruled that he would not continue the matter because the Department of Water Resources had already decided it would determine ownership when considering the application for transfer.

Place of Use and Water Right Chain of Title

13. In June of 1978, Dale T. and Helen B. Smedley (hereafter referred to as "Smedleys") acquired approximately 740 acres of land located on bench land west of Salmon, Idaho, and east of the channels of Pollard Creek and Jesse Creek, known locally as the Oliver Ranch. The land is specifically located within Section 1 and Section 2, T21N, R21E, B.M. The warranty deed conveying the property generally granted all water rights to the Smedleys.

14. In November of 1977, and before acquiring the Oliver Ranch, the Smedleys leased the Oliver Ranch to Van J. Woodward and Margareta J. Woodward for a period of 30 years. The lease merged into the Smedley's ownership of the Oliver Ranch in 1978. The lease did not describe any water rights that were subject to the lease.

15. In March of 1978, approximately three months before Smedleys purchased the Oliver Ranch, John Reddington conveyed "[f]ifteen inches of Jesse Creek . . . known as the Ostrander right . . ." to Smedleys by a deed of water rights. A copy of the deed is in the water right files. Isley exhibit no. C is a canceled check for \$15,000 from Fred R. or Mary Louise Jacobson (owners of the Oliver Ranch prior to Smedley) to John Reddington. Jacobsons paid Reddington on the same day Reddington deeded fifteen miners inches of water to Smedleys. Isley asserted that the check was payment for fifteen miners inches of right no. 75-00019.

16. In 1979, Smedleys filed application for transfer nos. 2355 and 2356, described in finding of fact nos. 5 and 6, respectively. The applications explained they were filed for the purpose of increasing the efficient use of water for irrigation purposes.

17. The applications for transfer did not propose a change in the nature of use and the season of use. There is some indication, however, that Smedleys wanted to change the nature of use and season of use for the water right. A letter issued by Glen Saxton of the department at the time of approval of the applications for transfer contained an unusual warning that approval of the transfers did not authorize a change in nature of use or change in the season of use.

18. In 1980, Smedleys conveyed 75 acres of the Oliver Ranch located in the SW1/4 of Section 1 and the S1/2 of Section 2, T21N, R21E, B.M. to Reed A. Summers and Diane S. Summers (Summers). The deed did not describe any water rights.

19. Smedleys began platting some of the property for development at approximately the same time as the approval of application for transfer nos. 2355 and 2356 in 1981. An intake pipe was buried under or near Chipps Creek which extracted water percolating from the creek. A

domestic pipeline system with four buried 100,000 gallon tanks was also constructed. Smedleys began selling domestic lots in the early 1980's.

20. Evidence at the hearing established that, as homes were built, water was diverted from Chipps Creek from about 1981 to the present time for domestic purposes including sufficient water for irrigation of one-half acre per residential lot.

21. In 1984, Smedleys conveyed four water rights to the Arrowhead Water District, an entity that had been formed to deliver domestic water to the subdivision homeowners. Three of the water rights conveyed were numbered in the department records as 75-00019D, 75-00021, and 75-00022.

22. By the early 1990's, nine homes were built in the Smedley Subdivision and were served with domestic water diverted from Chipps Creek. In addition, a waterline was stubbed to the boundary of one additional residential lot.

23. Isley is a successor in interest to Smedleys, and now owns the 75 acre parcel conveyed to Summers in 1980. Isley is also the successor of the lessee who leased the Oliver Ranch from Smedleys in 1977. Evidence shows that water has been diverted from Jesse Creek and its tributaries for irrigation of the Oliver Ranch when water is available, particularly for irrigation of lands owned by Isley. The phases of development within which the homes are located were released from any encumbrance created by the 1977 lease. Isley stipulated that Arrowhead should receive the water it needs for the existing nine homes and one lot, but was unwilling to concede that Arrowhead owns all of water right nos. 75-00019D and 75-00021.

24. The 0.30 cfs portion of water right no. 75-00019 acquired by Smedleys is not subject to the lease because: (1) it was acquired in 1978, after the lease was executed in 1977, (2) the right was not appurtenant to any of the lands subject to the lease at least until Smedleys transferred the water in 1981, (3) the lessees are not shown to have had any interest in transfer nos. 2355 and 2356 when it was approved by the Department in 1981, (4) water has been used by Arrowhead for domestic purposes, and (5) the homes and one lot were released from the lease.

25. The evidence shows that the intent of the Smedleys was to provide domestic water for the subdivision in the approximate quantities authorized by transfer nos. 2355 and 2356. Evidence also shows that the water approximately equal to the quantities authorized by water right nos. 75-00019D and 75-00021 has been delivered to the Arrowhead subdivision from 1981 through the present time with a better priority than the rights delivered to Isley's property.

26. Furthermore, the conveyance of 75 acres to Isley's predecessors (Summers) was complete prior to approval of transfer nos. 2355 and 2356. Isley's predecessors were not named as the owners of the water rights at the time the transfers were approved. Smedleys did not intend to convey to Summers any portion of water right nos. 75-00019D and 75-00021.

27. The evidence established that Arrowhead owns water right nos. 75-00019D and 75-00021.

Other Water Rights

28. Other water rights are diverted from Chipps Creek, Pollard Creek and Jesse Creek. A water right summary, prepared by the Department, was introduced by Blackadar as Blackadar exhibit no. F at the hearing. While the summary admittedly contains some descriptions that are inaccurate, it correctly shows that the City of Salmon owns water rights authorizing the diversion of 3.80 cfs with an 1867 priority from Jesse Creek and Pollard Creek. These are the earliest water rights authorized for diversion from Jesse Creek and Pollard Creek.

29. The City of Salmon withdrew its protest based on an understanding that its 1867 priority rights were the earliest rights diverted from Jesse Creek and Pollard Creek and Arrowhead understood and agreed that its water rights would be shut off if the City of Salmon's water rights were not being satisfied.

30. Blackadar owns portions of water right no. 75-00019. Arrowhead proposes to transfer a different portion of water right no. 75-00019. As a result, the portion of the right owned by Blackadar bears the same priority of June 1, 1868 as the portion sought to be transferred by Arrowhead.

31. Blackadar correctly pointed out limitations for water right no. 75-00019D, most notably the limitation of 12 acre feet per annum and the requirement that a measuring device be installed.

32. Edwards own land located south of the Oliver property which is irrigated by water diverted pursuant to an April 1, 1894 priority water right diverted from Chipps Creek.

33. Edwards were concerned about the delivery of all the water rights, not just the rights being delivered to the subdivision. Edwards raised concern regarding delivery of water pursuant to water right no. 75-00022 and where the right would be delivered. The parties verbally agreed to a scheme of delivery that is outside the scope of this hearing. Edwards did not withdraw their protest, but the hearing officer finds that their concerns are not relevant to the issues being considered.

34. Arrowhead has installed a measuring device which can be read by the watermaster. The measuring device accumulates total acre feet diverted. When water is not available pursuant to water right no. 75-00021, the watermaster must record the total volume that has accumulated until water right no. 75-00021 is again available. When 12 acre feet has been diverted through the Arrowhead system pursuant to water right no. 75-00019D, diversion must cease until diversion pursuant to water right no. 75-00021 is again possible.

Conditioning

35. Blackadar also pointed out the lack of diligence in delivering these rights in the past. The watermaster should be instructed by this order to carefully deliver the rights pursuant to their order of priority.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. With respect to the issues as set forth in Idaho Code § 42-222, the applicant bears the burden of proof regarding all of the criteria contained therein.

3. Ownership of a water right must be determined by the Department of Water Resources if a transfer is pending before the department.

4. Arrowhead Water District established at the hearing that it had used water in quantities very similar to the quantities described by water right nos. 75-00019D and 75-00021. It also established that it had used these quantities of water within the priorities approximately represented by the water rights. It established that it had received water in priority before deliveries to land owned by Isley or to land leased by Isley. It established a reasonable chain of title to the water rights.

5. This transfer will not injure other water rights.
6. This transfer will not result in an enlargement of use.
7. This transfer is in the local public interest.
8. This transfer is consistent with conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4104 is APPROVED and water right nos. 75-00019D and 75-00021 are subject to the following conditions:

1. Use of water under this right is limited to domestic purposes for ten homes. Not more than one-half acre associated with each completed home may be irrigated.

2. The total annual volume diverted pursuant to water right no. 75-00019D shall not exceed 12 acre feet.

3. A totalizing measuring device and lockable controlling works of a type approved by the department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

4. Use of water under this water right shall be regulated by the watermaster of State Water District No. 75A.

5. The watermaster shall close the controlling works to the Arrowhead Water District diversion whenever prior water rights are not being satisfied. The watermaster shall also close the controlling works to the Arrowhead Water District diversion when Arrowhead Water District has diverted 12 acre feet in one year pursuant to water right no. 75-00019D, unless water pursuant to water right no. 75-00021 is available.

6. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

7. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

8. Approval of this transfer does not preclude the opportunity for review of the validity of the water rights in the ongoing Snake River Basin Adjudication.

Dated this 20th day of August, 1996.



KARL J. DREHER
Director

CERTIFICATE OF MAILING

I do hereby certify that on this 21st day of August, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

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JULIE L. YARBROUGH
Senior Secretary