

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 76396APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of Applicant(s) Kenneth O. or Cynthia A Bell Phone 208 527 3929Mailing address 2295 North 3000 West Arco Id 83213 Email _____

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

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

☒ No Representative

Name of Representative _____ Phone _____

Mailing address _____ Email _____

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

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Kenneth O Bell
Signature of Applicant or Authorized Representative

Kenneth O. Bell owner 3-4-10
Print Name and Title if applicable Date

Cynthia A. Bell
Signature of Applicant or Authorized Representative

CYNTHIA A. Bell 3-4-10
Print Name and Title if applicable Date

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 your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.

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Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

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

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part					
☒ ☐	34-418 B	1.60	Irrigation	5-01 to 10-15	Big lost River Sinks
☒ ☐	34 518	6.40	Irrigation	5-01 to 10-15	Big lost River Sinks
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 8.0 cfs and/or _____ ac-ft

2. Total amount of water proposed to be transferred or changed 8.0 cubic feet per second and/or _____ acre-feet per annum.

3. Point(s) of Diversion:

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

New ?	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Source	Local name or tag #
/		NW	NW	NW	26	4N	26E	Butte	Big lost River	Munsey
		NE	NE	SW	1	3N	26E	Butte	Big lost River	Miller

4. Place of use: (If irrigation, identify with number of acres irrigated per 1/4 1/4 tract.)

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

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres (for irrigation use) _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: The Munsey Ditch has a headgate and is controlled by

the Big Lost River Watermaster

- b. Who owns the property at the point(s) of diversion? Munsey Ditch

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: _____

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

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

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

currently the river is dry at the Miller headgating. This transfer would allow me to irrigate during the years when the river does not flow to the Miller.

- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use: 34-7048

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

Yes No

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

If yes, describe: 56 acres -

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

Current Water Right No. 34-418B

Priority Date: 05/01/1892

Origin: Water Right

Basis: Decreed

Status: Active

Source: BIG LOST RIVER**Tributary to:** SINKS

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	5/01 10/15	1.60 CFS		
Total Diversion		1.60 CFS		

Source and Point(s) of Diversion:

BIG LOST RIVER NENESW 03N 26E 1 BUTTE

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	
03N 26E 12	40.0	25.0	21.0	39.0													125.0
03N 27E 6											35.0						35.0
03N 27E 7					17.0	36.0	39.0	32.0									124.0
					L 1	L 2											

Total Acres: 284

Conditions/Remarks:

1. USE OF THIS RIGHT WITH RIGHT NOS. 34-00518 AND 34-07048 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 284 ACRES IN A SINGLE IRRIGATION SEASON.
2. THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
3. RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
4. USE OF THIS RIGHT WITH RIGHT NOS. 34-00518 AND 34-07048 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 8.08 CFS.

Page 2

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

Transfer No. _____
Receipt No. _____

Current Water Right No. 34-418B

Documentation of Ownership of the Current Place of Use

Is this property subject to any liens, deeds of trust, mortgages, or contracts or other encumbrances?

Describe the affect on the current place of use for this water right if the place of use is changed pursuant to this transfer

To your knowledge, has any portion of the water right undergone a period of five(5) or more consecutive years of non-use?

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

Current Water Right No. 34-518

Priority Date: 06/01/1890

Origin: Water Right

Basis: Decreed

Status: Active

Source: BIG LOST RIVER

Tributary to: SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	5/01 10/15	6.40 CFS		
	Total Diversion	6.40 CFS		

Source and Point(s) of Diversion:

BIG LOST RIVER NENESW 03N 26E 1 BUTTE

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	
03N 26E 12	40.0	25.0	21.0	39.0													125.0
03N 27E 6											35.0						35.0
03N 27E 7					17.0	36.0	39.0	32.0									124.0
					L 1	L 2											

Total Acres: 284

Conditions/Remarks:

1. WATER IS DELIVERED THROUGH MILLER DITCH.
2. THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
3. RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
4. USE OF THIS RIGHT WITH RIGHT NOS. 34-00418B AND 34-07048 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 284.0 ACRES IN A SINGLE IRRIGATION SEASON.
5. THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

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

Transfer No. _____
Receipt No. _____

Current Water Right No. 34-518

6. USE OF THIS RIGHT WITH RIGHT NOS. 34-00418B AND 34-07048 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 8.08 CFS.

Documentation of Ownership of the Current Place of Use

Is this property subject to any liens, deeds of trust, mortgages, or contracts or other encumbrances?

Describe the affect on the current place of use for this water right if the place of use is changed pursuant to this transfer

To your knowledge, has any portion of the water right undergone a period of five(5) or more consecutive years of non-use?

Received by <u>DK</u>	Date <u>3-24-10</u>	Prelim. Check by _____	Date _____
Fee Paid <u>\$530⁰⁰</u>	Date <u>3-24-10</u>	Received by <u>DK</u>	Receipt # <u>E035679</u>
Add'l Fee Paid _____	Date _____	Received by _____	Receipt # _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at <http://www.idwr.idaho.gov/>.

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

- | Yes | N/A | |
|-------------------------------------|--------------------------|--|
| ☒ | ☐ | * Means the item is <u>always required</u> and must be included with the application. |
| ☒ | ☐ | * Completed Application for Transfer of Water Right form, Part 1. |
| ☒ | ☐ | * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative. |
| ☒ | ☐ | * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded. |
| ☒ | ☐ | * Complete and attach an Application for Transfer Part 2B <u>for each water right</u> for which <u>only a portion</u> is proposed to be changed through this transfer application |
| ☒ | ☐ | * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s). |
| ☒ | ☐ | * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.) |

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.

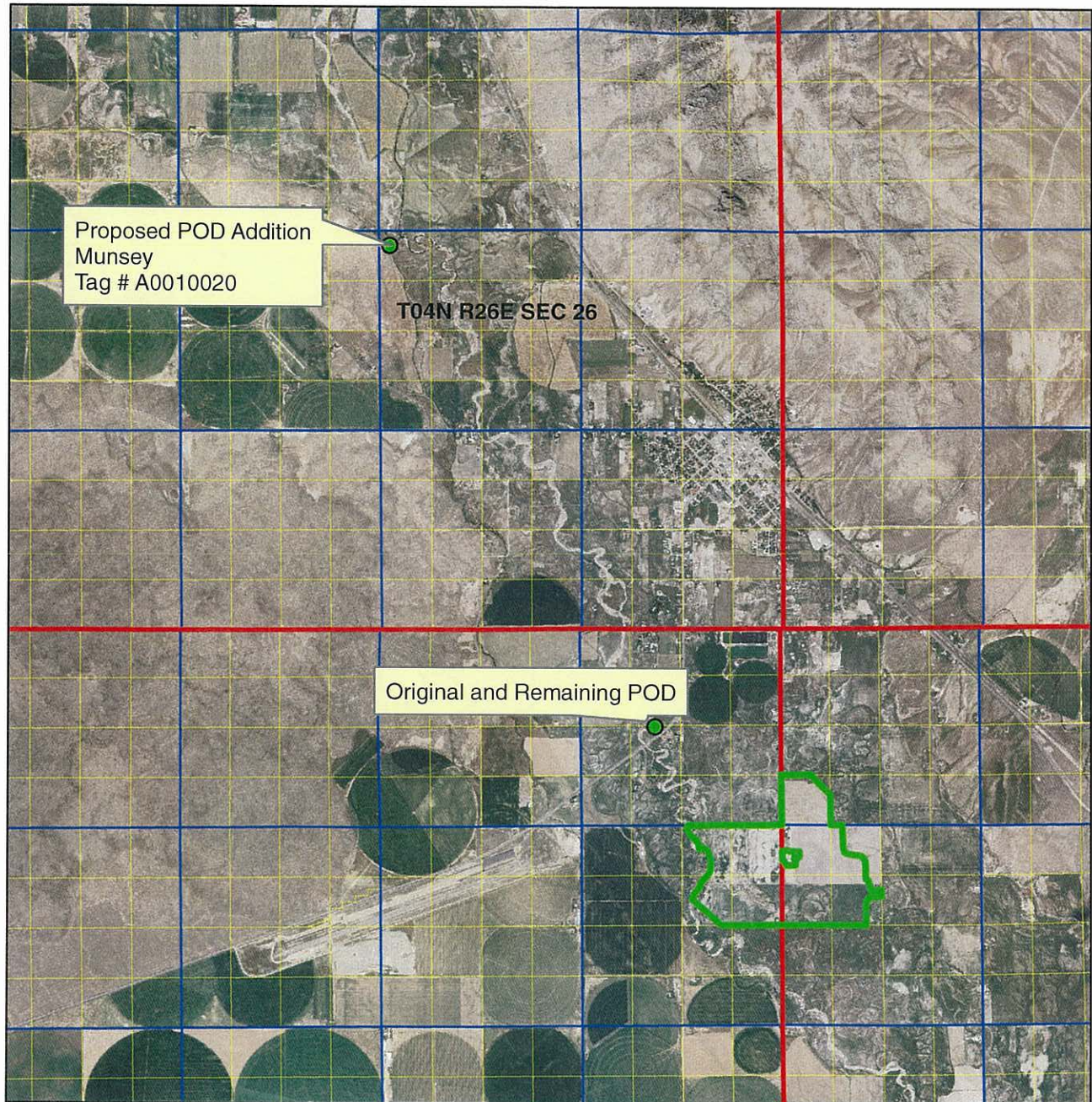
- | | | |
|-------------------------------------|-------------------------------------|--|
| ☐ | ☒ | #1 If the applicant is a business, partnership, organization, or association, and <u>not</u> currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.) |
| ☐ | ☐ | #2a Water Right ownership documentation if Dept. records do not show the transfer applicant as the current water right owner. |
| ☐ | ☒ | #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). |
| ☐ | ☒ | #3 Documentation of authority to make the change if the applicant is not the water right owner. |
| ☐ | ☒ | #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.) |
| ☐ | ☐ | #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/wrt_default.htm . |
| ☐ | ☒ | #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.) |
| ☒ | ☐ | * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.) |
| ☐ | ☒ | #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. |
| ☐ | ☒ | #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) |
| ☐ | ☒ | #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.) |
| ☐ | ☐ | #9 Other. Please describe: _____ |



Idaho Department of Water Resources

Water Right 34-418B and 34-518

Proposed Transfer
Add POD



Legend

- 34-418B
- Township/Range
- Sections
- QQ

0 0.375 0.75 1.5 2.25 3 Miles

Prepared by Denise Kidman
On March 4, 2010
2009 Aerial Photography



FOR VALUABLE CONSIDERATION RECEIVED

WILLARD O. BELL AND GLADYS K. BELL, the Grantor,
does hereby grant, bargain, sell and convey unto

KENNETH O. BELL AND CYNTHIA A. BELL, the Grantee,
whose current address is RT. 1 Box 120 2295 North 3000 West, ARCO, IDAHO

the following described real estate situated in BUTTE County,

State of Idaho, to-wit:

PARCEL 1:

Township 3 North, Range 27 E.B.M., Butte County, Idaho
Section 7: NW1/4

Township 3 North, Range 26 E.B.M., Butte County, Idaho
Section 12: NE1/4

PARCEL 2:

A portion of the SW1/4 SW1/4 of section 6, Township 3
North, Range 27 E.B.M. Butte County, Idaho, described
as: Commencing at a point of the SW Corner of Lot 7,
thence N. 1173 feet; thence #. 1300 feet, thence S
1173 feet; then W. 1300 feet to the point of beginning

SUBJECT to all existing easements and reservations on
Warranty Deed.

TO HAVE AND TO HOLD the said premises, together with all tenements, hereditaments and appurtenances
thereunto belonging, unto the said Grantee, his successors and assigns forever. Grantor does hereby covenant
to and with the said Grantee that IT is the owner in fee simple of said premises and that IT will warrant and
defend the same from all lawful claims whatsoever.

In construing this Deed and where the context so requires, the singular includes the plural and the
masculine, the feminine and neuter.

DATED: 3-10-04

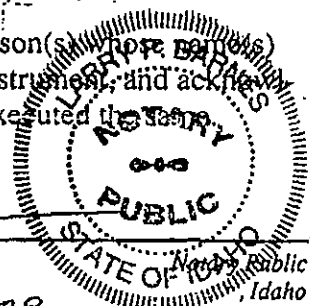
Willard O. Bell
Gladys K. Bell

STATE OF IDAHO, County of

On this 10TH day of MARCH, 2004
before me, LARRY P. BARNES, a
Notary Public in and for the said State personally
appeared:

WILLARD O. BELL &
GLADYS K. BELL

Known to me to be the person(s) whose names are
subscribed to the within instrument, and acknowledge
edges to me that THEY executed the same.



Reading at: 6-20-09

THIS SPACE FOR COUNTY RECORD'S USE ONLY.

NO. 0040411
RECORDED

MAR 11 2004

AM 2:37 PM
BUTTE COUNTY RECORDS

Tilly S. McArthur
MAR 04 2010

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Eastern Region

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Department of Water Resources
Eastern Region

16
127

APPROX
335 FT
FROM SECTION
LINE

TS 742
I-214

APPROX
30 FT FROM
FENCE

3000 W

21
112

NHEL/NW

①

73.6

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Eastern Region

RECEIVED

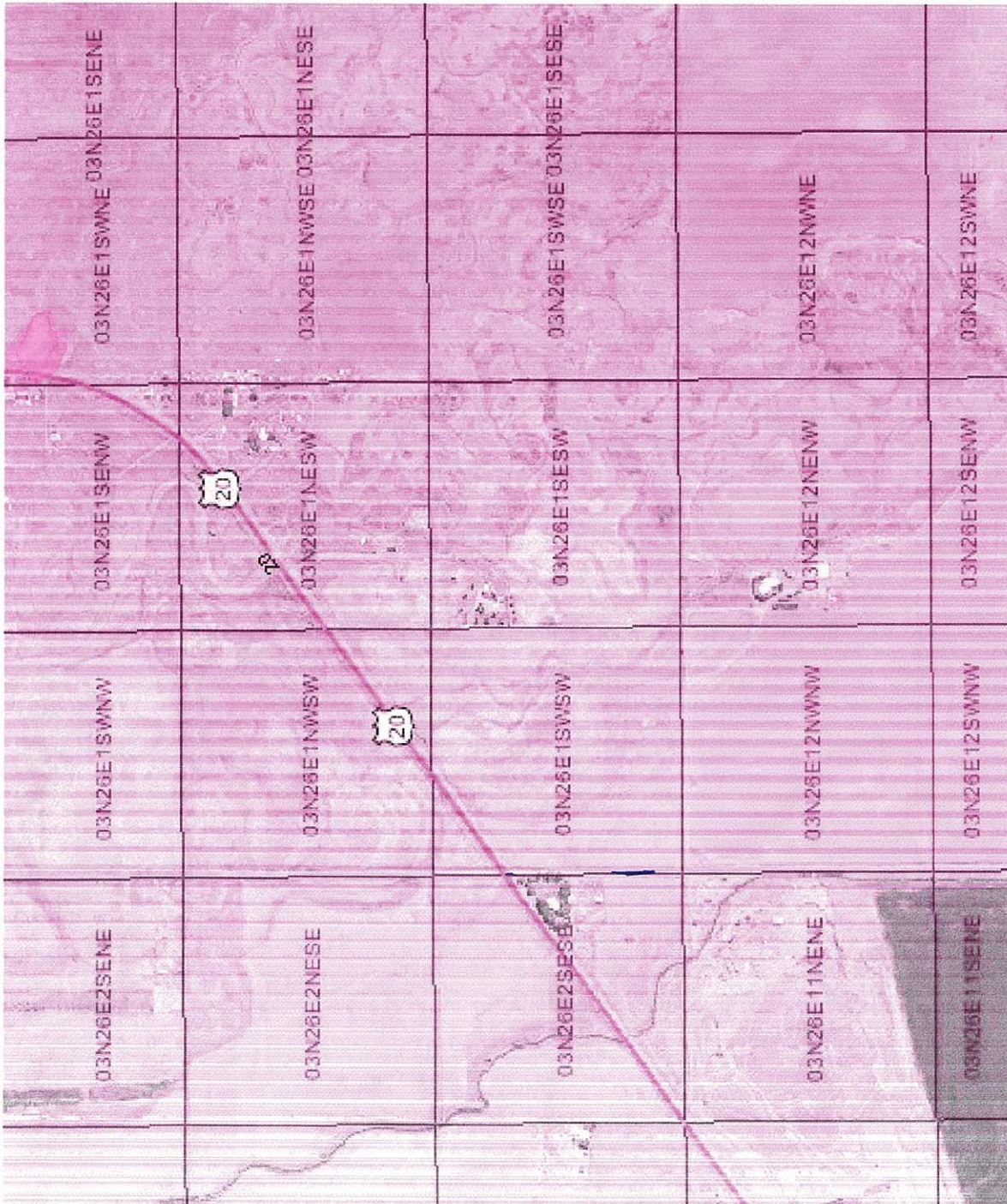
MAR 04 2010

Department of Water Resources
Eastern Region

NHEL/NW

②

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MAR 04 2010

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Eastern Region



MAR 24 2010

Department of Water Resources

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MAR 04 2010

Department of Water Resources
Eastern Region

NO. 0040413

RECORDED

MAR 10 2004

MARCH 10, 2004

BUTTE

Tully S McOffer

PIPELINE EASEMENT

Startin in N.W. corner of SECTION 12, TOWNSHIP 3N.,
Range 26 East, Boundry Line heading East from said section
corner, Approx. 2600 FT., Along the North Boundry line
of SECTION 12, Then on a gradual curve for Approx. 2600 FT.
throught the N.E. 1/4 of the N.W 1/2 of SECTION 12, to
leave the property at Approx. 335 FT. south of section line.

EASEMENT to include room for equipment to maintain and
repair pipeline.

WE, Willard C. Bell and Gladys K. Bell, convey our
permission for this easement to Kenneth O. Bell and
Cindy A. Bell on the 10th Day of March, 2004

Willard C. Bell

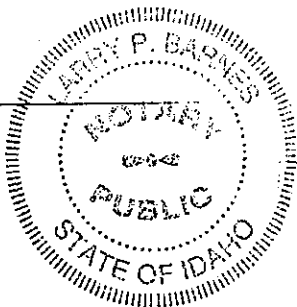
DATED 3-10-04

Gladys K. Bell

DATED 3-10-04

State of IDAHO)

County of BUTTE) ss.

On this 10th day of MARCH, 2004, before the undersigned, a Notary public, personally appeared WILLARD C BELL &GLADYS K BELL, known to me to be the person(s) who signed this agreement and acknowledged to me that they
executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for IDAHO Residing at GRCB My bond expires 6-20, 2007

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MAR 24 2010

Department of Water Resources
Eastern District

RECEIVED

MAR 04 2010

Department of Water Resources
Eastern District

WATER DISTRICT 34
P.O.Box 53 Mackay Idaho 83251
Phone (208) 588-3137

December 3, 2009

To whom it may concern;

Ken Bell's water rights 34-518 & 34-418B are deliverable thru the Munsey Canal and would be the preferred method when the flows in the Big Lost River below the Arco Diversion are receding. It takes an estimated 60 to 80cfs passing over the Arco Diversion to deliver his 8cfs.

The water savings here would be very substantial.

I fully support adding an additional point of diversion for these water rights in the Munsey Canal.

Bob Shaffer

Bob Shaffer
Watermaster
Water District 34

WATER DISTRICT 34
MACKAY IDAHO 83251

BOB SHAFFER

12/03/09

Department of Water Resources
Eastern Region

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Eastern Region

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MAR 24 2010

Department of Water Resources
Eastern Region

BIG LOST RIVER IRRIGATION DISTRICT

P.O. BOX 205 · MACKAY, IDAHO 83251 · (208) 588-2231 · FAX: (208) 588-2863

December 3, 2009

To Whom It May Concern

Dear Sir,

This letter is to inform you that Kenneth Bell residing at 2295N 3000W Arco, Idaho 83213 can have his water delivered to his property through a heading on the Muncey Canal for account Number 17/28B. His decrees and storage water (6-1-1890 for 320 inches and 5-1-1892 for 80 inches) can be delivered at the heading on the Muncey. At present and historically there has not been enough water in the river at his current point of diversion for delivery in the Miller Ditch. There may be some water in the river at some later date, but will probably not remain in the river long enough for Mr. Bell to finish a crop using his current heading. So therefore, he needs to use this new point of diversion from the Muncey Canal.

Sincerely,



James Rindfleisch, Manager
Big Lost River Irrigation District
Cell 208-390-1447

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MAR 24 2010

Department of Water Resources
Eastern Region

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MAR 04 2010

Department of Water Resources
Eastern Region

BIG LOST RIVER IRRIGATION DISTRICT

P.O. BOX 205 · MACKAY, IDAHO 83251 · (208) 588-2231 · FAX: (208) 588-2863

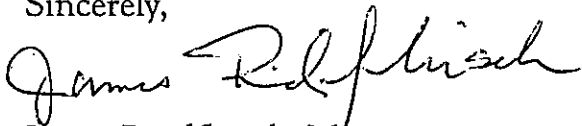
December 3, 2009

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Sincerely,



James Rindfleisch, Manager
Big Lost River Irrigation District
Cell 208-390-1447

WATER DISTRICT 34
P.O.Box 53 Mackay Idaho 83251
Phone (208) 588-3137

December 3, 2009

To whom it may concern;

Ken Bell's water rights 34-518 & 34-418B are deliverable threw the Munsey Canal and would be the preferred method when the flows in the Big Lost River below the Arco Diversion are receding. It takes an estimated 60 to 80cfs passing over the Arco Diversion to deliver his 8cfs.

The water savings here would be very substantial.

I fully support adding an additional point of diversion for these water rights in the Munsey Canal.

Bob Shaffer

Bob Shaffer
Watermaster

Water District 34

WATER DISTRICT 34
WATERMASTER

BOB SHAFFER

WATER DISTRICT 34
WATERMASTER

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 4110 (WATER RIGHT	)	RECOMMENDED
NO. 34-00518) IN THE NAME OF	)	ORDER
WILLARD O. OR GLADYS K. BELL	)	
_____	)	

A hearing was conducted on July 7, 1993, regarding protests filed against application for transfer no. 4110 in the name of Willard O. or Gladys K. Bell (Bell). After having reviewed the evidence and briefs submitted by the parties, the hearing officer, as a representative of the Director of the Department of Water Resources, recommends the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Application for transfer no. 4110 proposes to add a point of diversion for water right no. 34-00518. The application proposes to locate an additional point of diversion approximately two to three miles upstream from the original point of diversion.

2. The Department recommended recognition of the right in the Snake River Basin Adjudication as follows:

Water Right No.: 34-00518

Priority: June 1, 1890

Quantity: 6.4 cfs

Point of Diversion: NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 1, Twp. 3N, Rge. 26E
(Commonly known as the Miller Ditch)

Basis of right: Decreed in Abbott v. Utah Construction

RECEIVED
JUL 13 1994

JUL 13 1994

Place of Use:

T W P	R g e	S e c	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03 N	26 E	1 2	40	25	21	39													125
03 N	27 E	6											35 L7						35
03 N	27 E	7					17	36 L1	39 L2	32									124
TOTAL ACRES																			284

3. Other water rights which also authorize irrigation of these lands are 34-00418B, 34-07048 and storage water delivered by the Big Lost River Irrigation District.

4. The application for transfer proposes to add a point of diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, T4N, R26E. This point of diversion is locally known as the Arco diversion and is the heading for the Munsey Ditch.

5. Bell proposes to deliver no more than 3.0 cubic feet per second (cfs) of right 34-00518 through the Munsey Ditch. Approximately two miles down the Munsey Ditch, Bell proposes construction of a pipeline diverting from the Munsey Ditch which will cross the Big Lost River, and irrigate the listed place of use. At the hearing, Bell testified the pipeline is already installed.

6. Bell alleges the diversion of water upstream into the Munsey Ditch will conserve water now lost in the Big Lost River while flowing to reach the Miller Ditch heading.

7. The application for transfer was protested by Lewis Rothwell, Charles Huggins, James Rindfleisch, and Lester, Dennis & Trudy Braswell (Braswells). The protestants were present, except James Rindfleisch, who failed to appear at the hearing.

8. The protestants alleged the approval of the application for transfer would injure their water rights. The protestants also

alleged the proposed point of diversion change conflicts with the local public interest because the stream will be further dewatered. Finally, Rothwell alleged the Munsey Ditch did not have sufficient capacity for the additional water.

9. Huggins and Braswells both divert water from the McLaughlin Ditch. The heading of the McLaughlin Ditch is located approximately one mile downstream from the Miller Ditch. The Director's report for Basin 34 recommends the following rights, claimed by Huggins, for diversion of water from the Big Lost River at the McLaughlin diversion:

<u>Name</u>	<u>Water Right No.</u>	<u>Priority</u>	<u>Quantity</u>
Charles Huggins	34-10626	09/24/1900	1.30 cfs
	34-02445	08/17/1962	0.30 cfs
	34-07104	03/12/1975	2.92 cfs

10. The Director's report for Basin 34 recommends the following rights for Braswells, diverted from the Big Lost River at the McLaughlin diversion:

<u>Name</u>	<u>Water Right No.</u>	<u>Priority</u>	<u>Quantity</u>
Dennis Braswell	34-00908	10/02/1885	0.80 cfs
	34-00133	09/24/1900	1.10 cfs
	34-10299	09/24/1900	2.10 cfs
Lester Braswell	34-00033	10/02/1885	0.80 cfs

11. The Director's report also recommends the following rights diverted at the McLaughlin headgate:

<u>Name</u>	<u>Water Right No.</u>	<u>Priority</u>	<u>Quantity</u>
Morgan	34-00244A	10/02/1885	0.16 cfs
Stonehill	34-00244C	10/02/1885	0.30 cfs
Parkinson	34-02313	08/21/1954	1.20 cfs

12. According to his testimony at the hearing, Lewis Rothwell owns 42 inches of 1886 water, 219 inches of 1887 water and 13 inches of 1888 water in addition to storage water in the Mackay Reservoir. All the water authorized for diversion pursuant to Rothwell's rights is diverted at the Arco diversion, which is the

same point of diversion Bell wants to add to water right no. 34-00518.

13. Records of the Department of Water Resources, and the Director's report, list water rights which are diverted at the Arco diversion or upstream from the Arco diversion, which have the same or later priority than water right no. 34-00518.

14. All the witnesses at the hearing agreed the Big Lost River loses water between the Arco diversion and the Miller diversion. Willard Bell testified that during a test conducted several years ago, 2500 miners inches (50 cfs) were allowed to pass through the Arco diversion, and the entire flow disappeared into the bed of the Big Lost River several hundred yards downstream from the Arco diversion.

15. Testimony at the hearing established that delivery of Bell's 6.4 cfs at the Miller headgate has transported water diverted at the McLaughlin headgate, including water diverted by Braswell and Huggins.

16. Within the Big Lost River Basin, natural flow right holders have traditionally stored their natural flow rights in Mackay Reservoir when water is not being used. Willard Bell implied by his testimony that if his application is approved, the remaining 3.4 cfs he would not divert at the Arco diversion would be stored in Mackay Reservoir for use later in the year.

17. Bell only intends to divert water at the new proposed point of diversion if water cannot be diverted at the Miller diversion.

18. When regulating water, the watermaster will deliver to the latest priority date right, or rights that can be filled, or partially filled, for the entire river reach administered by the watermaster. In other words, if all rights bearing a priority of June 1, 1890, can only be partially satisfied, the watermaster will deliver the pro rata share of the 1890 rights to each rightholder, regardless of the location of the point of diversion, and regardless of how much water may be lost in delivering each right.

19. If substantial water is lost in delivering Bell's water

to him, he is not penalized for the loss. Bell receives his water at his point of diversion in the same proportion as any other water right holder with the same priority.

20. When June 1, 1890 priority rights cannot be delivered, Bell and all other right holders with the same priority must cease diverting natural flow. Although Bell cannot divert water at the Miller Ditch heading, sufficient water must pass the Arco diversion to satisfy 1885 priority water rights diverted at the McLaughlin Ditch headgate, or any other deliverable, downstream senior rights.

21. As flows in the Big Lost River decline, Braswell should receive his water at the McLaughlin Ditch headgate in the same proportion as any other water right holder owning a water right with priority of October 2, 1895. At some reduced natural flow rate, water would not be available for Braswell's right, with all other rights of the same priority.

22. Because of the substantial loss in the Big Lost River between the Arco diversion and the McLaughlin Ditch heading, when water can no longer be delivered to Braswell, the water previously lost in delivering water downstream to Braswell is suddenly available for diversion at or upstream of the Arco diversion. The extra water may be sufficient that 1885 priority rights, or even later priority rights, including an 1890 right, may be deliverable at or above the Arco diversion.

23. Because Bell has never diverted his water right upstream of the Arco diversion, granting him the right to do so could injure other right holders with later priority rights who have used the water no longer lost when Braswell cannot divert water at the McLaughlin Ditch headgate.

24. Moving a water right upstream while water is still flowing in the Big Lost River could result in damage to the riparian habitat as well as damage to fish and aquatic habitat.

25. If Bell were allowed to divert water at the Arco diversion, storage of 3.4 cfs of natural flow for later use would further aggravate the injury.

26. After the hearing, Bell petitioned to augment the record

with an affidavit of the watermaster of water district no. 34, Doug Rosenkrance. The affidavit purports to add testimony regarding the capacity of the Munsey Ditch, the hydrologic characteristics of the Big Lost River and whether approval would injure other water users.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

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. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights, and that it is consistent with conservation of Idaho's water.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest of which each is most cognizant, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The applicant carries the burden of proof for all the criteria of Idaho Code § 42-222.

5. Because the headgate for the Miller Ditch is located upstream from the McLaughlin Ditch, and right no. 34-00518 authorizes the diversion of 6.4 cfs, which is a large quantity of water relative to other rights delivered below the Arco diversion, other users have relied on the water in the past to carry their water for the smaller rights diverted from the McLaughlin Ditch.

6. All of the protestants would be injured if the 3.0 cfs is diverted at the Arco diversion, and the water is no longer in the river to carry the other water rights to the McLaughlin Ditch.

7. When a point of diversion is located within a losing reach of the river, a change in the point of diversion upstream improves the availability of water for diversion later in the year when the water is no longer deliverable at the original point of diversion. When water can no longer be delivered to the Miller headgate, the water normally diverted by Bell will be available for diversion from the Big Lost River upstream from the Arco diversion by individuals with the same or later priority rights than right no. 34-00518. If this application is approved, an additional 3.0 cfs will be diverted at the Arco diversion during periods when it was not diverted at the Miller diversion to the injury of other water users. Storing a portion of the 6.4 cfs (3.4 cfs) will further injure other water users.

8. There was no proposal offered to mitigate for the injury and enlargement of use.

9. Public interest values regarding the stream and its habitat are legitimate, however, there is no need to address the issue in this case.

10. The test for determining whether a motion to augment should be granted is whether there were good reasons for failure to present it at the hearing, essentially the same test set forth in Idaho Code §67-5276.

11. Idaho Code §42-222 states the Department must consider recommendations of the watermaster as evidence. The watermaster probably should have been called as a witness and been subject to cross examination, however. Nevertheless, admission of the affidavit will not change the holding in this matter. The watermaster's affidavit is admitted into evidence.

12. Failure to appear at the hearing is cause for dismissing the protest.

RECOMMENDED ORDER - Page 7

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4110 is REJECTED.

IT IS FURTHER ORDERED that the protest filed by James Rindfleisch is DISMISSED.

IT IS FURTHER ORDERED that Bell's motion to augment the record is GRANTED.

Dated this 19th day of October, 1993.



Gary Spackman
Hearing Officer

RECEIVED

JUL 10 1993