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RECEIVED

**WATER RESOURCES
WESTERN REGION** **BEFORE THE DEPARTMENT OF WATER RESOURCES**

**In the Matter of Transfer
Nos. 73775 and 73776**

PETITION FOR RECONSIDERATION

PETITION FOR RECONSIDERATION - Page 1

Memorandum

I. Statement of facts.

On or about September 6, 2005, Petitioners submitted Transfer Application Nos. 73775 and 73776 for the use of two surface water rights (2-202A and 57-7100) in pivots. Although there is also a separate ground water right associated with their property (57-7051A), it was not intended that this ground water right be used in the pivots. Water Right No. 57-7051A is in the Water Supply Bank.

The original subject Transfer Approvals included as Condition No. 3 a combined use limitation with Water Right No. 2-10201, owned by another party and recently decreed in the SRBA on this other party's land. In the prior Petition for Reconsideration, the Cantrells asserted that because there was no overlap between the decreed place of use for 2-10201 with the old or new places of use for Water Right Nos. 2-202A and 57-7100, this condition should be deleted from the Transfer Approvals. The Amended Preliminary Order modified Condition No. 3 but, as reworded, a combined use limitation with 2-10201 is retained. This Petition for Reconsideration submits additional information supporting deletion of the overlap/combined use condition with Water Right No. 2-10201.

The original Transfer Approvals' Condition No. 4 included combined use limitations for Water Right No. 57-7051A with Water Right Nos. 2-202A/57-7100, apparently based on the presumption that when withdrawn from the Water Supply Bank, ground Water Right No. 57-7051A would also be used in the pivots. The Amended Preliminary Order revises this condition such that if the place of use for Water Right No. 57-7051A "is changed through a transfer approved by IDWR before its currently authorized use is resumed, the combined use

limits will be evaluated in the transfer process and may not apply.” This revised condition is acceptable to the Cantrells and is not the subject of this Petition for Reconsideration.

II. Condition No. 3 in Both Transfer Approvals Regarding Combined Use with Decreed Water Right No. 2-10201 Should Be Deleted as there is No Overlap and that Water Right is Associated with Other Property Owned by Another Party.

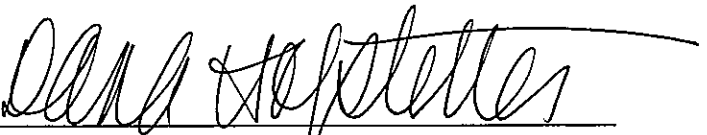
The record in this matter includes information submitted by the Cantrells during application processing establishes that the ground associated with decreed Water Right No. 2-10201 is owned by another party, not the Cantrells. A review of the IDWR license file for 2-7154 (the parent right to 2-10201) confirms that the place of use of 2-10201 is south of the Grand View Mutual Canal, while the Cantrells’ property and the places of use for their water rights are north of this Canal. *Affidavit of Dana L. Hofstetter*. Thus, there should not be any overlap of 2-202A or 57-7100 with 2-10201 and Condition No. 3 should be deleted in its entirety.

III. Conclusion.

For the foregoing reasons, the Transfers should be amended by the deletion of Condition No. 3.

DATED this 6th day of November, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Ted and Sandy Cantrell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2009, I caused a true copy of the foregoing **PETITION FOR RECONSIDERATION** to be served by the method(s) indicated on the following:

Original to:

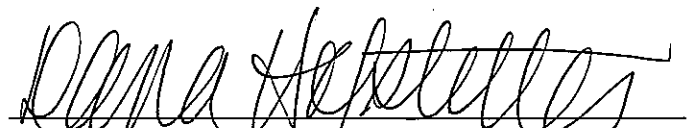
Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copy to:

Jeff Peppersack
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

John Westra
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Triangle Dairy Inc.
P.O. Box 7526
Boise, Idaho 83707
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DANA L. HOFSTETTER

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NOV 06 2009

DEPARTMENT OF
WATER RESOURCES

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Attorney for Ted and Sandy Cantrell, Petitioners

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

In the Matter of Transfer
Nos. 73775 and 73776

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)
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)

**AFFIDAVIT OF
DANA L. HOFSTETTER**

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

- (1) I am Dana L. Hofstetter, counsel of record in this matter for Ted and Sandy Cantrell.
- (2) Attached hereto as Exhibit A is a true and correct copy of the Permit

Application for Water Right No. 2-7154 (the parent right for 2-10201) that I obtained from the Idaho Department of Water Resources' ("IDWR") Internet website. This document establishes that Water Right No. 2-7154 was intended for irrigation of acreage south of the Grand View Mutual Canal in Section 31, Township 5 South, Range 4 East, while the Cantrells' property that is the subject of the above-captioned Transfer Applications lies north of the Grand View Mutual Canal (but south of the Grand View Irrigation District Canal). Since the Grand View Mutual Canal separates the Cantrells' property from the intended place of use for Water Right No. 2-7154, there should be no overlap between the Cantrells' place of use and the place of use of Water Right No. 2-7154 (or 2-10201).

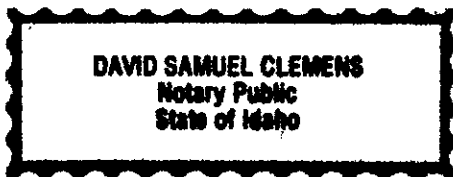
(3) Attached hereto as Exhibit B is a true and correct copy of IDWR agent Don Shaff's Memorandum to Dave Shaw of IDWR dated March 11, 1983 from the License file for Water Right No. 2-7154 that I obtained from the IDWR Internet website. Page 3 of that Memo notes that in some cases more acres were licensed for Water Right No. 2-7154 than there are acres owned by the water right holder and suggests that the water right license be amended as reflected in the attached Land List #1. Attached Land List #1 appears to identify only 30 irrigated acres in the SW1/4NW1/4 (Lot 2), 2 irrigated acres in the SE1/4NW1/4 and no irrigated acres in the NW1/4NW1/4 of Section 31, Township 5 South, Range 4 East, corresponding with acreage in these locations that is south of the Grand View Mutual Canal as depicted on attached figures of the place of use.

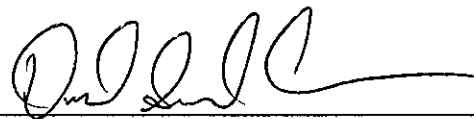
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 5th day of November, 2009.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 5th day of November 2009.




Notary Public in and for the State of Idaho
Residing at: Boise, IDAHO
My Commission Expires: 7/18/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2009, I caused the foregoing **AFFIDAVIT OF DANA L. HOFSTETTER** (and attachments) to be served by the pre-paid method(s) indicated on the following:

Original to:

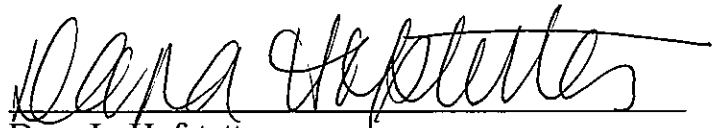
Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copies to:

Jeff Peppersack
Idaho Department of Water Resources
The Idaho Water Center
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John Westra
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Triangle Dairy Inc.
P.O. Box 7526
Boise, Idaho 83707
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

\\037.1\8853

Identification No. 12-0154

Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

POWER OF ATTORNEY:

APPROVED

APPLICATION FOR PERMIT

Idaho Land & Appraisal
Service

To appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

P.O. Box 1603
Boise, ID 83701

1. Name of applicant 3 Crown, Inc.
post office address Route B, Box 330, Grand View, ID 83624
2. Source of water supply Snake River which is a tributary of Columbia
3. a. Location of point of diversion is Lot 9 1/4 of 1/4 of Section 34 Township 5S
Range 4E B.M. Owyhee County; additional points of diversion if any: _____

b. If water is not consumed, it will be discharged into _____ at a point in _____ 1/4
of _____ 1/4 of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 9.6 for irrigation purpose from Mar. 1 to Nov. 1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 9.6 cfs cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Aslett Canal, re-lift pump,
sprinkler system

b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ 10,000.
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: _____ 1/4 of _____ 1/4 of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____.
(5) If water is to be used for other purposes describe: _____

MICROFILM

Blumberg No. 5208

EXHIBIT

A

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5S	3E	36	8	40	34	40	40	20	33	10	3	16			22	21	3	12	302 ✓
		25											7	6					13 ✓
5S	4E	31					L.2 .5	L.3 37.5			L.4 37	L.5 36	10	32					157.5
6S	4E	6					L.3 10	L.4 3.5											13.5

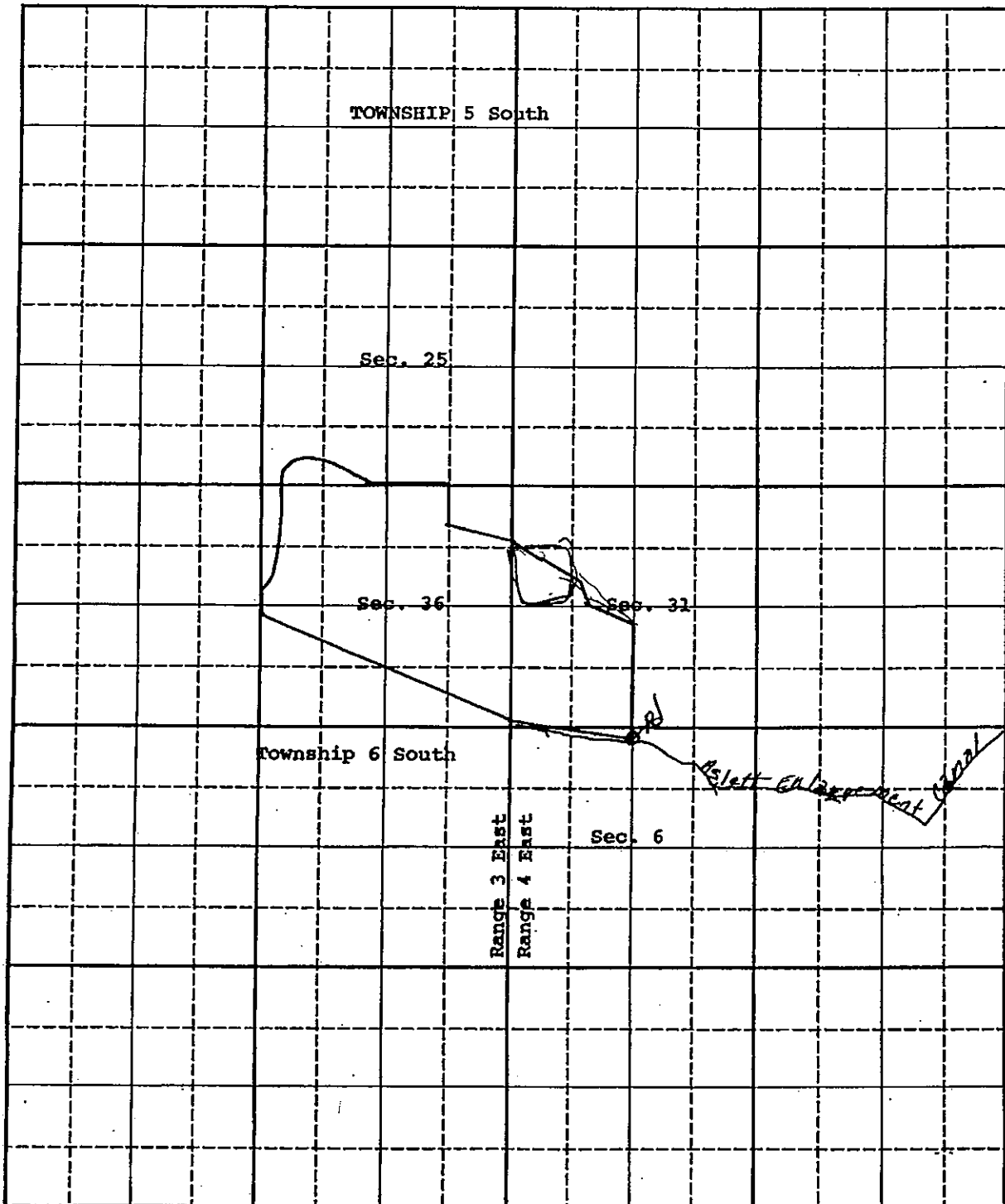
Total number of acres to be irrigated 486

c. Describe any other water rights used for the same purposes as described above. 30484/02-2176(part)

9. a. Who owns the property at the point of diversion C.J.Strike Reservoir
 b. Who owns the land to be irrigated or place of use applicant
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Agreement between Asletts and applicant
see attached

10. Remarks

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

[Signature]
(Applicant)

Proposed Priority 7-23-1974

Received by ij Date 7-22-74 Time 10:00A
Preliminary check by ADH Fee \$ 115.00
Receipted by ij Date 7-23-74 Kit # 152-74
Publication prepared by SW Date 7-26-74
Published in Owyhee Nugget
Publication dates 8-1, 8-8-74
Publication approved OK Date 8-12-74
Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval Denial by ADH

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

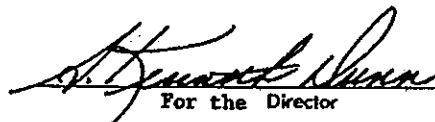
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 02-7154, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1979.
- c. Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.
Use of water under this permit is supplemental to all existing water rights with the same purpose and place of use.

2. Denial of said application is for the following reasons: _____

Witness my hand this 27th day of August, 19 74.


For the Director

by A. KENNETH DUNN, ADMINISTRATOR

M E M O R A N D U M

DATE: 3/11/83

TO: Dave Shaw

FROM: Don Shaff

SUBJECT: 02-2272, 02-2405, Licenses see p. 3 for 02-7154

These water rights and others were first held by D. O. Bybee and his wife. To accomplish the task of issuing licenses for these two rights, the entire package must be dissected and examined from scratch. By carefully reassembling all the rights involved, reason will prevail over what otherwise appears as chaos. This memorandum attempts to provide a vehicle for that careful analysis.

The first problem may have occurred with the first licenses (02-2083 and 02-2084). Geographic features and the present field designs would lead one to believe the pattern of beneficial use may have been different than the licenses describe. Figure 1 illustrates this problem. A comparison can be made with Figure 1 between 1) what the present pattern of irrigated land is for all the water rights and 2) what the water right records describe.

As can be noted from Figure 1, the analysis is complicated by a division of some of the water rights and the land between two subsequent owners. In some instances the two parcels must be considered as a whole. Yet at the same time the separation cannot be ignored because each owner has developed a separate undivided water right. Some of the rights have licenses for a full or nearly-full miners inch per acre. Yet other rights, licenses and permits, are for less than an inch per acre. For purposes of analysis, the rights were considered in the order of filing with the hope that the intentions of the developer could be discovered and possibly then piece together the rights.

Land List #1 and #2 describe the irrigated lands of Yorgason and Field. Below those descriptions is the breakdown of the water rights as I recommend they be described or licensed. In some cases, a transfer or amendment will be necessary. To assist

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OCT 27 1993

Bulberg No. 5208

EXHIBIT
B

Page 2

Memo to Dave Shaw, Subject: 02-2272, 02-2405, Licenses
3/11/83

graphically in this breakdown, Figure 2 shows how the rights would fit together in relation to the land.

Through my investigation I believe 02-2083 and 02-2084 were either licensed incorrectly or the lands as irrigated now were done so before 1969 when the transfer requirement, (Idaho Code 42-108) became effective. I suggest these two rights should be considered as described on Figure 2 and in Land List #2. The changes are systematic although somewhat arbitrary. The right is still described in the same and or adjacent 40-acre tracts. Each was issued at 1.0 inch per acre on 120 and 50 acres, respectively. The change in place of use does not alter these ^{allocations per acre} limitations.

02-2176
Getting by those rights brings us to 02-2176. This license, amended at least twice, is divided by both farms, plus the LDS Church. For Yorgason's farm the right fits like a glove. But on Field's farm, this license was issued without considering the existence of the two earlier licenses above (Figure 1). In some 40-acre tracts the two licenses would exceed the number of acres in the tract and 1.0 inch per acre. Consequently I suggest, 02-2176 should be transferred in part by Field to other lands. The other lands were apparently irrigated earlier, but were not a part of the permit.

Because 02-2176 has a diversion rate of less than 1.0 inch per acre, a second right (02-2405) was acquired by Bybee to supplement it. On Field's land the intent of Bybee to do this is obvious although the combination of the two acreages might be too large for a tract or overlaid one of the earlier licenses. None of the water for 02-2405 has been described up to now on the Yorgason farm except a small part of SWSE and NESW, S. 36. However, there are 43 acres of land described on the permit and adjacent to both owners that is not irrigated at all. I propose that 02-2405 be amended by Bybee (proof was submitted before 1976) rather than assigning the permit to both current owners. (For the Snake River Adjudication, Bybee has not claimed 02-2405, but Yorgason and Field have claimed applicable parts of it.) Yorgason shares one-half of a 100 HP motor pump that

* ASSIGNED TO YORGASON & FIELD 11/04/83

OCT 27 1993

Page 3

Memo to Dave Shaw, Subject: 02-2272, 02-2405, Licenses
3/11/83

delivers 10 cfs and formerly one of Bybee's three pumps. Bybee now has only one-half of a 75 HP motor and pump that was one of his three pumps. With Yorgason's part of 02-2176 having ^{2.04}~~2.04~~ cfs, he purchased from the assignees of Bybee the capacity to divert 5.0 cfs and ability to irrigate with 02-2405. It would follow the permit should be amended to include his land. By doing so, each owner except the LDS Church will have the lands of 02-2176 supplemented to near 1.0 inch per acre by 02-2405.

The LDS Church by the equitable division of 02-2176 has .07 cfs for 6 of its 11 irrigated acres. Another right, 02-2380, is for .10 cfs on the other 5 acres.

~~While Yorgason's land, 02-7154 should be addressed. This right, developed from a different point of diversion for the Aslett Canal then to the Bybee Canal, fills in where 02-2176 does not cover. (Figure 1). The problem comes about for this right because in some cases more acres were licensed than there are acres owned and in some cases fewer acres were licensed than were or are now irrigated. The exception is the SWNW, S. 36 where a ^{2 acre} parcel has been sold and is not irrigated now. I suggest an amended license should be issued as shown in Land List #1. This amendment will result in fewer acres and a smaller diversion rate than presently is licensed. But with the change to 02-2405 as suggested, 02-7154 will contribute its part to ^{.9871}~~.9844~~ inch/acre for all of Yorgason's irrigated land.~~

02-2272

Lastly, 02-2272 is left. This right is used by way of a relift pump described in the Field Report. This right held by Mrs. Bybee, apparently was to fill in some land above the canal between two previous rights on Field's land. The assumption erroneously has been made for some time that Field was the holder of this permit. Apparently an assignment will be necessary.*

With the licensing of the last of the rights for Field, he will have ^{.9396}~~.9269~~ inch/acre for all of his irrigated land.

*ASSIGNED 11/04/83 OR EARLIER.

OCT 27 1993

YORGASON

LAND LIST ATTACHMENT

Description and location of place of use:

LAND ACTUALLY IRRIGATED

[illegible]

* 30 ACRES IRRIGATED NOW, BUT LICENSED FOR 33 ACRES AND MORE THAN 15 OR WAS OWNED IN 1977,

FIELD

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NW 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS	CFS
			NW 1/4	NW 1/4	SW 1/4	SE 1/4	NW 1/4	NW 1/4	SW 1/4	SE 1/4	NW 1/4	NW 1/4	SW 1/4	SE 1/4						
55	3E	36								5	13					27	14	59		
55	4E	31														27	26	53		
		32										23	10			2		35		
65	3E	1	L1 23	L2 15														38		
65	4E	5	L1 19	L2 22	18	32	L3 45	L4 35										171		
		6	L1 26	L2 27			L3 37	L4 48										138		
		4					L1 2	L2 1										3		
																		497		
55	4E	32										23	10			2		35		
65	4E	5					L3 45	L4 35										80		
		6	L1 5															5		
																		120	21	
65	4E	4					L1 2	L2 1										3		
		5	L1 19	L2 22		6												47		
																		50	12	
55	3E	36								5	13							18		
55	4E	31														27	26	53		
65	4E	5				18	26	L3 45	L4 35									44		
		6	L1 21	L2 27			L3 37	L4 48										133		
																		248	282	
55	3E	36								5	13							18		
55	4E	31														27	26	53		
65	4E	5				18	26	L3 45	L4 35									44		
		6	L1 21	L2 27			L3 37	L4 48										133		
																		248	176	
55	3E	36																41		
65	3E	1	23	15														38		
																		79	129	

TOTAL
Total number of acres irrigated

497 9³⁴