

MEMORANDUM

TO: Transfer No. 73831 and 73832 File

FROM: Angie Grimm

DATE: August 25, 2008 Amended November 26, 2008

RE: Evaluation of Sufficiency of Information Submitted

Transfer app 73831 proposes to change the place of use and points of diversion for one of the applicant's industrial rights, 63-32001, from one processing plant to another.

Transfer app 73832 proposes to change the place of use, point of diversion and nature of use for a primary irrigation right, 63-32202, to commercial use for practices at the Nagel Beverage Company's processing plant.

The Nagel Beverage Company facility, the proposed place of use, is located at 8925 Birch Ln between Cherry Ln and Karcher Rd just east of Northside Blvd. The current place of use for 63-32001 was Nagel Beverage Company's old processing plant at 5465 W Irving St in Boise. The current place of use for 63-32202 is 7.5 acres approximately ¼ mile south of McMillan Rd between Meridian Rd and Locust Grove Rd. in Meridian.

Contact person for the applicant is Ed Squires, Hydro Logic, Inc.

Summary of Information Submitted

Authority to File: The applicant is the current owner on record for 63-32001. However, Ada Co. tax lot data indicates Idaho Youth Ranch Nagel Center LLC is the current owner of the place of use for this water right. The purchase and sales agreement transferring the property from Nagel Beverage Company to the Idaho Youth Ranch was submitted 8/25/08. Item 10 part (a) confirms the water rights were withheld from the property before Idaho Youth Ranch was given the property by Nagel Beverage Company. Subsequent submittal of a Quitclaim Deed further confirms the Idaho Youth Ranch Nagle Center LLC has no interest in water right 63-32001.

The current owners on record of 63-32202 are Sheldon and Renata Ham. A warranty deed conveying ownership of this water right to David Perrie was found in the adjudication claim backfile for this right. The applicant submitted a deed to a water right conveying ownership of the water right from Parrie to Nagel Beverage Company, Inc. A warranty deed for ownership of the proposed place of use was submitted with transfer application 71581, which resulted in 63-32001 and 63-32002 after splitting 63-7640. I have attached a copy of this deed to this memo for reference. Canyon Co. tax lot data confirms Nagel Beverage Company still owns the proposed place of use. The Water

Right Grant Deed and Assignment, an email, a letter, and a notice of error documenting Parrie's previous ownership of water right 63-32202 is attached to this memo for reference. Authority to file the transfer applications has been documented for both rights to be transferred.

Water Right Validity: Rights presumed to be valid, because the partial decrees were issued on 2/16/2007 within the past five year period.

Injury to Other Water Rights: No injury should occur provided the drilling and use of the wells do not interfere with nearby existing wells. As ground water rights, use of the wells is subject to reasonable pumping level provisions of Idaho Code 42-226. Well log data on file indicates nearby production wells are significantly shallower, several hundred feet, then the production zone for the proposed P/Ds with interbedded clay layers separating the production zones. Water level data submitted with transfer application 73832 indicates production from nearby wells did not produce any significant interference effects on the applicant's monitoring well completed into varying production zones. Also, Department data indicates ground water levels in the area have been historically stable. Therefore, it is unlikely use of the proposed P/Ds will injury other ground water uses in the area.

Enlargement of Use: The applicant does not propose to enlarge the use. There will be no increase in diversion rate, annual diversion volume or number of acres irrigated as a result of these transfers. The diversion volume for industrial use of 63-32202 will be limited to 22.1 AFA based on the historic annual consumptive use of the right for irrigation of 7.5 acres. The consumptive use value calculation is based on the rate of 2.95 AF/AC used in previous changes in nature of use of the parent and subsequent child rights of 63-8796. Use of this rate from Allen/Brockway Boise site values for the consumptive use calculation is based on the similar consumptive nature of turf grass and alfalfa. The increase in the period of use for 63-32202 proposed is allowable for the ground water use, because the diversion rate, total annual volume diverted, and annual volume of consumptive use are not increasing.

Local Public Interest: Further development of the proposed industrial use will allow for a potential increase in long term local employment serving the local public interest. Retiring of 7.5 acres of irrigation is not a significant impact to the agricultural base of the local area.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use(s) consistent with conservation of water resources in Idaho.

Review of the application finds there is no clear inconsistency with criteria of I. C. § 42-222 preventing processing of the application.

Discussion

Transfer application 73831 proposes to change the place of use and point of diversion for 63-32001, a portion of parent right 63-7640. 63-7640 was a licensed industrial use water right for the applicant's beverage bottling operation in Boise. When the applicant built a new facility in Nampa, right 63-7640 was split, by approval of transfer 71581, into two portions one for the existing facility in Boise and one for the new facility in Nampa. Now the applicant has donated the property of the former bottling plant and seeks to transfer the associated water right 63-32001 to the new facility in Nampa. The Purchase and Sale Agreement submitted 8/25/08 by the applicant's representative demonstrates right 63-32001 was withheld from the property when it was donated to the Idaho Youth Ranch and therefore still owned by the applicant and available for transfer.

Transfer application 73832 proposes to change the place of use, point of diversion, nature or use and period of use for 63-32202, a portion of parent right 63-8796. The permit application for 63-8796 indicated the applicant had shares in Settlers Irrigation District for irrigation of the proposed place of use. However, the license issued in April of 1988 had no supplemental conditions and the right has been used as a primary right since. An affidavit submitted by Renata Ham 3/21/03 stated all three Ham rights (63-8796, 63-9972 and 63-10566) have been used as primary ground water rights with no surface water use. An email sent to the state office from Steve Lester summarizing the Ham rights indicates 63-8796 will be considered a primary right based on the license and use. When the right was recommended and subsequently decreed, a condition was added stating the right is combined with water from Settlers Irrigation District. A memo written by Jeff Peppersack 8/22/03, during processing of the first transfer splitting 63-8796, states this adjudication condition was carried over to the transfer approval for the unchanged part, but was not part of the license and should be removed. It appears this condition was not removed. The next transfer approval (no. 70628) for this right was amended to exclude this condition. Subsequent transfer approvals have carried over the adjudication condition contrary to previous guidance. Therefore, 63-32202 was decreed as a use combined with Settlers Irrigation District water. Based on all the information above and Department procedure to date with processing transfer of this parent right, 63-32202 shall be considered a primary right, for which the nature of use can be changed. Furthermore, 63-32202, if this transfer is approved, will no longer be conditioned for use with water from Settlers Irrigation District. I have attached the email written by Steve Lester, Jeff Peppersack's memo, water right 63-8796 license, and a split tree for 63-8796 to this review memo for reference.

Transfer application 73832 proposes a nature of use change from irrigation to industrial. Department standards require the applicant to submit historical consumptive use data to determine the quantity allowable for transfer to the new nature of use. Current policy recommends the use of data from University of Idaho report "Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho" dated September, 2006 to calculate historical consumptive use of crops. Previous transfers changing the nature of

use for parent right 63-8796 used the Allen/Brockway data set, which the University of Idaho September 2006 data set supersedes. The transfer application stated in comments the volume proposed for transfer was calculated based on a rate of 2.95 AF/AC, which is from the Allen/Brockway data set. Directive regarding administration of Administrator's Miscellaneous Memo No. 16 (states the University of Idaho September 2006 data shall be used for new water use estimates) is if historic consumptive use information is provided with an existing application, that data can be used instead of the new data set. As such, the rate provided with the application was applied in this instance, consistent with administrative directive on the policy and the previous nature of use changes of right 63-8796.

The existing place of use for right 63-32001 has no other overlapping rights for industrial use. The current place of use for right 63-32202 has no other applicable overlapping rights since it has been determined this right is a primary ground water right for irrigation. The proposed place of use currently has one water right for industrial use, 63-32002. If both transfers are approved, the place of use will have three water rights, 63-32001, 63-32002, and 63-32202 for industrial use. The applicant's representative, Ed Squires of Hydro Logic Inc., stated, during a phone conversation, that the applicant plans to expand their Nampa plant production which requires the additional quantity of water requested in the transfer approvals. The proposed place of use PLS quarter quarter location also has water right 63-8830 appurtenant to it. This right is pending in the SRBA. The SRBA agent who worked on the recommendation confirmed no land in this location is currently owned by the water right owner on record for 63-8830 and the right was recommended based on an existing license. Right 63-8830 is for irrigation of 27 acres from a ground water well. This right is for a different use from a different source (well) than the use proposed in the transfer application(s). Approval of the transfer application(s) would not create an overlap per current Department overlap analysis policy.

The facility currently has one well, tag number D0039322. The applicant paid the \$200.00 fee (receipt W033033) applicable for a well requiring a water right at the time drilling permit 833903 was issued. Transfer application 73831 proposes two wells as P/Ds for the right. Transfer application 73832 indicates the existing well shall be the P/D for the right. Ed Squires confirmed the applicant proposes two P/Ds, the existing well and a proposed well, for right 63-32001 currently being transferred.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

FROM xR 71581

Oct 14 04 10:40a

Ed Squires

208-342-3100

p.2

238004/UE



PIONEER TITLE COMPANY
OF ADA COUNTY
8151 W. Rittenhouse Ave. / Boise, Idaho 83704
(208) 377-2700

REQUEST PIONEER-MANNA
TYPE/STAMP FEE 10.00

CANYON CITY RECORDER
BY [Signature]

2004 JAN 15 PM 4 44

RECORDED

200402592

WARRANTY DEED

For Value Received Ronald W. Van Auker, a married man, as his sole and separate property

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto

Megal Beverage Co

hereinafter referred to as Grantee, whose current address is 5465 Irving Street, Boise, ID 83706
the following described premises, to-wit:

See exhibit "A", attached hereto and made a part thereof, by reference and which is comprised of
first (1) page

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs
and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor
is the owner in fee simple of said premises; that said premises are free from all encumbrances except current
year taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record,
and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims
whatsoever.

Dated: January 6, 2004

[Signature]
Ronald W. Van Auker

STATE OF IDAHO, County of ADA, ID.

On this 15th day of January, in the year of 2004, before me the undersigned, notary public personally
appeared Ronald W. Van Auker known or identified to me to be the person whose name is subscribed
to the within instrument, and acknowledged to me that he executed the same.



[Signature]
Debbie A. Eguizar
Notary Public of IDAHO
Residing at Nampa, Idaho
Commission expires: March 9, 2006

ATTACHMENT E1

EXHIBIT "A"

A parcel of land being Parcel A as shown on Record of Survey Instrument Number 200222457, located in the NW1/4 of the SW1/4 of Section 10, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho and described as follows:

Commencing at a brass cap monument marking the SW corner of said SW1/4, thence along the South line of said SW1/4 N89°56'06"E a distance of 1324.09 feet to a point from which a 5/8 inch rebar marking the SE corner of said SW1/4 bears N89°56'06"E a distance of 1324.08 feet, thence leaving said South line N00°13'00"W a distance of 1457.49 feet to a 5/8 inch rebar on the West line of said NW1/4 of the SW1/4, said rebar being the POINT OF BEGINNING;

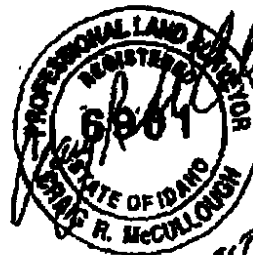
Thence leaving said West line S89°56'06"W a distance of 1006.06 feet to a 5/8 inch rebar on the easterly right-of-way of Northern Pacific Rail Road;

Thence along said right-of-way N19°27'20"W a distance of 559.89 feet to a 5/8 inch rebar;

Thence leaving said right-of-way N89°54'25"E a distance of 1190.54 feet to a 5/8 inch rebar on said West line;

Thence along said West line S00°13'00"E a distance of 528.71 feet to the POINT OF BEGINNING.

Said parcel contains 13.32 acres more or less and is subject to all existing easements and rights-of-ways of record or implied.



13 OCT 04

EXHIBIT "A"

A parcel of land being Parcel A as shown on Record of Survey Instrument Number 200333829 and being located in a portion of the NW1/4 of SW1/4 of Section 10, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho and described as follows:

Commencing at a brass cap monument marking the NW corner of said NW1/4 of the SW1/4, thence along the North line of said NW1/4 of the SW1/4 N89°53'52"E a distance of 495.00 feet to a 5/8 inch rebar marking the POINT OF BEGINNING;

Thence continuing along said North line N89°53'52"E a distance of 828.30 feet to a 5/8 inch rebar marking the NE corner of said NW1/4 of the SW1/4;
Thence leaving said North line and along the East line of said NW1/4 of the SW1/4 S00°13'00"E a distance of 662.06 feet to a 5/8 inch rebar;
Thence leaving said East line S89°54'25"W a distance of 1190.54 feet to a 5/8 inch rebar on the easterly right-of-way of Northern Pacific Rail Road;
Thence along said right-of-way N19°27'20"W a distance of 403.15 feet to a 5/8 inch rebar on the West line of said NW1/4 of the SW1/4 and from which the SW corner of said S1/4 bears S00°12'00"E a distance of 2365.91 feet;
Thence leaving said right-of-way and along the said West line N00°12'00"W a distance of 61.44 feet to a 5/8 inch rebar;
Thence leaving said West line N89°53'52"E a distance of 495.00 feet to a 5/8 inch rebar;
Thence parallel with said West line N00°12'00"W a distance of 220.00 feet to the POINT OF BEGINNING.

Said parcel contains 17.03 acres more or less and is subject to all existing easements and rights-of-ways of record or implied.



Oct 14 04 10:40a
10/13/2009 10:14

Ed Squires
2088877958

208-342-3100
VAN ALKER INC

PAGE 05 P. 5

PNS2710

QVB
DKB

EXHIBIT "A"

A portion of the Northwest Quarter of the Southwest Quarter, Section 10, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho.

BEGINNING at the Northwest corner of said Northwest Quarter of the Southwest Quarter the REAL POINT OF BEGINNING, and bearing

South 220 feet along the West boundary of the aforesaid Southwest Quarter; thence East 495 feet; thence

North 220 feet to the intersection of the North boundary of the aforesaid Southwest Quarter; thence

West 495 feet along the aforesaid North boundary to the REAL POINT OF BEGINNING.

9902296

RECORDED

39 JUN 20 PM 4 21

C. H. C. H. A. L. E. S.
CANYON CITY RECORDER
BY *[Signature]*

PIONEER - N. A. R. A. -
TYPE *[Signature]* PER *[Signature]*

GIVENS PURSLEY LLP
Attn: Jeffrey C. Fereday
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

WATER RIGHT GRANT DEED AND ASSIGNMENT

FOR VALUE RECEIVED, Grantor Renata Ham and Stonecreek Turf of Meridian, Idaho, hereby grants, bargains, sells, and conveys unto Grantee, David J. Parrie, whose address is 9139 Ustick Road, Boise, Idaho 83704, all of Grantor's right, title, and interest in and to the following portion of licensed irrigation ground water right number 63-8796:

The approximately 11 percent (7.5/68) portion of such licensed irrigation ground water right that is appurtenant to 7.5 acres in the N $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, T4N, R1E, Boise Meridian, in Ada County (hereinafter, the "Water Right").

Grantor hereby further assigns to Grantee all of Grantor's right, title, and interest in and to the above-described approximately 11 percent (7.5/68) portion of the license for ground water right number 63-8796 issued by the Idaho Department of Water Resources, a copy of which is attached hereto as Exhibit A, together with a like portion of Grantor's right, title, and interest in and to any claim for such portion filed in the Snake River Basin Adjudication, Fifth Judicial District, in the State of Idaho, in and for the County of Twin Falls, Case No. 39576. The Water Right conveyed by this Deed is subject to all conditions and limitations specified on such license or that may be imposed by the SRBA Court.

Grantor hereby covenants to Grantee that Grantor has ceased to divert and use the Water Right on the above-described ten acres or otherwise. Grantor makes no other guarantees or warranties as to the Water Right, its transferability, or its yield upon transfer, change, or exchange.

[End of Text]

TO HAVE AND TO HOLD the Water Right unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused her name to be subscribed to this Grant Deed effective this 16th day of April 2004.

GRANTOR:

RENATA L. HAM

Renata L. Ham
Renata L. Ham

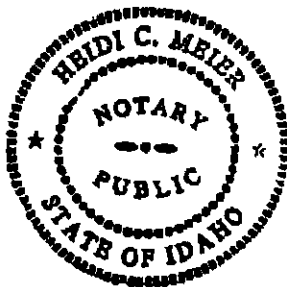
STONECREEK TURF, a sole proprietorship

Renata L. Ham
Renata L. Ham, Proprietor

STATE OF IDAHO)
) ss.
County of Ada)

On this 15th day of April, 2004, before me, a Notary Public in and for the State of Idaho, personally appeared Renata Ham, known or identified to me to be the person who executed the above Grant Deed, and acknowledged to me that she executed the same on her own behalf and on behalf of Stone Creek Turf, a sole proprietorship.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Heidi C. Meier
NOTARY PUBLIC FOR IDAHO
Residing at: *2036*
My commission expires: *9/29/09*

Brown, Kimberly

From: Shurte, Jan
Sent: Monday, November 21, 2005 9:55 AM
To: Brown, Kimberly
Subject: FW: RE: FW: IDWR correspondence RE Ham water right

-----Original Message-----

From: Terry Scanlan [mailto:TScanlan@spfwater.com]
Sent: Friday, November 18, 2005 4:14 PM
To: Shurte, Jan; Nelson, Dan
Subject: FW: RE: FW: IDWR correspondence RE Ham water right

Jan and Dan -

My client Farwest LLC (Marty Goldsmith) asked me to look into 83-22022. They (as Cobre Basin HOA) received a preliminary recommendation for the water right. However, the water right (as 63-8796) was retained by the Renata Ham as part of the sale of the land to Goldsmith. Ham has sold off all of water right 63-8796, including the 7.5-acre portion identified as 63-22022. A copy of the deed is attached. Please contact Jeff Fereday if you have any questions.

Does Cobre Basin HOA need to respond to the Notice of Error?

Terry

-----Original Message-----

From: Jeffrey C. Fereday [mailto:JeffFereday@givenspursley.com]
Sent: Thursday, November 17, 2005 11:01 AM
To: Terry Scanlan
Cc: Renata Moon; Ed Squires
Subject: RE: RE: FW: IDWR correspondence RE Ham water right

Terry:

Here's a copy of the grant deed and my cover letter transferring it to Parrie. Since Ed Squires was working with Parrie on this, I'm copying him on this email. Let me know if you need anything else.

Jeff

From: "Terry Scanlan"
To: "Jeffrey C. Fereday"
Sent: 11/17/2005 9:40AM
Subject: RE: FW: IDWR correspondence RE Ham water right

-----Original Message-----

Sent: Thursday, November 17, 2005 8:31 AM
Subject: RE: FW: IDWR correspondence RE Ham water right

11/22/2005

Terry:

Renata got the same notice. That 7.5 acre piece was sold to David Parrie, we closed on it, and he paid in full. However, Parrie neglected to file notice of ownership change with IDWR, so Renata's still on their database. He also has not gone thru with his transfer, but evidently he's doing that now.

Jeff

----- Original Message -----

"Terry Scanlan"

To: 11/16/2005 12:37PM

Subject:

Jeff -

-----Original Message-----

Sent: Wednesday, November 16, 2005 11:57 AM

Subject: IDWR correspondence RE Ham water right

Please let me know how to proceed. Thanks for your help!

Farwest, LLC 4487 N. Dresden PL, Suite 102 Boise, ID 83714

11/22/2005

GIVEN PUSLEY LLP

LAW OFFICES
601 W. Sannock Street
PO Box 2780, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

JEFFREY C. FEREDAY
Direct Dial: 208-388-1217
E-Mail: jcf@givenspursley.com

Gay G. Allen
Christopher J. Bannock
Jessica M. Borup
William C. Cole
Michael D. Crowner
Thomas E. Drough
Ray Lewis Egeus
Timothy P. Fearnside
Jeffrey C. Fereday
Steven A. Hippler
John T. Klein
Coburn K. Kottmann
Anne O. Kunkel
Franklin G. Lee

David R. Lombardi
D. David Lovell, Jr.
Emily A. MacMaster
Kimberly D. Mitteney
John M. Marshall
Kenneth R. McClure
Kelly Greene McCrindle
Cynthia A. Mullis
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Joshua B. Montgomery
Angela K. Nelson
Deborah E. Nelson

W. Hugh O'Harden, LL.M.
Michael G. Orr
Kenneth L. Pursley
Bradley V. Sneed
H. Barton Thomas, LL.M.
Conley E. Ward
Robert E. White
Michael V. Woodhouse

James A. McClure
OF COUNSEL

Raymond D. Shivers
RETIRED

April 16, 2004

Mr. David Parrie
9193 Ustick Road
Boise, ID 83704

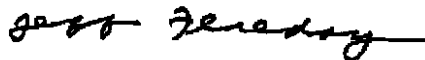
Re: Water Right Deed and Assignment
GP File No. 6558-4

Dear Mr. Parrie:

Enclosed is the original, fully executed deed and assignment in exchange for the check we received from you in the amount of \$25,000 as payment of the balance due under your purchase of a portion of water right number 63-8796. Please forward a conformed copy of the deed to my office once it has been recorded with the Ada County Recorder's office. I presume you also will want to file a change of ownership form with the Department of Water Resources.

Thank you for your assistance. It has been a pleasure working with you.

Sincerely,



Jeffrey C. Fereday

JCF/hcm
Enclosure

cc: Renata Ham
Ed Squires

ENCLOSURE(S) JCF to Parrie and deed.DOC

11/02/2005

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: November 18, 2005

Water right number: 63-32202

RENATA HAM
3125 W MORNINGGALL
BOISE ID 83713

SHELDON G HAM
11955 W MESQUITE DR
BOISE ID 83704

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source): *Also, Regarding water right # 65-32202 there is a 1.7 Acre section which is N.E of N.W of Sect 31 T4N R1E I disagree it is forfeited.*
2. Describe the changes you wish to make in the proposed recommendation: *This water right for 7.5 Acres belongs to David Panie who purchased it from me. Enclos is a copy of the deed.*
3. Give a brief explanation as to why you disagree with these portions:

 I AGREE with this proposed recommendation: no changes need to be made.

DATE: 11/18/2005 SIGNATURE: Renata L. Ham
Please print your name: RENATA L. HAM

IDWR Regional Office, 2755 Airport Wy, Boise, ID 83705, 2083342190

Graves, Lori

From: Lester, Steve.
Sent: Thursday, April 24, 2003 9:40 AM
To: Peppersack, Jeff; Spackman, Gary
Subject: Primary or Secondary Rights?

Gents:

This note concerns 3 ground water licenses owned by Ham: 63-8796, 63-9972 & 63-10566. The rights use the same well but serve separate acres for a turf farm. The first of those was discussed in my 4-11-03 memo regarding use of 63-8796 to mitigate for approval of Application 63-12070. Jeff, it appears you have that application file now. This email augments my memo somewhat. The email also seeks SO & Western agreement on the issue of whether the 3 licenses are primary or secondary rights. Agreement is necessary because Ham intends to sell pieces of the rights to mitigate other things, either in transfer applications or simply by retiring irrigation. Of course, transfer applications will require more rigorous analysis than non-transfer mitigation plans. But the primary/secondary answer should be the same for either approach in future filings based on portions of these 3 rights.

Jeff Fereday represents Ham and called yesterday seeking dept. confirmation in the primary/secondary issue. He said he met with Norm some time ago and reported that Norm apparently agreed all 3 rights were developed as primary ones based on the information he was provided. I doubt there is any written record of that meeting.

Here's the background:

63-8796 & 63-9972 were originally filed as apparent secondary rights to Settlers Canal water. 63-10566 was filed as stating no other rights were used, but it also sought to replace lapsed 63-8410. The latter was originally filed as apparent secondary right to Settlers Canal water.

Field exams of the 3 rights in question suggest Settlers water was present and perhaps used to a limited extent although details are inconclusive. Exam 63-10566 states canal water presented maintenance problems for the operation ("clogging"). The first 2 licenses were issued with the standard 0.02 cfs & 4.5 afa per acre when combined with all other rights. 63-10566 was licensed with a condition requiring full use of appurtenant surface water prior to using ground water.

Ham filed an affidavit with Western (presented in the spiral bound notebook replete with tabs format, the distinctive Givens Pursley touch). Ham states the 3 rights provided the only water to the turf farm. Says surface water presented too many problems to run a successful turf farm so relied solely on ground water. That is consistent with what other turf farm owners have said over the years. The land was irrigated within 5 years prior to filing SRBA claims.

I think we can clearly conclude that 63-8796 & 63-9972 can be considered primary rights under these circumstances. What about 63-10566? While it appears to be clear violation of the surface water condition of approval, the historic practice probably established a primary right. I recall other situations where we have reached a similar conclusion (general recollection without a specific precedent). We seem to "forgive much" as people present their cases. I think we can safely say 63-10566 is a primary right under these circumstances.

I seek your thoughts so we can proceed on a unified front as additional filings based on these rights trickle in. We already have 1 or 2 more filings recently received, and Fereday mentioned more on the way. Fereday is concerned that different IDWR offices will reach different conclusions and hopes to avoid that. **Please reply by Tuesday, April 29.** Western has a wr processing meeting early the next day, and it would be ideal to reach agreement by then.

Jeff, can you tell me how many acres in what qq were proposed under 63-8796 to mitigate Application 63-12070? I want to keep a record of the licenses as they are proposed for mitigation &/or transfer and neglected to record that information for 63-12070.

Thanks for your thoughts on this. Let me know if you need more information.

Steve

MEMORANDUM

Date: August 22, 2003

To: Transfer 70628
Water Right No. 63-8796 split into 63-31723 and 63-31724

From: Jeff Peppersack

Re: Amendment of Transfer

John Marshall called this day (representing the owner of the unchanged part) to discuss conditions placed on the unchanged part of this transfer. Apparently the adjudication recommendation conditions were carried on the transfer approval. The conditions referencing water use with Settlers Irrigation and extending the irrigation season were not part of the water right license and should be removed from the approval for the unchanged part. Adjudication should be alerted regarding the amendment when completed.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-8796

Priority: May 9, 1977

Amount:

1.05 CFS

306.0 AFA

This is to certify, that FRANK N. HAM
WYONA HAM

4415 N. LOCUST GROVE
MERIDIAN, ID 83642

has complied with the terms and conditions of the permit issued pursuant to Application for Permit dated May 9, 1977, and has submitted proof to the Department of Water Resources on May 13, 1982, that water has been applied to a beneficial use; an examination by the Department indicates that the works have a diversion capacity of 1.05 cfs of water from a GROUNDWATER source and that a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>VOLUME</u>		
Irrigation	03/15 to 11/15	1.05 cfs	306.0 afa		
<u>LOCATION OF POINT OF DIVERSION(S):</u>		NWNE, Sec. 31, Township 4N, Range 1E Ada County			
<u>PLACE OF USE:</u> Irrigation					
<u>TWN</u> <u>RGE</u> <u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
4N 1E 31	NWNE 15	SWNE 7	NENW 29	SENE 17	68
Total number of acres irrigated:					68

CONDITIONS/REMARKS:

1. The right to the use of the water hereby confirmed is limited to the amount which can actually be beneficially used and is restricted and appurtenant to the lands or place of use and to the purpose herein described, as provided by the laws of Idaho.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 1st day of April, 1988.

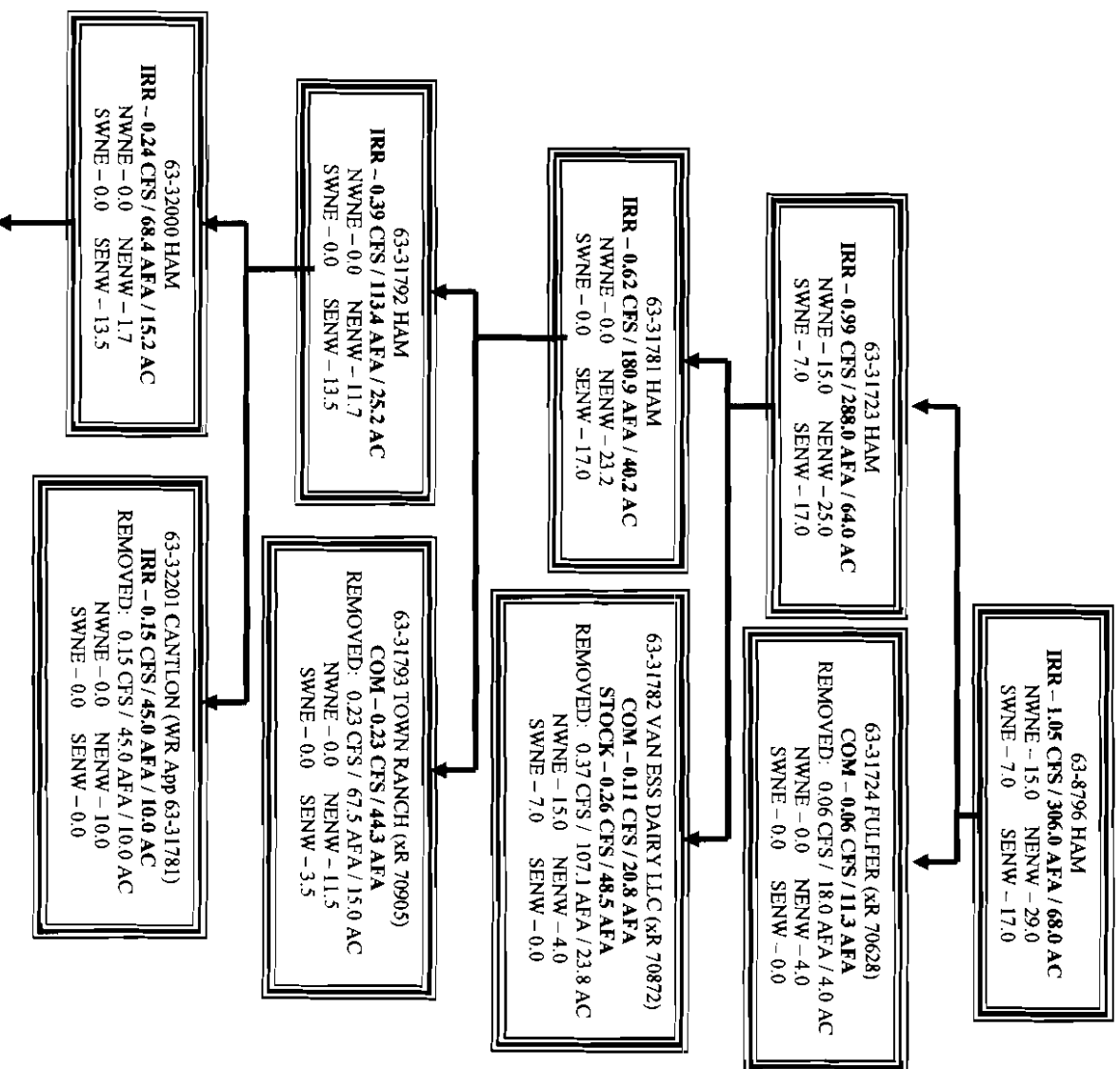
NOTARIAL SEAL

JUL 06 1988

Director

EXHIBIT **A**

63-8796 Ham Split Tree Diagram



CONTINUED ON NEXT PAGE

63-8796 HAM SPLIT TREE DIAGRAM CONTINUED

