

Form 222
1-87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

JAN 05 2007

Department of Water Resources
Eastern Region

Name of Applicant Mickelsen Properties, LLC Phone (208) 523-0620
Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C., P.O. Box 50130, Idaho Falls, Idaho 83405

A. PURPOSE OF TRANSFER

1. Change point of diversion Add diversion point(s) Change place of use
 Change nature of use Change period of use Other _____

2. Describe the reason for the proposed changes Water Right No. 34-618 has been used for many years on some 1985 acres of land on Era Flat under a transport agreement with Big Lost River Irrigation District, but current records show it is appurtenant to 139 acres in the NE, Sec. 4, T4N., R26E. Applicant desires to make the records conform to the practice.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.	Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
	<u>34-618</u>	<u>09/01/1884</u>	<u>3.2 cfs</u>	<u>Irrigation</u>	<u>5/1 04/01</u> to <u>10/15 11/01</u>
	_____	_____	_____	_____	_____ to _____
	_____	_____	_____	_____	_____ to _____
	_____	_____	_____	_____	_____ to _____
	_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 3.2 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Big Lost River Tributary to Sinks

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	<u>NW</u>	<u>SE</u>	<u>SE</u>	<u>4</u>	<u>5N</u>	<u>26E</u>	<u>Butte</u>	<u>Moore Diversion</u>

5. Lands irrigated or place of use: (Permissible place of use for all water rights)

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	25E	12	39	40	40	39	40	40	40	40	31	32	31	32	39	40	36	36	595
3N	26E	17	11	25			37	39	13	5									130
		18	35	39	36	25	38	26	37	40	17	10				2			305
4N	25E	35	40	40	40	40								40	40	40	40		320
		36	38	40	40	39	40	40	40	40	40	40	40	40	39	40	40	39	635

Total Acres 1985

6. General Information:

- a. Description of diversion system Water is diverted from river into Moore Canal; thence into crossover ditch; thence into Timberdome Canal; thence to places of use.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes _____ No . If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer:
There will be no change from several years of actual practice.
- d. Remarks:
A copy of the transport agreement with Big Lost River Irrigation District is enclosed.

ACTION OF THE DIRECTOR DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____ and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 2006.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 34-618

WATER RIGHT NUMBER: 34-618

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MICKELSEN PROPERTIES LLC PO BOX 438 RIGBY, ID 83442 (208)745-6626
Original Owner	EVERETT T ACOR JR 3196 N YELLOWSTONE HWY IDAHO FALLS, ID 83401 (208)524-5138

Priority Date: 09/01/1884
 Basis: Decreed
 Status: Active

<u>Source</u>	<u>Tributary</u>
BIG LOST RIVER	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	05/01 to 10/15	3.200 CFS	
	<u>Total Diversion:</u>	3.200 CFS	

Location of Point(s) of Diversion

BIG LOST RIVER NW1/4SE1/4SE1/4 Sec. 4, Twp 05N, Rge 26E, B.M.
 BUTTE County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	26E	4	35.0	36.0	36.0	32.0													139.0
			L 1	L 2															

Total Acres: 139

Conditions of Approval:

1. R43 The right holder shall maintain a measuring device, or other suitable method of measurement, and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
2. S34 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.
3. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 34.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 34-618

- 4. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
- 5. Water delivered through the Moore Diversion.
- 6. Rights 34-618 and that portion of ground water right no. 34-7179 associated with water right no. 34-618, when combined, shall not exceed a total diversion rate of 0.02 cfs per acre, and shall not exceed a total annual maximum diversion volume of 486.5 af at the field headgate.
- 7. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
- 8. 065 The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right prior to or in conjunction with beneficial use of associated ground water rights.
- 9. Rights 34-618, 34-02330B, 34-07080B, 34-07121A, 34-07121B, 34-07092, 34-07077, 34-7179, 34-12376, 34-13659, 34-13661, 34-13840 and 34-13842 when combined shall not exceed the irrigation of 2124 acres.
- 10. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Remarks:

Comments:

- 1. pskaggs 7/21/2006 10:56:49 AM Transferred Right
Comment: This is now an approved transfer, transfer number = 71254

Dates and Other Information:

Licensed Date:
 Decreed Date: 7/15/2002
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 State or Federal: S
 Owner Name Connector:
 Water District Number: 34
 Generic Max Rate Per Acre: 0.02
 Generic Max Volume Per Acre: 3.5
 Decree Defendant:
 Decree Plaintiff:
 Civil Case Number: 39576
 Judicial District: FIFTH
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
42.2		2124

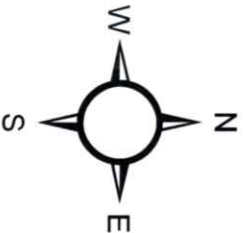
Combined Water Rights: 34-13659 , 34-7080B , 34-618 , 34-2330B , 34-13661 , 34-7121A , 34-7121B , 34-7179 , 34-12376 , 34-7092 , 34-13840 , 34-7077 , 34-13842

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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MICKELSEN PROPERTY (W.R. # 34-10028 & 34-10896)

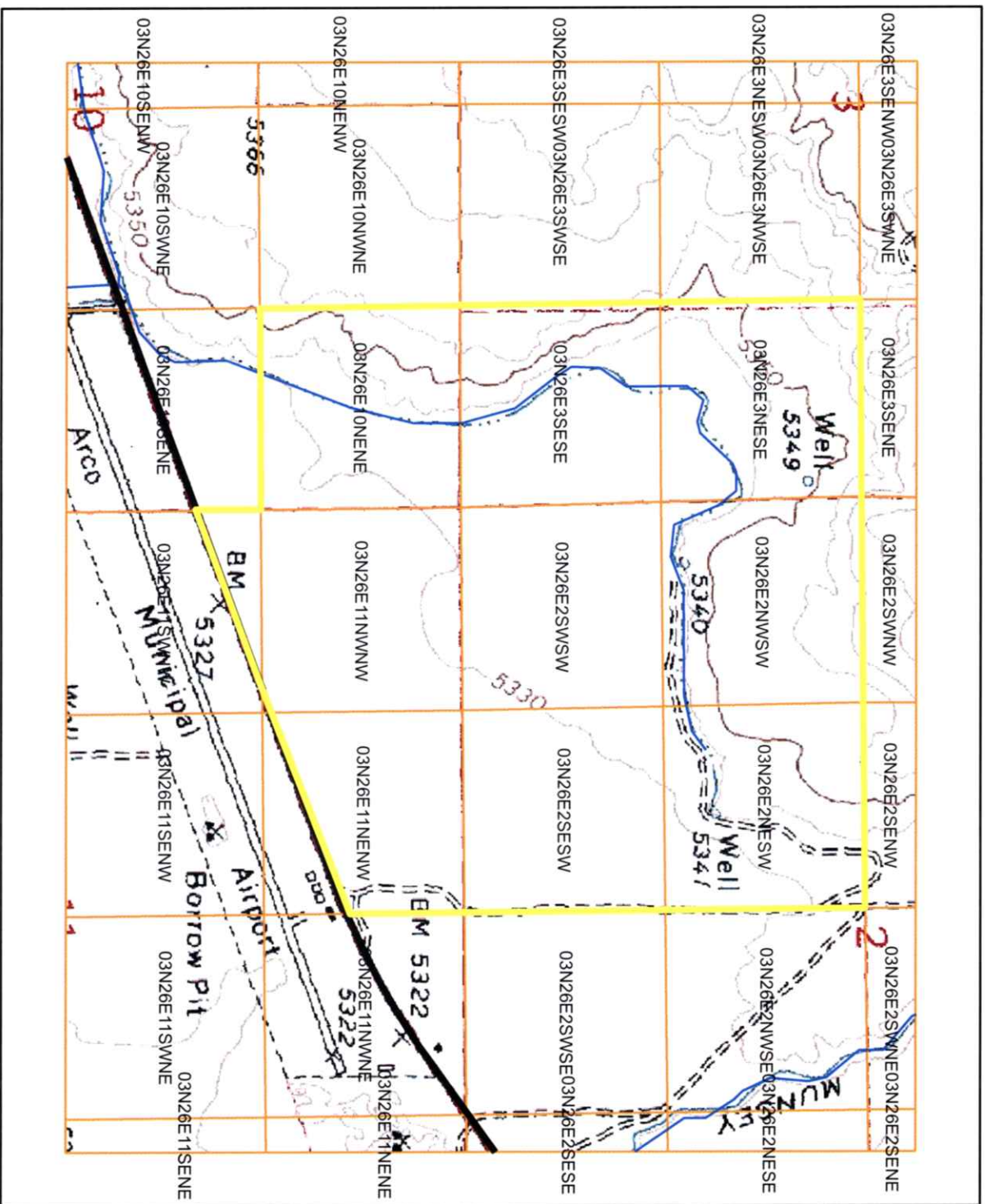
73320



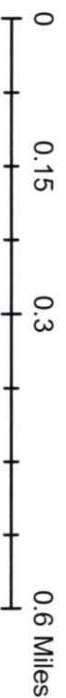
Legend

- Mickelson_Property
- MajorRoads
- PLS-QQ
- Rivers

Prepared by:
Robert L. Harris
Jan. 3, 2007



73320



B. CHANGES IN NATURE OF USE

1.	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

No return flows.

3. Describe effects on other water uses resulting from the proposed change:

No change.

I hereby asset that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

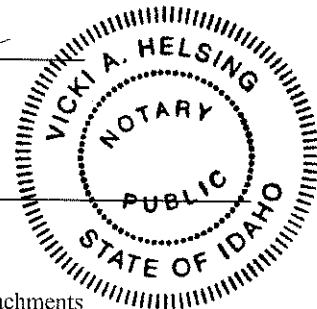
I understand that any willful misrepresentations made in this application may result in voiding its approval.

Mickelsen Properties LLC
 (Signature of Applicant) *Manage*

Subscribed and sworn to before me this 13th day of December, 2006.

Vicki A. Helsing
 Notary Public

My Commission Expires June 15, 2011



FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 7 attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee \$370⁰⁰

Received by SC Date 1/8/07 E032524 - overpayment
 Published in Arco Advertiser Copies of protest forwarded by Request Refund

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for approval denial
 _____ rec'd _____ by _____

Copy of transfer sent to lien holder _____

WATER PUMPING AND TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of Dec., 1999, by and between Alan M. Cannon, Jr. Scott P. Acoc, hereinafter referred to as "Landowner" of Shelley, County of Bingham, State of Idaho and Big Lost River Irrigation District, an irrigation district duly organized under the laws of State of Idaho, hereinafter referred to as "District", with its principal office in Mackay, Custer County, State of Idaho.

WITNESSETH:

WHEREAS, Landowner is the owner of certain real property located outside the boundaries of the District, described as follows, to-wit:

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4	LOT	USE	ACRES
<i>See attached</i>						

Containing 2025 irrigable acres; and,

WHEREAS, landowner has certain groundwater/surface water rights appurtenant to the above-described real property, which rights are described as follows, to-wit:

License No: 34-00618
Date of Priority: 9-1-1884
Rate of Diversion: 3.20 cfs
Point of Diversion: TOSN R26E
SEC 04, NESESE
Acres irrigable under said right: 2025

WHEREAS, Landowner desires the District to transport water diverted under the above-described right through an existing canal of District for use on the lands of Landowner above-described; and,

WHEREAS, the District is the owner of a canal known as the McCree canal, being a part of the facilities of the District used for the delivery of decreed flows of Big Lost River of Landowners and storage water of the District for the irrigation of lands within the District; and,

WHEREAS, the District has, from time to time additional capacity within said canal that could be used for the delivery of water to landowners outside of the District; and,

WHEREAS, Landowner desires the District to transport water diverted under the above-described right into the District's McCree Canal to a point

described as follows, to-wit: NW 1/4 NE 1/4 NE 1/4 of Section 18, Township 4 North, Range 26 E.B.M., and 1/4 1/4 1/4 of Section , Township North, Range E.B. M., which point shall be known as the point of delivery by the District to Landowner of said transported water, for use by Landowner on the lands above-described.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree:

1. District will transport groundwater of the Landowner diverted into the District's canal in the 1/4 1/4 1/4 of Section , Township North, Range E.B.M., and 1/4 1/4 1/4 of Section , Township North, Range E.B. M., to the point of delivery from the District to Landowner, not-to-exceed the rate of diversion provided in Landowner's water right hereinabove described and actually diverted into the District's canal, less losses for seepage and evaporation as hereinafter provided, for the irrigation of Landowner's lands above described.

2. Landowner shall construct and maintain at their own expense, any additional ditches, structures, or other water conveyance facilities necessary for the conveyance of water from the District's canal to the Landowner's place of use that may be required for the delivery of said water from the District's canal to Landowner's place of use, and District assumes no responsibilities of whatsoever kind or nature for said water after it leaves the District's canal at the point of delivery above-described to Landowner. Landowner further hereby agrees to hold District harmless from all claims of whatsoever kind or nature arising from the transportation and use of said water by Landowner from the point of delivery from the District's canal.

3. The obligations of the District to transport water for Landowner under this agreement and the right of the Landowner to have water transported by the District under this agreement is subordinate to the obligations of the District to transport water within its distribution system for the irrigation of lands within the District and is conditioned upon there being sufficient additional capacity in the more Canal of the District over and above the capacity required for the delivery of water by the District to lands within the District. The determination of the availability of additional capacity in the District's more Canal shall be determined by the District, and its determination shall be binding upon the parties to this agreement. In the event it is determined by the District that there is not sufficient additional capacity in the District's canal for the transportation of water under this agreement, no further transportation of water under this agreement shall be made by the District until such time as it is determined by the District that there is sufficient capacity in said canal to transport water under this agreement. In the event the transportation of water is curtailed under this agreement for the reason that there is a lack of capacity in the canal of the District, this agreement may be terminated at the request of Landowner at the end of the irrigation season in which said lack of capacity occurs.

4. Landowner shall construct and maintain at his sole cost and exponse, all pipolines, pumps, headgates, measuring devices or structures, and other structures or other improvements necessary to divert water into the District's canal and to redivert said water, less transportation losses, from the District's canal.

5. Landowner shall be required to provide and maintain adequate devices to measure and diversion of water into the District's more Canal and the volume of water to be diverted by the District from its more Canal to Landowner at all times during the term of this agreement. Under no condition shall Landowner be entitled to have diverted to him by the District from the District's canal under this agreement a quantity of water in excess of the quantity of water actually diverted into the said canal by Landowner under the terms hereof, less the transportation losses attributed to the transportation of said water by the District. No water may be diverted into the District's more Canal by Landowner or diverted from the District's more Canal by the District to the Landowner under this agreement without the Landowner first providing to the District twenty-four (24) hours notice in advance as to the intent of the Landowner to divert water into the District's canal under this agreement and the amount to be diverted therein by Landowner. Landowner shall also notify the District immediately upon discovering that the diversion by the Landowner of water into the District's canal has been terminated or reduced for whatsoever reason, whether or not under the control of Landowner. Landowner shall also notify the District twenty-four (24) hours in advance of any voluntary cessation of diversion into the District's canal by Landowner.

6. Water transportation for Landowner by the District under this agreement shall be limited to those periods of time in which the District is delivering water through its facilities for the irrigation of lands within the District.

7. For and in consideration of the transportation of Landowner's water by the District under the terms of this agreement, Landowner does hereby agree to pay to the District an annual fee, which will include the appropriate ditchrider fee and an operation and maintenance assessment equal to the operation and maintenance assessment of the District on Class one (1) lands within the District. The operation and maintenance portions shall be based upon an assessment of the benefit received. Charges will be set against all lands benefited hereby proportionately. Since all charges, including operation and maintenance are based on the number of irrigated acres, Cannon shall notify the District of the number of acres that have been irrigated by you with said waters each year. On or before April 1 of each year, the District shall advise Landowner in writing as to the annual fee due for that year, which transportation fee must be paid by Landowner on or before the 1st of May of each year. Failure of the Landowner to pay the annual transportation fee under this agreement, when due, whether or not water is delivered or is to be delivered to the District by Landowner for transportation by the District, shall constitute a substantial breach of this agreement and the agreement may be terminated by the District, without further notice

to the Landowner. Any transportation fee not paid when due shall bear a penalty of two percent (2%) and interest at the rate of one percent (1%) per month from the due date until paid.

8. No water rights, transmission rights, or ditch rights in the facilities of the District shall accrue to Landowner by reason of this agreement, the rights of landowner being fully contained herein, and landowner does hereby waive any other claims he may have. It is further understood and agreed that nothing in this agreement shall constitute a dedication or assignment to Landowner by District of the District's facilities and the rights of the District therein.

9. It is fully understood and agreed by the parties hereto that under no circumstances of whatsoever kind or nature shall the District at any time agree to the transportation of storage water for use by the Landowner on lands that are not within the District.

10. Landowner covenants and agrees that the transportation loss in the transportation of Landowner's water under this agreement shall be the actual transportation loss at such times as the only water being transported in the District's moore Canal is the water of Landowner. In the event other water is being transported in the District's moore Canal at a time that water is being transported for Landowner by District under this agreement, the transportation loss in the transporting of Landowner's water shall be the actual transportation loss of water diverted in the District's moore Canal by Landowner. Transportation loss may be adjusted from time to time during the term of this agreement when it is determined by the district that the actual loss is greater or less than herein provided.

11. Landowner does hereby grant to the District the right of a designated employee of the District to go upon the real property of Landowner to be irrigated with the water transported under this Agreement, for the purposes of confirming the place of use of said water being transported under this agreement and the number of irrigable acres to which said water is or can be applied.

12. Any breach of any of the covenants or conditions contained herein shall constitute a material breach of this agreement and a default hereunder. Upon such default occurring, the non-defaulting party may terminate this agreement, upon giving the defaulting party ten (10) days written notice of said default.

13. This agreement shall be for term of twenty (20) years, beginning the 10th day of Dec. 1999, and shall remain in full force and effect until the 10th day of Dec. 1, 2020, unless terminated as herein provided.

14. Landowner agrees that no assignment or other transfer of this agreement may be made except for security purposes. In the event Landowner desires to assign this agreement to a lending institution as security for a farm loan, the District hereby agrees

to give its written consent upon ten (10) days written notice of said assignment. In the event Landowner desires to assign this agreement to a lending institution as security for a farm loan, the District hereby agrees to give its written consent upon ten (10) days written notice of said assignment. In the event said assignment is consented to by the District, Landowner agrees to continue to remain responsible and obligated under all of the terms, covenants and conditions of this agreement, and the assignee shall be bound by the terms hereof.

15. In the event District is required to file suit to collect the sums agreed to be paid by Landowner to District under this agreement, or to remedy any other breach of this agreement or to terminate this agreement, Landowner agrees to pay the District's costs and attorney fees incurred in said preceding.

16. This document constitutes the full agreement of the parties hereto, and no amendments or changes hereto may be made unless in writing and duly signed by each of the parties hereto.

17. Landowners agrees that all water transported shall be delivered pursuant to a water right appurtenant to the place of use and shall only be delivered to such places and in such amounts as authorized by water rights recognized by the State of Idaho Department of Water Resources.

IN WITNESS WHEREOF, the parties have hereto set their hands the day and year first above written.

BIG LOST RIVER IRRIGATION DISTRICT

By: M. Todd Perkins
Chairman of the Board

ATTEST:

[Signature]
Secretary

LANDOWNER

Alan M. Cannady
Kurt Neer

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, 19____,
before me the undersigned Notary Public in and for said State, personally appeared
_____ and _____, known to me to be
the Chairman of the Board and Secretary of Big Lost River Irrigation District,
respectively, and acknowledged to me that they executed the same on behalf of said
irrigation district.

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

(SEAL)

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 34-00618

1999 FEB 19 PM 4:02
DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

NAME AND ADDRESS: EVERETT T ACCOR JR.
ROUTE 1 BOX 13
MOORE, ID 83255

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 3.20 CFS

PRIORITY DATE: 09/01/1884

POINT OF DIVERSION: TOSH R26E S04 NESESE Within Butte County

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 05-01 TO 10-15 3.20 CFS

PLACE OF USE: Irrigation Within Butte County
T04N R26E S04 LOT 02 (NWNE)36.0 SWNE 36.0
SENE 32.0 LOT 01 (NENE)35.0
139.0 Acres Total

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 2307 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-12376, 34-02426C,
34-07080B, 34-07121A, 34-07121B, 34-07092, 34-07179, 34-07077,
34-07120, 34-02330B, 34-00892C, 34-00256 AND 34-00416.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION
FEB 19 1999
[Signature]
SPECIAL MASTER

Barry Wood
Administrative District Judge
Interim Presiding Judge of the
Snake River Basin Adjudication