

**STARTING
LEFT
SIDE OF
FILE**

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code:

No. of Additional Sheets Presented: **One**

Maturity Date 3. (Optional): **5 years**

1. Debtor(s) (Last Name First) and Address(es):

**Janice Jeppesen
Merle Jeppesen
434 Morgan
Rexburg, ID 83440**

2. Secured Party(ies) Name(s) and Address(es):

**Systems Leasing Trust No. IV
Box 632
Valley, Nebraska 68064**

4. For Filing Officer: Time, Date, No., Filing Office

5. The Financing Statement Covers the Following Types (or Items) of Property:

**2 Model 5871 Valley Corner Systems, 8 Tower, 1264' installed
SEE ATTACHED EXHIBIT "A"**

6. ☐ To be Recorded in Real Estate Mortgage Records

☒ Proceeds—

☐ Products of the Collateral are Also Covered:

7. Description of Real Estate:

8. Name(s) of Record Owner(s):

9. Assignee(s) of Secured Party and Address(es)

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check ☒ if so)

- ☐ already subject to a security interest in another jurisdiction when it was brought into this state, or
☐ which is proceeds of the following described original collateral which was perfected:

**First National Bank of Omaha, &
Harold Kosowsky, Co-Trustees
One First National Center
Omaha, NE
SYSTEMS LEASING TRUST NO. IV**

K. Merle Jeppesen and Janice Jeppesen

By _____
Signature(s) of Debtor(s)

By _____
Signature of Secured Party
Vinda Tashand

**(5) FILE COPY - BORROWER
FORM 801**

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8. Name(s) of Record Owner(s):

**Janice, Molly, Julie, Kevin,
Cory, & Garen Jeppesen**

9. Assignee(s) of Secured Party and Address(es)

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Signature(s) of Debtor(s)

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Signature of Secured Party
Vinda Tashand

**(5) FILE COPY - BORROWER
FORM 801**

MICROFILMED

THE CENTRAL NATIONAL INSURANCE
COMPANY OF OMAHA
(A Stock Company)
Omaha, Nebraska
(Hereinafter called the Company)
CERTIFICATE OF INSURANCE

CA 159 94 34

Certificate No. CA 159 94 34 Replacing Certificate No. _____

Lease or Installment Sales Agreement covered hereunder dated May 8, 1980

Term: 120 months Original Sales Price: \$91,000.00

Name & Mailing Address of Lessee or Purchaser: SYSTEMS LEASING TRUST NO. IV and Merle & Janice Jeppesen,
434 Morgan, Rexburg, ID 83440

Location of Premises of Original Installation: S1N1, N1S1 Sec. 20, T5n, Range 41E, Madison County,
Idaho

Lease or Agreement No. S-1227 * Installment Sales Contract No: _____ **

Other Interest including Mortgagee Name and Address: First National Bank of Omaha, & Harold Kosowsky,
Co-Trustees, One First National Center, Omaha, NE

Description of Property Covered:

2-Model 5871 Valley Corner Systems, 8 tower, 1264', installed.

SN 30147, 30148

~~XXXXXXXX~~

Insurance Premium \$5,460.00

NOTICE: In the event of a loss, please report your claim to:
VALMONT FINANCIAL, Claim Division, Box 632, Valley, Nebraska 68064 Tele. No. 402-359-2201

This certificate of insurance is issued pursuant to the terms of Policy No. CA 1599301 issued to Valmont et. al., which policy insures the above described covered property against all risk of physical damage on loss subject to all terms, conditions and agreements of the forementioned policy. Terms of said policy are available for inspection upon request to Valmont's offices. Each claim submitted under this policy is subject to a deductible of \$200.00.

*If coverage is provided pursuant to a lease agreement, than this certificate is issued as a matter of information only and confers no right on the Lessee.

**If coverage is provided under an installment sales agreement, this certificate certifies that the Company does insure Valmont et. al. and the additional interest shown above subject to all terms, conditions and agreements of the policy number shown above.

Date Issued: 5-8-80

E. Benjamin

Authorized Representative of the Company

CN 8849

(Exclusions on the reverse side hereof)

ORIGINAL COPY

MICROFILMED

Systems Leasing



P.O. BOX 632 • VALLEY, NEBRASKA 68064 • (402) 359-2274

RETURN RECEIPT REQUESTED

May 8, 1980

Mr. & Mrs. Merle Jeppesen
434 Morgan
Rexburg, ID 83440

NOTICE OF ASSIGNMENT OF RENTS IN
RESPECT OF LEASE NUMBER S- 1227

Gentlemen:

We are writing to inform you that the Lease referred to above between you and Systems Leasing Trust No. IV and all rentals and other sums due and to become due thereunder (other than amounts payable by you pursuant to Section 5 and Section 8 thereof), have been assigned, in the normal course of business, to the First National Bank of Omaha and Harold Kosowsky as Security Trustees, as security for payment of certain loan certificates issued by the Trust. Accordingly, you are hereby authorized and directed, until notified to the contrary by the Bank, to make all of the assigned payments directly to the Bank, at the following address:

First National Bank of Omaha
P. O. Box 3128
Omaha, Nebraska 68103

Attention: Corporate Trust Division

Copies of all notices you are required by the Lease to send to the Lessor should be sent to First National Bank of Omaha at the above address.

Please acknowledge your receipt of this Notice and indicate your agreement with the foregoing by signing the enclosed copy where indicated and return it to the First National Bank of Omaha in the enclosed envelope.

FIRST NATIONAL BANK OF OMAHA
Security Trustee

SYSTEMS LEASING TRUST NO. IV

By [Signature]
Trust Officer

By [Signature]
Controller

[Signature]
Security Trustee

Acknowledged and Agreed to:

Lessee(s)

Dated: _____, 1979

MICROFILMED

Systems Leasing



P.O. BOX 632 • VALLEY, NEBRASKA 68064 • (402) 359-2274

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Security Trustee

By [Signature]
Trust Officer

[Signature]
Security Trustee

SYSTEMS LEASING TRUST NO. IV

By [Signature]
Controller

Acknowledged and Agreed to:

Lessee(s)

Dated: _____, 1979

MICROFILMED

IRRIGATION PUMPS
& SPRINKLERS

ESTIMATE & AGREEMENT

STEEL, ALUMINUM PIPE
VALLEY SELF-PROPELLED
CIRCULARS

GEM STATE IRRIGATION, INC.

BOX 351

SOUTH YELLOWSTONE HWY.

REXBURG, IDAHO 83440

PHONE 356-9318

TO Merle Jeppesen	DATE March 20, 1980	COMPLETION DATE
BID: WE HEREBY PROPOSE TO FURNISH MATERIAL AND LABOR TO COMPLETE THE WORK OUTLINED HEREIN FOR THE SUM OF:		
DOLLARS \$		
PAYMENT TO BE MADE AS FOLLOWS:		

WE HEREBY SUBMIT SPECIFICATIONS AND BID FOR:

QUANTITY	STOCK NUMBER OR DESCRIPTION	AMOUNT
2	Model 5871 Valley Corner Systems, 8 Tower, 1264' with end gun shut-off, stop-in-slot, 8 sets high flotation tires, 1 set maxi float tires, pivot flex, running light, Nelson PC 100 end gun, freight, erection, wiring, pivot pad, pivot tie-in.	91,500 ⁰⁰
2352'	12" AWP 12 Ga. installed 200 ft more 10 ⁰⁰ / 2000 ⁰⁰	
2928'	10" AWP 12 Ga. installed	
2	10" Wye T's, 4-10" Goosenecks, 1-8" Gooseneck,	
4	8 x 6 Reducers, 2-10" x 12" Reducers	
1	10" Butterfly valve, gear op, install owner 10" valve	
1	6" Butterfly valve, gear op	
2	6" Rainbird valves, electric. Owner bring-in 1200 Bowl and 12 DC Bowl	
2	Change head shafts for 1200 Bowl and 12DC Bowl	
1	Disassemble both pumps, add 1 stage to each bowl, new bowl shafts	
1	200 H.P. Motor installed	
1	150 H.P. Motor installed	Sub Total: \$129,110.00
	POWER CABLE INSURANCE	5460 ⁰⁰
2400'	#1-0 Power cable installed (from edge of field to #2)	134,500.00
2960'	#2 Power cable installed (from #2 to #3 pivot)	
1	Junction box at pivot #2	
1	Booster transformer at Pivot #3	
1	Disconnect installed	Sub Total: \$8,430.00
	PANELS	
1	200 H.P. Panel with L.A., S.C., PH.F., U.R., Press Switch	
1	150 H.P. Panel with L.A., S.C., PH.F., U.R., Press Switch	
1	200 H.P. Panel installed	
1	150 H.P. Panel installed	Sub Total: \$5,860.00
	141,400 ⁰⁰	
	91,000	
	50,400	
	Grand Total	146,860 ⁰⁰
		\$141,400.00

MICROFILMED

TERMS: 10TH OF MONTH FOLLOWING DATE OF PURCHASE. Without grace for value received, I promise to pay to the order of Seller the above mentioned amounts, payable as hereinabove set forth. I agree that title to the merchandise hereinabove set forth shall at all times remain in the Seller's name, until this note is fully paid, and in if the same be placed with an attorney for collection or suit, I agree to pay a reasonable attorney's fee. If not paid at maturity, this note shall thereafter draw interest at the rate of 12% per annum until paid. Upon failure of the part of the purchaser to make payments, as herein specified, the Seller may repossess said property wherever found. Property shall not be moved from premises without consent of Seller.

No. 5503	DATE 3/20/80	SIGNED <i>[Signature]</i>	ACCEPTANCE OF BID
	THE ABOVE SPECIFICATIONS, TERMS AND CONTRACT ARE SATISFACTORY, AND I/WE HEREBY AUTHORIZE THE PERFORMANCE OF THIS WORK.		
THIS BID VOID AFTER 30 DAYS FROM DATE UNLESS ACCEPTED BY SIGNATURE AT RIGHT			SIGNED <i>[Signature]</i> DATE 3-20-80

CUSTOMER'S COPY

4025 # B

Electric Service Agreement

K. Merle Jeppesen, an individual, herein called Customer agrees to use, and UTAH POWER & LIGHT COMPANY, herein called Company agrees to supply electric service to the amount of 350 kilowatts, in the form of phase alternating current, at approximately 60 cycles per second and 240/480 volts for Customer's irrigation pump operation at or near Rexburg in Madison County, State of ID, under the provisions of the Company's Schedule No. 10, Tariff No. 15, and for a term of 10 years from date of commencement of services hereunder.

All power and energy delivered hereunder shall be paid for by Customer under said Schedule No. 10 or any effective superseding rate schedule filed with the regulatory authorities having jurisdiction. This Agreement shall in all respects be subject to the applicable provisions of such rate schedule and to the Company's Electric Service Regulations, copies of which are available at the Company's offices.

It is understood and agreed that the initial date of delivery of power and energy under this agreement is subject to the Company's ability to obtain required labor, materials, equipment, rights-of-way and compliance with applicable governmental regulations.

In order more fully to express the agreements of the parties, and the terms and conditions of service hereunder provided, an extension as defined in Electric Service Regulation No. 10 is necessary to meet Customer's requirements and said Regulation is hereby made a part hereof. It is, therefore, provided that:

(a) In consideration of the special investment by the Company to supply service hereunder, Customer guarantees net minimum annual payments for service under the provision of said Electric Regulation No. 10 in the sum of \$ 9,700.00 payable each year for five years beginning with commencement of service or 60 days after extension is completed, whichever occurs first, without regard to the amount of electric energy actually consumed.

(b) The Company acknowledges receipt from the Customer of \$8,084.00, which sum has been advanced and will be credited in accordance with said Electric Service Regulation No. 10.

(c) Customer acknowledges that service supplied hereunder may be curtailed by Company during any or all of the hours between 7 a.m. and 7 p.m. on not more than one (1) day per calendar week during irrigation season.

Company reserves the right to solely designate the day on which service will be curtailed.

7-44-10-17-1980

Dated April 17 1980

K. Merle Jeppesen

Attest or Countersigned

Customer

UTAH POWER & LIGHT COMPANY

By (signed) J. C. Taylor

Title

Vice President

MICROFILMED

UTAH POWER & LIGHT COMPANY
P. O. Box 130
Rexburg, Idaho

August 8, 1980

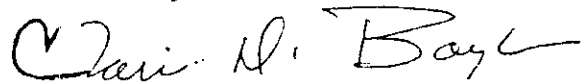
Mr. K. Merle Jeppesen
434 Morgan Dr.
Rexburg, Idaho 83440

Dear Mr. K. Merle Jeppesen:

Enclosed is a copy of our current rate schedule and contract for your line extension, which have been signed by an authorized Representative of Utah Power & Light Company. Please keep this copy in case you have any questions in the near future.

Thank you.

Sincerely,



Clair D. Boyle
Rexburg Division Customer
Service Manager

CDB/cs
cc

MICROFILMED

FEDERAL LAND BANK ASSOCIATION OF REXBURG

P. O. BOX 157 217 N. 2ND EAST REXBURG, IDAHO 83440

TELEPHONE: (208) 356-4442



LEE B. BOYLE, MANAGER

March 31, 1980

Mr. K. Merle Jeppesen
434 Morgan
Rexburg, Idaho 83440

Dear Merle:

This letter is to inform you of the official approval of your recent loan application in the amount of \$53,500 under the following loan conditions:

1. The loan is for a term of 20 years on 200 acres with \$2,675 in Federal Land Bank Association stock.
2. A 30 foot wide right of way over land owned by the applicant for access from county road to the security to be included in the mortgage with evidence of title. The access will be described as the North 30 feet of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of section 30, township 5 North, Range 41 East, Boise Meridian,
3. Those to sign the note and mortgage: K. Merle and Janice Jeppesen.
4. Loan proceeds to be disbursed for the purposes shown on the application, namely for other improvements \$50,010; loan costs \$815; stock \$2,675.

This loan will be closed in accordance with the Bank's variable rate plan under which the interest rate is subject to change and is subject to closing within 60 days from the date of approval. (3-28-80)

We will notify you upon receipt of your mortgage papers so you and your wife can come in and sign them.

Sincerely,

A handwritten signature in cursive script, reading "Eileen Siddoway".
Eileen Siddoway
Office Assistant



SERVING MADISON, FREMONT, AND TETON COUNTIES

MICROFILMED

Federal
LAND BANK
(Association)

ISSUED ON		
05	01	84

LOAN NUMBER
0183465-2-0

PLEASE MAIL TO

K MERLE JEPPESEN
434 MORGAN
REXBURG ID 83440

FLBA OF REXBURG
217 N SECOND EAST
P O BOX 157
REXBURG ID 83440

REMITTANCE AMOUNT

DETACH ON PERFORATION AND FORWARD TOP PORTION WITH REMITTANCE IN ENCLOSED ENVELOPE

KEEP THIS PORTION FOR YOUR RECORDS
THE FEDERAL LAND BANK
OF SPOKANE

IF THIS STATEMENT DOES NOT AGREE WITH YOUR RECORDS, NOTIFY

DISTRICT INTERNAL AUDITOR

WEST 601 FIRST AVE TAF-C4, SPOKANE WA 99220

DAY		YR.	DESCRIPTION	ISSUED ON	MO.	DAY	YR.	BILLING RATE	ASSOCIATION	LOAN NUMBER
07	83		BALANCE BROUGHT FORWARD	05	09	84		11.75	103-1	0183465-2-0
01	84		INT- 11 MONTHS AT 11.75%					5,481.71		
01	84		INT- 1 MONTHS AT 12.00%					508.94		
01	84		ANNUAL INSTALLMENT						7,064.44	
NEW BALANCES THIS STATEMENT								5989.65		

ADD 2.69822 PER DAY IF PAYMENT RECEIVED AT FLBA AFTER

6/01/84

TOTAL AMOUNT DUE

7,064.44

MICROFILMED



Box 632

VALLEY, NEBRASKA 68064
Area Code (402) 359-2274

S-1227

LEASE NUMBER

TERMS AND CONDITIONS OF LEASE

§1. **LEASE.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon the terms and conditions described herein, the Equipment described above, which along with all replacement parts, additions and accessories incorporated therein or affixed thereto, shall herein be referred to as the "Equipment".

52. **TERM.** The initial term of this Lease shall commence on the starting date set forth above and, subject to the terms hereof, shall continue to the expiration of the number of months set forth above. The starting date shall be deemed the date of installation of the Equipment. Lessee hereby authorizes Lessor to insert such starting date and other rental payment dates hereon at any time thereafter.

§3. LESSOR'S DISCLAIMER OF WARRANTY. The Lessee acknowledges that: (i) THE EQUIPMENT IS A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE LESSEE; (ii) LESSOR IS NOT A MANUFACTURER THEREOF, NOR A DEALER IN PROPERTY OF SUCH KIND; (iii) NEITHER THE MANUFACTURER OF THE EQUIPMENT NOR ANY DEALER NAMED ABOVE IS AN AGENT OF LESSOR OR AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS LEASE; AND (iv) LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHATSOEVER AS TO TITLE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR OTHERWISE REGARDING THE EQUIPMENT OR ANY ITEM THEREOF. It is expressly agreed that the only warranties, express or implied, which attach to the Equipment are those warranties which are made by the manufacturer of the Equipment. Lessor hereby assigns to Lessee during the term of this Lease, and Lessee hereby accepts, any and all dealer and manufacturer warranties with respect to the Equipment, copies of which are delivered to Lessee at the time of the execution of this Lease or prior thereto, receipt of which is hereby acknowledged by Lessee. No defect in, unfitness of, or inability of Lessee to use any Equipment, howsoever caused, shall relieve Lessee from its obligation to pay rentals hereunder, or from any other obligation of Lessee hereunder. Lessor shall not, in any event, be responsible to Lessee for any damages, direct, consequential or otherwise resulting from the delivery, installation, use, operation, performance or condition of any Equipment or any delay or failure by the dealer in delivering or installing any Equipment or performing any service for Lessee.

THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ABOVE AND ON THE REVERSE SIDE WHICH ARE HEREBY MADE A PART HEREOF AND WHICH LESSEE ACKNOWLEDGES THAT IT HAS READ. THIS LEASE IS NON-CANCELLABLE BY LESSEE AND SHALL NOT BE BINDING ON LESSOR UNTIL IT HAS BEEN ACCEPTED BY OR ON BEHALF OF LESSOR.

THIS LEASE MAY BE ASSIGNED TO A SECURITY TRUSTEE AND ONLY THAT COUNTERPART HEREOF LABELED "ORIGINAL" SHALL BE EFFECTIVE BY DELIVERY TO TRANSFER ANY RIGHTS OF LESSOR HEREUNDER TO AN ASSIGNEE.

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER DISTRICT NO. 1

John V. Evans
Governor

C. Stephen Allred
Director

150 Shoup
Idaho Falls, Idaho 83401
(208) 525-7172

April 10, 1981

K. Merle Jeppeson

IN ACCOUNT WITH:

Water District No. 1
150 Shoup
Idaho Falls, Idaho 83401

Estimated delivery of 1,030 24-hr. second feet
of water during:

the 1981 irrigation season. \$ 49.40

RONALD D. CARLSON
WATERMASTER

JD 5-10-81

MICROFILMED



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

November 8, 1984

Mr. K. Merle Jeppesen
434 Morgan Drive
Rexburg, ID 83440

Dear Mr. Jeppesen:

I have researched our records for a water right filed in the 1960's by Keith and Elmo Jeppesen for the use of water from Moody Creek which included the following lands:

T. 5 N., R. 41 E.

Sections 16, 17, 20, 21

The water right you refer to in your letter of October 28 appears to be the filing made September 13, 1960. However, Permit No. 29036 lapsed through failure of the holder to make proof of completion of works due September 21, 1965; and the permit is considered to be of no further force or effect.

Enclosed is a microfilm copy of the permit and order of cancellation. Included is a billing for our copying fee.

If you have any questions or need further assistance, please do not hesitate to contact us here at State Office or our regional office in Idaho Falls.

Sincerely,

ROBERTA GARRETT
Records Supervisor

RG:rg

Enclosures

MICROFILMED

STAT IDAHO
Department of Water Resources

Nº 13965

Boise, Idaho, April 29, 1980

RECEIVED FROM

Merle Jeppson of Shoup
Charity-Joe & Dallas

35 00
DOLLARS

FOR

<i>Tranzer</i>	\$	35	00
	\$		
	\$		
	\$		
	\$		
TOTAL - - -	\$	35	00

Merle Jeppson

IRCES

Shoup
Idaho 83401
25-7172

K. Merle Jeppson

IN ACCOUNT WITH:

Water District No. 1
150 Shoup
Idaho Falls, ID 83402

Estimated delivery of 515 cfs/days of
water during:

the 1982 irrigation season	\$	28.31
the 1981 adjusted billing	\$	-0-
TOTAL	\$	28.31

RONALD D. CARLSON
Watermaster

pd-3-82
MICROFILMED

Systems Leasing



P.O. BOX 632 • VALLEY, NEBRASKA 68064 • (402) 359-2274

May 8, 1980

Mr. & Mrs. Merle Jeppesen
434 Morgan
Rexburg, ID 83440

Re: Lease #S-1227

Enclosed, Mr. & Mrs. Jeppesen,

. . . are your copies of the documentation for your Systems Leasing Trust No. IV lease including:

1. Executed copy of Systems Leasing Trust No. IV lease
2. Executed and filed copies of the Uniform Commercial Code Financing Statements (2)
3. Certificate of Insurance covering the leased equipment
4. Notice of Assignment of Rents

The purpose of the Notice of Assignment of Rents is to advise you, as one of our lease customers, where your future rental payments are to be made, as required under an agreement between Systems Leasing Trust No. IV and it's lenders. Naturally, all warranties and termination options relating to your equipment and lease remain unchanged. Therefore, we will be most appreciative if you will . . . as verification of receipt of this notice . . . execute and return it in the self-addressed envelope provided.

We are pleased that you have chosen to lease your system from Systems Leasing Trust No. IV and we want to take this opportunity to wish you the very best in the coming years. If we may be of any service to you, please do not hesitate to contact us.

Sincerely,

SYSTEMS LEASING TRUST NO. IV

Vickie Carroll/cw

Vickie Carroll

Enc.

MICROFILMED

AFFIDAVIT

JUN

STATE OF IDAHO,)
 ss.
County of Madison.)

KEITH L. JEPPESEN, being first duly sworn, states under oath as follows:

1. I am a resident of Madison County, Idaho, and testify as to matters within my personal knowledge.

2. In the summer of 1965, I began gathering bids to place a watering system on some of the land in Permit No. 29036 issued by the Department of Water Resources.

3. In 1965, my son, K. Merle Jeppesen, also acquired a water right on lands in the Moody area of Madison County, Idaho.

4. A system of pumps, pipe and handlines was placed on portions of the land covered by said permit and Merle Jeppesen watered lands with his right and also watered certain of said lands under my right.

5. I never received a copy of or notice of a letter written by the Department of Water Resources to my brother, Elmo Jeppesen, and he never mentioned he was going to allow the right to expire. During all these years, we have assumed that we were using our right in accordance with Permit No. 29036.

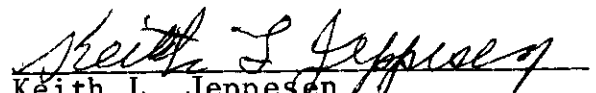
6. Recently, when Merle Jeppesen inquired of the Water Resources Department in Boise, Idaho, to receive a copy of our permit, he was surprised to learn that said permit had lapsed.

MICROFILMED

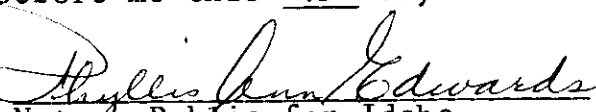
7. I make this affidavit in support of the claim to a water right for K. Merle Jeppesen, and ask for reinstatement of Permit No. 29036 issued by the Department of Water Resources in 1965.

8. The point of diversion used is in the Southeast Quarter Northwest Quarter of Section 21, Township 5 North, Range 41 East, Boise Meridian, Madison County, Idaho, and water is used on the following acreages and sections of Sections 16, 20 and 21, in said Township and Range:

Acreage	Location	Section
30 Acres	Southwest Quarter Southwest Quarter	16
160 Acres	Northeast Quarter	20
80 Acres	South Half Northwest Quarter	20
80 Acres	North Half Southwest Quarter	20
80 Acres	North Half Southeast Quarter	20
40 Acres	Northwest Quarter Northwest Quarter	21
40 Acres	Southwest Quarter Northwest Quarter	21
20 Acres	Northwest Quarter Southwest Quarter	21


Keith L. Jeppesen

SUBSCRIBED AND SWORN To before me this 25th day of June, 1985.


Thyllis Ann Edwards
Notary Public for Idaho
Residing at: Rexburg, Idaho
My Commission is for Life

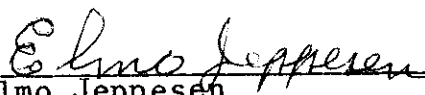
MICROFILMED

AFFIDAVIT

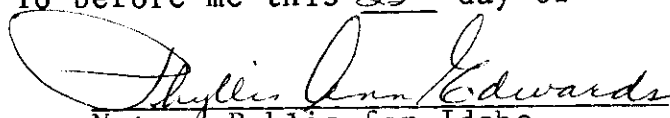
STATE OF IDAHO,)
 ss.
County of Madison.)

ELMO JEPPESEN, being first duly sworn, states under oath as follows:

1. I am a resident of Madison County, Idaho, and testify as to matters within my personal knowledge.
2. I make this affidavit in support of the claim to a water right for K. Merle Jeppesen.
3. K. Merle Jeppesen began irrigating portions of his lands in Sections 16, 20 and 21, Township 5 North, Range 41 East, Boise Meridian, Madison County, Idaho, in 1966.
4. He rotated crops of grain and potatoes on these acreages, following farming practices in the area.

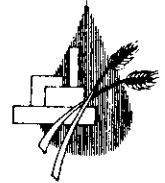

Elmo Jeppesen

SUBSCRIBED AND SWORN To before me this 25th day of June, 1985.


Notary Public for Idaho
Residing at: Rexburg, Idaho
My Commission is for Life

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM TO A WATER RIGHT



Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that K. Merle Jeppesen

434 Morgan Drive, Rexburg, Idaho		(Name of Claimant)	83440	Telephone No.	356-3638
(Mailing Address)		(Zip Code)			

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) July 15, 1965

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Moody Creek tributary to Teton River, tributary to Snake River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, af)		(Domestic, Irrigation, Stock, Etc.)		(Both dates inclusive)	
				(Mo., Day)	(Mo., Day)
Quantity	<u>1.0</u>	Use	<u>irrigation</u>	Period of Use From <u>4-1</u>	To <u>11-1</u>
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To

(4) 4.0 c.f.s TOTAL QUANTITY USED.
(cfs, af)

(5) A) Point of diversion: (Location of point where water is diverted from its source)

SE ¼ NW ¼, Sec. 21 Twp. 5 N. Rge. 41 E.B.M., County of Madison

Additional points of diversion:

None

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Existing pump, switch panel, mainline, together with extension of mainline and sprinkler pipes used in connection with Permit No. 29036.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]No. of acres **530**

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered:

(7) If you are claiming water as a member of an organization, list name of organization:

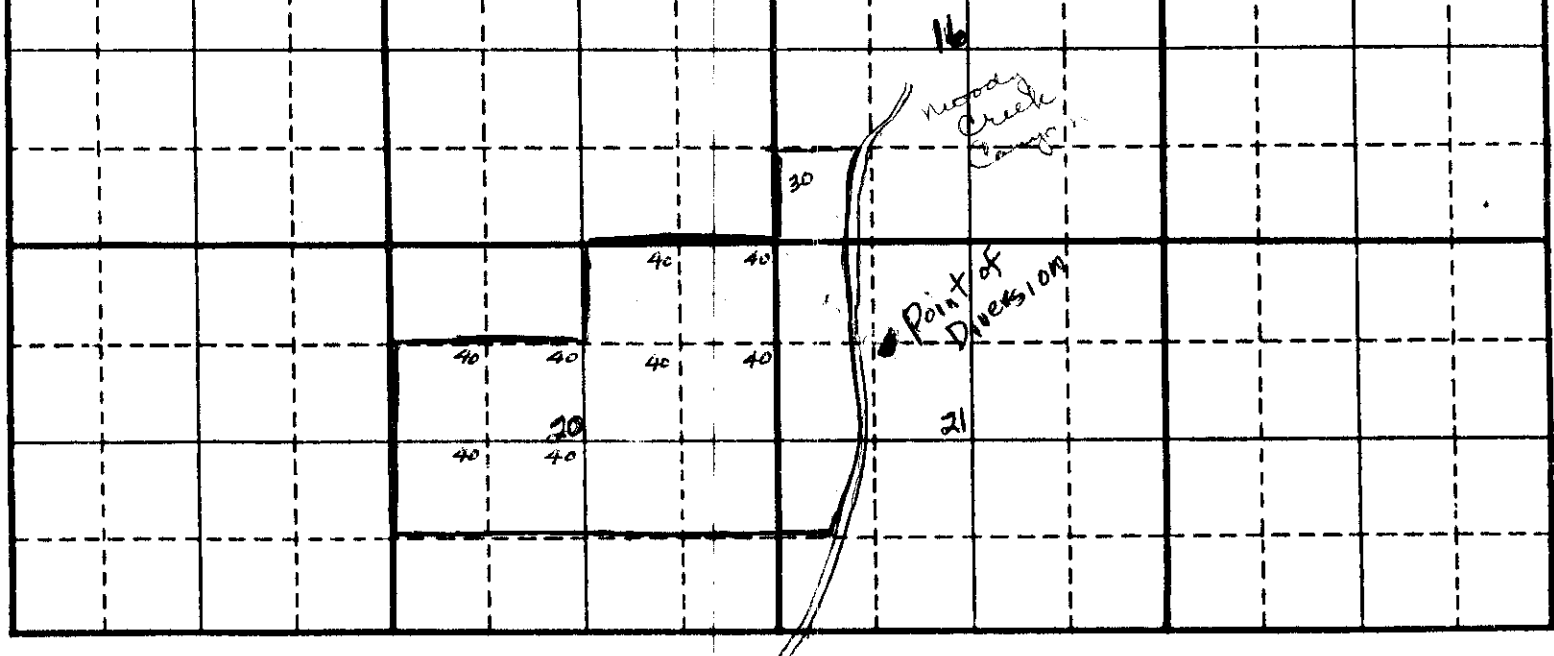
MICROFILMED

(8) Remarks The above-described acreages have been irrigated since June 1965 from a pump and irrigation system located at the point of diversion shown below as described in State of Idaho Permit No. 29036. Therefore, Applicant claims the benefit of the provisions contained in paragraph 7.D of the Swan Falls Framework Contract executed by the Governor and Attorney General of the

State of Idaho and the Idaho Power Company, and reserves the right under any present or future Department of Water Resources Rules and Regulations, legislation, and adjudication proceedings involving the Snake River and its tributaries to have "grandfathered" said right as of June, 1965.

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Township 5 North, Range 4 E. B. M.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Madison) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 25th day of June, 1985.

K. Merle Jeppesen
K. Merle Jeppesen (claimant)

Thyllie Ann Edwards
Notary Public for Idaho
Residing at Rexburg, Idaho

My commission expires Life

Received by CW Date 6-27-85 Exception filed by: _____ Date _____
Prelim. check by CW Date 9-10-85 #3491
\$30.00 fee received by CW Date 9-10-85
Published in Star-Tribune Suburban
Dates 9/19 + 9/29/85

29036

RECEIVED

JUN 27 1985

Department of Water Resources
Laramie District Office

To Appropriate the Public Waters of the State of Idaho

Application For Permit

J. Elmo Jeppesen
Rt. #2,
Rexburg, Idaho.

APPLICATION No. 37004
PERMIT No. 29036
DISTRICT No.

1. Name of Applicant: J. Elmo and Keith Jeppesen

Postoffice address: Rexburg

County: Madison

State: Idaho

2. If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of capital stock:

(c) Amount paid in:

(d) Names and addresses of directors:

3. The financial resources of the applicant are:

(a) Cash on hand:

(b) Treasury stock:

(c) Bond to be issued:

(d) Other resources:

4. Quantity of water claimed: 8.0

cubic feet per second.

5. Source of water supply: Moody Creek

which is a tributary of Teton River

6. Location of point of diversion:

corner of Section T. R. E. M. and is in the

feet distant from the NW 1/4 Sec. 16 SE 1/4 Sec. 21

of section T. 5 N. R. 41 E. B. M. County of Madison

7. Water is to be used for Irrigation

8. If for mining, milling, power or manufacturing purposes, give:

(a) Point of use of water

feet distant from

corner of Section

T. R. B. M. in the

of Section of

T. R. B. M.

(b) Amount of power generated:

H.P. under

feet head.

(c) Water is to be returned to

at a point

feet

distant from the

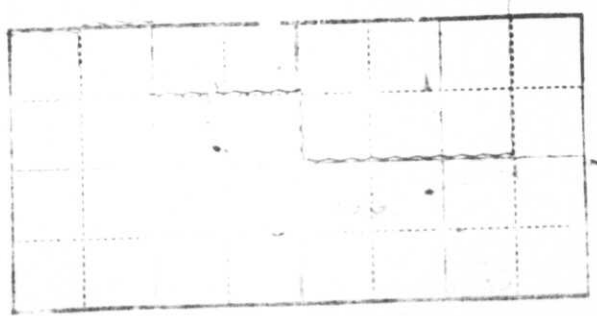
corner of Section

of Section

T. R. B. M. in the

T. R. B. M.

9. Estimated cost of works: \$ 50,000



T. R. B.M. in the of Section of T. R. B.M.

(b) Amount of power generated:

H.P. under

feet head.

(c) Water is to be returned to

at a point

feet

distant from the corner of Section

T. R. B.M. in the

T. R. B.M.

7. Estimated cost of work: \$ 50,000

8. Kind of work: **Pumps, pipe and sprinkler system**

9. Height of dam **none**

feet; length of dam at top

feet; length of dam at bottom

feet; material used in dam:

10. Size of headgate: Width

feet; height

feet.

11. Ditch: Width at bottom

feet; width at water line

feet; depth of water

feet;

dimensions of flume:

Diameter of pipe **4 to 12**

inches; length of conduit

5

miles.

Average grade per mile

feet

12. The time required for the completion of such work is 5

years.

13. The time required for the complete application of the water to the proposed use is

6

additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. Existing water rights and or valid permits appurtenant to the lands to be irrigated are:

None

16. (a) Is reservoir to be used? **Not known** If so, fill in (b) and (c) below:
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

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

J. Elmo and Keith Jeppesen

Applicants

By **s/ J. Elmo Jeppesen**

Agent

Date of first receipt at Department of Reclamation: **11:00 A.M. September 13, 1960**

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is **29036**
Recorded in Book **102** Page **29036** Approved **September 21, 1960**

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$ **November 21, 1960** to be filed on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before **March 21, 1963**

The whole of said work to be completed on or before **September 21, 1965**
Beneficial use of water appropriated in accordance herewith, to be made on or before **September 21, 1971**

Witness My hand this **21st** day of **September, 1960**

s/ GEO. N. CARTER
State Reclamation Engineer

IN TESTIMONY WHEREOF, WE:

ROBERT E. SMYLIE

Governor of the State of Idaho

and **ARNOLD WILLIAMS**

Secretary of State of the State of Idaho, have caused this instrument to

be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this **21st**

day of **September**, 19 **60**
(Countersigned)

STATE OF IDAHO

(SEAL) By **s/ ARNOLD WILLIAMS**

By **s/ ROBERT E. SMYLIE**

Governor

REMARKS:

Reservoir application will be submitted if survey shows it is feasible

1. Introduction

ARNOLD WILLIAMS

Secretary of State of the State of Idaho, have caused this instrument to

be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 21st

219t

day of
September
1960

STATE OF IDAHO

(STAMP)
BY 9/ ARNOLD WILLIAMS

by S/ ROBERT E. SMYTHE

Schizothorax sinensis

6000000

REMARKS:

Reservoir application will be submitted if survey shows it is feasible

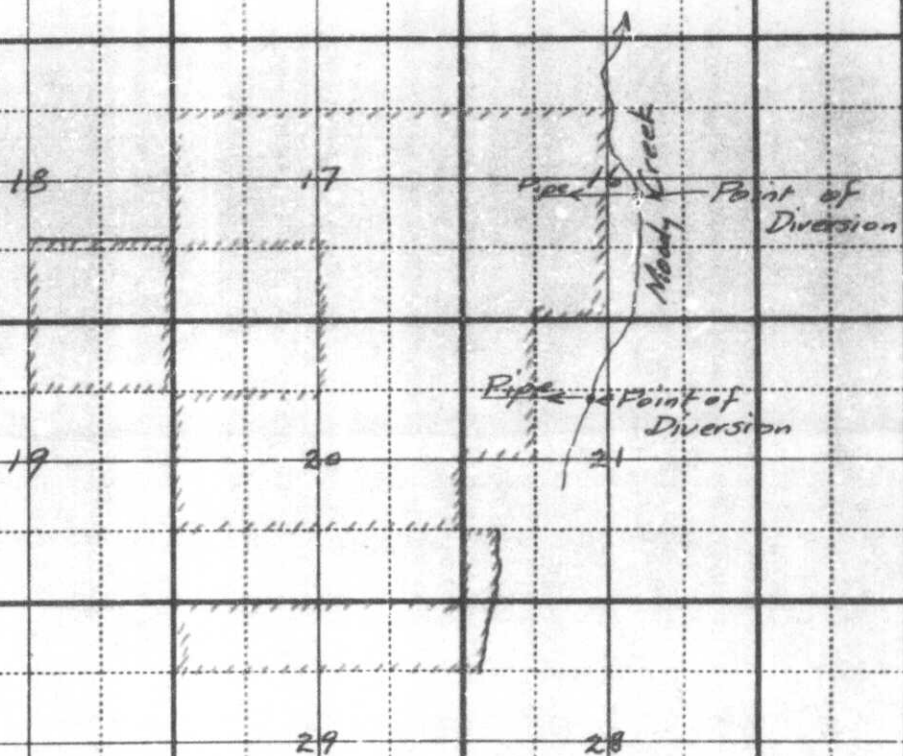
14

[illegible]

NAME OF APPLICANT J. Elmo and Keith Jeppesen

Form No. 0

R41E



Permit Map No. 29036
As Approved SEP 21 1960
GEO. N. CARTER
State Reclamation Engineer

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

IN THE MATTER OF CANCELLATION OF PERMIT }
TO APPROPRIATE THE PUBLIC WATERS OF THE }
STATE OF IDAHO NO. 29036 }

ORDER OF CANCELLATION

WHEREAS, Permit No. 29036 lapsed through failure of the holder to make proof of completion of works within the time specified in the Permit, to-wit:
Completion of Works Proof which was due September 21, 1965, and

WHEREAS, due notice was given the holder of said Permit that such proof would be due on the date above mentioned, and

WHEREAS, on October 21, 1965 notice was sent to the holder of said Permit to appear before the State Reclamation Engineer on or before 40 days to show cause why such Permit should not be cancelled, and

WHEREAS, the holder of said Permit has failed to comply with the said requirements, and that no showing has been made as to completion of the works under said Permit.

IT IS THEREFORE, hereby ordered that Permit No. 29036 be and the same is hereby cancelled and held for naught.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Department, at Boise, Idaho, this 14th day of January 19 66.

Carl P. Daffan
STATE RECLAMATION ENGINEER

29036

MICROFILMED

THE STANDARD/JOURNAL
REXBURG, IDAHO

AFFIDAVIT OF
PUBLICATION

STATE OF IDAHO }
County of Madison } ss

I, Terry Weatherston,
being first duly sworn, depose and say, that I am
the printer of THE STANDARD/JOURNAL, a bi-
weekly newspaper printed and published bi-
weekly at Rexburg, Madison County, Idaho; and I
do solemnly swear that the

Notice Of Claims To Water Rights

a copy of which notice appears attached here-
to, was published in the regular and entire issue
of said newspaper, and not in any

supplement issue thereof for 2
consecutive issues, the first publication hav-

ing been made on Sept. 19, 1985
and the last publication having been made

on Sept. 26, 1985.

Further, that said newspaper is one of general
circulation in said county; that it is a legal
newspaper, conforming to legal specifications
under the Idaho Statutes; that it has at least two
hundred bona fide subscribers living within the
county of publication; and that it has been
continuously and uninterruptedly published in said
county during a period of seventy-eight con-
secutive weeks prior to the first publication of the
said notice.

Terry Weatherston

~~~~~

Subscribed to and sworn to before me  
this Sept. 27, 1985

*Jeri Garner*  
Notary Public.

(SEAL)

My commission expires life

RECEIVED

OCT 4 1985

Department of Water Resources  
Eastern District Office

NOTICE OF CLAIMS  
TO WATER RIGHTS

The following claim(s) have been filed on  
water right(s) created by diversion and  
beneficial use:

22-4195  
JEPPESEN, MERLE K.  
434 MORGAN DRIVE, REXBURG, ID  
83440  
Source: MOODY CREEK trib. to TETON  
RIVER

Priority Date: 07/15/1965  
Diversion Pt: SENW Sec 21 T 05N R 41E  
Use: IRRIGATION (4.00 CFS)  
In: SWSW Sec 16 T 05N R 41E NENE  
NWNE SWNE SENE SWNW SENW NESW  
NWSW NESE NWSE Sec. 20 T 05N R 41E  
NWNW SWNW NWSW Sec 21 T 05N R  
41E FOR 530 ACRES.

Exceptions to a claim may be filed with  
the Director, Dept. of Water Resources, 150  
Shoup Ave., Suite 15, Idaho Falls, Idaho  
83402.

KEN DUNN  
Director

Publ. Sept. 19 and 26, 1985J.

MICROFILMED

**NOW  
STARTING  
RIGHT  
SIDE OF  
FILE**

**Friends of Moody Creek**

P.O. Box 610

Rexburg, ID 83440

July 13, 2006

Sent by fax to phone # 208-624-3990  
and by United States mail to:

Board of Directors  
Fremont-Madison Irrigation District  
P.O. Box 15  
St. Anthony, ID 83445

Dear Board of Directors,

This letter is a formal objection by concerned citizens united under the name of Friends of Moody Creek to the request for annexation to the Fremont-Madison Irrigation District by DKJ Farms, LLC or Merle and/or Janice Jeppesen or any other procedure or action that may be used by DKJ Farms, LLC or Merle and/or Janice Jeppesen to increase the volume of water they are taking from Moody Creek or increase the acres irrigated.

We understand that the June 8<sup>th</sup> deadline for submitting protests is gone, but as the attached documentation show we have been in protest for many years. We feel it was intentionally misleading to publish the Notice of Petition for Annexation under the name DKJ Farms, LLC since all prior transactions have been in K. Merle and/or Janice Jeppesens' name and due to a strong possibility we would not recognize the connection between K. Merle and Janice Jeppesen and DKJ Farms, LLC. This was not done in the spirit of providing public notice, but as an act of deception.

As Friends of Moody Creek, our objective is to preserve, protect and improve one of Madison County's priceless natural resources. Friends of Moody Creek believe protection and preservation of the cutthroat trout fishery found on Moody Creek is of utmost importance. Our forefathers treated Moody Creek with a great deal of respect and we believe that we must exhibit respect and discipline in order to pass this living natural resource on to future generations.

Moody Creek consistently ran dry in mid-irrigation season from 1999 to 2003. This was due to aggressive pumping by Jeppesens that quite literally dried up the creek and destroyed the cutthroat trout fishery that used to thrive there. In the spring and summer of 2004 a group formed by the Watershed Council monitored the streams flow above and below the Jeppesen pumping site and found that when they were carefully monitored and held to the restrictions imposed by the Idaho Dept. of Water Resources, there was adequate water in Moody Creek for them to pump their allotted water right and still not endanger the Moody Creek habitat.

Our concerns about Moody Creek have been raised with the Jeppesens and the Idaho Department of Water Resources many times in an attempt to ensure that Jeppesens only take from Moody Creek the volume of water permitted by their water right and to establish procedures and means to measure the volume of water taken by them. At the writing of this letter the Jeppesen's are still in violation of the stipulations and regulations set forth by the Idaho Department of Water Resources.

When Merle and Janice Jeppesen were initially granted a point of diversion water right revision, the Idaho Department of Water Resources required that certain conditions be met. Those conditions are:

- 1) Not more than 200 acres be irrigated with water from Moody Creek
- 2) Water usage be limited to 8 cfs from April 1<sup>st</sup> to June 20<sup>th</sup> each year
- 3) Water usage be limited to 4 cfs from June 21<sup>st</sup> to Nov 1<sup>st</sup> each year
- 4) Total diversion could not exceed 285 acre feet per annum
- 5) A totalizing meter was to be installed with a lockable control device to regulate the flow rates

The original transfers had safeguards built in; restrictions were stipulated that, if followed, would protect Moody Creek. We are concerned about the blatant disregard shown by the Jeppesens for the conditions and restrictions imposed by the Idaho Department of Water Resources as well as the resulting damage to Moody Creek's cutthroat trout population and fragile ecosystem. Of further concern is an application made in Statutory Claim no. 22-4195 for Merle and Janice Jeppesen through Woodmansee/Johnson to the Idaho Department of Water Resources to literally double their present water rights. We are deeply concerned about the impact such an increase in water rights would have on Moody Creek.

The Friends of Moody Creek are concerned that the request for annexation into the Fremont-Madison Irrigation District by DKJ Farms LLC or Merle and/or Janice Jeppesen is one more attempt by Jeppesen's to circumvent the limitations placed on them by the Idaho Department of Water Rights in the original transfer of water rights.

To enable Fremont-Madison Irrigation District to more fully understand the history of abuse of water rights and significance of our concerns about Moody Creek, copies of the following prior correspondence and other documents are enclosed with this letter:

Ref. #2 From IDWR - Approved application for transfer of water rights #2034  
 Ref. #3 From IDWR - Approved application for transfer of water rights #3002  
 Letter from Norman C. Young, IDWR to Merle or Janice Jeppesen dated 10/28/02  
 Letter from Friends of Moody Creek to Dave Tuthill, IDWR Dated 9/7/005  
 Letter from Gary Spackman, IDWR to Friends of Moody Creek Dated 01/25/06  
 Letter from Friends of Moody Creek to Gary Spackman, IDWR Dated 06/03/06  
 Notice of Petition for Annexation of Lands to Fremont-Madison Irrigation District

If you would like any additional information, please contact Friends of Moody Creek at the above address.

Sincerely,

FRIENDS OF MOODY CREEK

In order to expedite the execution and delivery of this letter by the undersigned members of Friends of Moody Creek, the undersigned agree that this letter may be signed in counterparts and delivered by facsimile transmission.

*Darlene Wood*  
*Ted Wood*  
*George R. Brown*  
*Jerry Wilson*  
*James W. Wood*  
*Jim Wood*  
*Dean Brown*  
*Steven J. Wood*  
*Teddie Wood Jr*  
*Corey Wood*  
*Jennifer Clauch*  
*Erin Wood*  
*Susie Wood*  
*Ross Parkinson*  
*Brian Hyman*  
*Jim Wilson*  
*R.G. Wood*  
*Kirk Shirley*  
*Marlene Shirley*  
*Donna Yates*  
*Doug Yates*  
*John M. Wood*  
*Richard S. Wood*  
*Kirk & Manette Shirley*  
*Phil & Pat Olsen*  
*David & Susie Wood*  
*Nathan Ashcraft*  
*Max & Marinda Barchie*  
*Johnne P. Webster*

Members of Friends of Moody Creek include:

James & Lyn Wood  
 George & Carol Brown  
 Corey & Erin Wood  
 Daniel & Jennifer Clauch  
 Rob & Sally Smith  
 Jim & Rita Smith  
 Steve & Darlene Wood  
 Kim Summers  
 Byron & Joann Webster  
 Dean & Diane Brown  
 Bud Summers  
 Doug & Donna Yates  
 Bart & Joann Webster  
 Teddie Wood Porter  
 Ross & Ruby Parkinson

W

RECEIVED

JUN 05 2006

DEPARTMENT OF  
WATER RESOURCES

*Friends of Moody Creek*

P.O. Box 610

Rexburg, ID 83440

June 3, 2006

Mr. Gary Spackman  
Idaho Department of Water Resources  
322 E. Front St.  
P.O. Box 83720  
Boise, ID 83720

Dear Mr. Spackman,

After our telephone conversation with you on the morning of June 1, 2006, the Friends of Moody Creek believe that Water District 01 and the Jeppesens are exhibiting blatant disregard for the stipulations set forth in a letter your letter dated January 25, 2006.

You mentioned that the Jeppesens attorney had called to tell you that they needed until April 1 to comply and that as of June 1<sup>st</sup> you still had no further communication from the Jeppesens attorney. It has come to our attention that instead of using this additional time to comply with Idaho Dept of Water Resources demands in the above mentioned letter, they have spent that time at the Department office in Idaho Falls attempting to circumvent the law! Again they are showing blatant disregard for the verbal agreement to comply by April 1 with the regulations set forth in your letter.

After the June 1<sup>st</sup> telephone call, Friends of Moody Creek called an emergency meeting. Committee members unanimously voiced their strong opinion that all pumping out of Moody Creek from the Jeppesen site should be shut down immediately!

We ask that your Department make that same demand in the letter that you promised to draft and send to concerned parties. Please send Friends of Moody Creek a copy of that letter.

We most certainly will be referencing these issues as well as others at the upcoming adjudication hearing.

Respectfully,

Friends of Moody Creek (see attachment)

Friends of Moody Creek

James & Lyn Wood  
George Brown  
Byron & Joann Webster  
Corey & Erin Wood  
Daniel & Jennifer Claunch  
Rob & Sally Smith  
Jim & Rita Smith  
Steve & Darlene Wood  
Kim Summers  
Ross & Ruby Parkinson  
Max & Marinda Barchie  
Nathan Ashcraft  
David & Susie Wood  
Phil & Pat Olsen  
Kirk & Manette Shirley  
John Bowen  
John M. Wood  
Richard S. Wood  
Bud Summers  
Doug & Donna Yates  
Bart & Joann Webster  
Teddie Wood Porter  
Dean & Diane Brown

Law Offices

**RIGBY, THATCHER, ANDRUS  
RIGBY, & MOELLER, Chartered**

Ray W. Rigby  
Gordon S. Thatcher  
G. Rich Andrus  
Jerry R. Rigby  
Michael S. Kam (1954-2001)  
Gregory W. Moeller  
Reed E. Andrus

P.O. Box 250  
25 North Second East  
Rexburg, ID 83440

Telephone: (208) 356-3633  
Fax: (208) 356-0768  
E-Mail: jrigby@rigby-thatcher.com

Idaho Department of Water Resources  
ATTN: Trent Galbraith  
900 N Skyline Drive, Suite A  
Idaho Falls, ID 83402-6105

RECEIVED

MAY 08 2006

DEPARTMENT OF  
WATER RESOURCES

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MAY 03 2006

Department of Water Resources  
Eastern Region

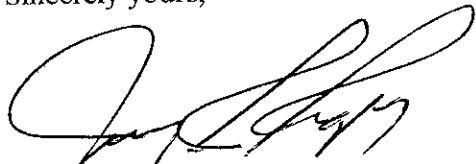
May 2, 2006

RE: Water Right Numbers: 22-7528, 22-7683, 22-265D, 22-265E, 22-2299A, 22-2299B, 22-4195, 22-7091, 22-7115, 22-13454, 22-13479, and 22-7195.

Dear Trent,

Please take notice that this firm represents BMJ Farms LLC, owned by Bevan Jeppesen, and DKJ Farms LLC, owned by Dallan Jeppesen, in the above entitled water rights. Please see that we are included in all future mailings and matters.

Sincerely yours,



Jerry R. Rigby

*Database updated - Keri Lynn - 5.19.06*

*Adj #'s  
updated 5/11/06  
Kmj*

*22-7528  
22-7683  
22-265D  
22-4195 ✓*



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

DIRK KEMPTHORNE  
Governor

January 25, 2006

KARL J. DREHER  
Director

FRIENDS OF MOODY CREEK  
PO BOX 610  
REXBURG ID 83440

Dear Friends of Moody Creek:

On March 31, 2005, George Brown an owner of land along Moody Creek in Madison County, Idaho, wrote a letter to the Idaho Department of Water Resources (IDWR). The letter alleged excessive diversion of water by Merle and Janice Jeppesen (Jeppesens) from Moody Creek. On September 7, 2005, several persons, identifying themselves as "Friends of Moody Creek," sent a letter to Dave Tuthill, Administrator for the Water Management Division of IDWR. George Brown was also one of the signatories of the letter. The September 7, 2005 letter also alleged excessive diversion of Moody Creek water by Jeppesens. This letter is a response to both letters.

Water right no. 22-265 was decreed in 1910 in the case of *Rexburg Irrigation Co. v. Teton Irrigation Co.* The right allowed diversion from Moody Creek of 9.6 cfs from April 1 to June 20, and 4.8 cfs from June 21 to November 1. Two transfers have been approved allowing diversion of water from Moody Creek by Jeppesens.

### Transfer no. 2034

The records of IDWR show that a portion of water right no. 22-265 was transferred in 1977 to 85 acres of land owned by Jeppesens. At the time the application for transfer was filed, Jeppesens submitted a copy of an agreement between Merle & Keith Jeppesen and Dean Graham as authority to change the place of use of water right no. 22-265. In the agreement, Dean Graham, as owner of all or a part of water right no. 22-265, agreed to allow Merle & Keith Jeppesen to use 140 inches (2.8 cfs) of water right 22-265 in exchange for use of other water rights held by Merle & Keith Jeppesen. The application for transfer sought to transfer 4.0 cfs from April 1 to June 20 and 2.0 cfs from June 21 to November 1 to a new point of diversion and place of use.

The approved transfer authorized an upstream change in the point of diversion on Moody Creek and implicitly recognized the 4.0/2.0 cfs flow rates sought.

The approved transfer required installation of a measuring device approved by IDWR and limited the irrigation to 85 acres. The transfer did not impose a volume limitation. The transfer stated that the 85 irrigated acres would be rotated within a 320-acre place of use.

### **Unnumbered Application for Transfer**

In 1980, Jeppesens filed another application for transfer, attempting to enlarge the place of use for portions of water right no. 22-265. The application was denied in 1983.

### **Application for Transfer no. 3002**

In 1984, Jeppesens filed another application for transfer, numbered 3002. The application sought approval of the diversion of 4.0/2.0 cfs for the irrigation of an additional 115 acres. A deed from the Dean Graham Estate was submitted as proof of authority to file the application for transfer. The deed and the application for transfer cross-referenced the earlier agreement allowing use under the first transfer.

The application for transfer was approved. Irrigation with the portion of water right no. 22-265 transferred was limited to 115 acres. The 115 acres could be irrigated within a larger 515-acre place of use. The water right holder was required to install a totalizing meter and lockable controlling works.

The application stated that additional water was delivered to irrigate the larger 515-acre place of use through the East Teton Canal.

The file contains computations that were the basis for determining 2.5 acre-feet per acre as the annual diversion volume that should be allowed by the transfer. The calculations are attributed to Ronald Carlson, IDWR employee and Watermaster for Water District 01, although his name is not on the calculation sheet. The author of the computation sheet assumed the system could divert a maximum of 1,800 gallons per minute, and could only irrigate two of three fields, each ranging in size from 145 acres to 177 acres, during an irrigation season. He determined how much water would be delivered to a crop of potatoes in one field and a crop of grain in another field during a single irrigation season. The area of both fields totaled between approximately 320 and 350 acres. Because the grain was irrigated early and the potatoes were irrigated later, the water could be used on all the acres. With two of the three fields irrigated, the author determined an annual volume diverted of between 356 acre-feet (minimum) and 400 acre-feet (maximum) per year.

The results of the calculations were further analyzed by Jim Johnson in a memo dated July 10, 1985. Johnson divided the minimum and maximum volumes computed by each of the individual field acreages (145 acres, 172 acres, and 177 acres) to determine a range of volumes per acre. The approximate average of these computations was 2.5 acre-feet per acre. This computation was erroneous because the initial volume calculation was based on irrigation of two fields, and Johnson's computation was based on use of water on one field. Johnson

multiplied 115 acres by 2.5 acre-feet per acre. The resulting product of 288 acre-feet was included as the upper annual volume limit for the portion of water right no. 22-265 transferred.

### **Interpretation of the Transfers**

In reviewing the file, there is some uncertainty about whether the second transfer was intended to include an additional 4.0/2.0 cfs, or whether the transfer sought to irrigate more lands with the previous flow rate transferred. In the past, IDWR interpreted each transfer as having moved fully independent portions of water right no. 22-265. Based on IDWR's past interpretations, Jeppesens have the authority to divert up to 8.0 cfs from April 1 to June 20 and 4.0 from June 21 to November 1 under the two transferred portions of water right no. 22-265.

Transfer no. 2034 did not determine an annual volume of water for irrigation of the 85-acre place of use. Transfer no. 3002 limited the annual volume to 288 acre-feet for irrigation of the 115-acre place of use. Both transfers identified a fixed number of acres that could be irrigated within a larger block of irrigated land. Both transfers required installation of a measuring device acceptable to IDWR.

### **Claim No. 22-4195**

Claim no. 22-4195, filed by K. Merle Jeppesen, asserts the perfection of a water right by beneficial use of water diverted from Moody Creek. The claim asserts the right to divert 4.0 cfs of water from Moody Creek for the irrigation of 530 acres. Merle Jeppesen asserts that the water was beneficially used as claimed on July 15, 1965.

Merle Jeppesen has asserted the perfection of a water right by filing Snake River Basin Adjudication (SRBA) Claim no. 22-4195. SRBA Claim no. 22-4195 has not been decreed by the SRBA Court.

As long as Claim no. 22-4195 is a claimed beneficial use, it will be one of the first water rights shut off by the watermaster during regulation.

### **Claim No. 22-594**

Claim no. 22-594 identifies Jeppesens points of diversion for a water right claimed by Woodmansee-Johnson Canal Company. Ryan Madsen, Deputy Watermaster for Water District 01, stated the Woodmansee-Johnson water has not been delivered to Jeppesens' diversion in recent years.

### Subsequent Activities

Following the approval of the above discussed transfers and filing of a claim for an additional water right, controversy about Jeppesens' diversion has stirred for almost two decades. An Order to Show Cause was issued to Jeppesens on October 28, 2002 directing K. Merle and/or Janice Jeppesen to show cause why IDWR should not issue a notice of violation for illegal use of water. In the settlement of the violation, the requirement for installation of adequate measuring devices was reiterated.

An August 18, 2003 memo written by Ryan Madsen states that Jeppesens installed a Grainland meter and a data logger, but it was unreliable. The memo states that the flow meter would not read accurately, and that the Jeppesens attempted to recalibrate the meter several times. The memo also states that Water District 01 staff derived a power consumption coefficient for the pump(s). In the last paragraph of the memo, Madsen states:

Because the transfer conditions are so confusing, regulating more than the rate of diversion is difficult, even though there appears to be both a volume limit and an acreage limit on the transfer. Since the right Jeppesen has is the oldest water right in Water District 1, the right will never be cut, based strictly on priority. It appears that the authorized rate of diversion will never be exceeded by the Jeppesen pumps.

Both transfers approved for Jeppesens' diversion require measurement of the water diverted. Both transfers also limit acreage irrigated.

In 2005, Ryan Madsen regulated the Jeppesen diversion. Attached is a spreadsheet summarizing Jeppesens' diversions. The summary spreadsheet includes both the daily flow rate and total annual volume pumped. The highest flow rate diverted by Jeppesens was 4.0 cfs. The total volume of water diverted during the 2005 irrigation season was 346.9 acre-feet.

I asked Madsen how the flows were determined, recorded, and reported. Jeppesens are required to submit a pump card to Water District 01 every month of the irrigation season. The pump card must contain diversion information for the entire month. Jeppesens are responsible for the reading, recording, and reporting.

I asked Madsen how Jeppesens measure the flow rate pumped. Madsen told me there is a single mainline leading from Jeppesens' pumps. Originally, Jeppesens installed a Grainland meter. As stated before, information in the file indicates that measurements of flow with the Grainland meter have been unreliable. Madsen also told me that, at the end of the summer of 2005, Jeppesens installed a mechanical meter in the pipe, most probably a propeller meter. Madsen has not seen the meter operate, and does not know whether it is accurate. As a result, I believe the flow rates reported were not measured but were estimated based on system operation.

Madsen measured the flow in Jeppesens' mainline with an ultrasonic meter on July 19, 2005 as summarized at the bottom of the spreadsheet. Madsen's measurement was within a reasonable range of the flow rate Jeppesens reported for that day.

I also asked Madsen about the power consumption coefficient he derived. Madsen told me the inputs to the coefficients were based on pumping only the smaller of two pumps that lift water from Moody Creek into Jeppesens' pipeline. A power consumption coefficient can only accurately estimate water diverted if a coefficient is derived for the use of each pump and also for the two pumps both pumping together if they are used that way. If the pump is valved back at all to reduce pressure in the lines, additional coefficients must be derived. If more than one pumping configuration is employed, the time that the system operates under each configuration must be recorded and the power coefficient derived for that particular configuration must be applied to a pro rata share of the power used. Without further assurance, I cannot be confident that estimates of annual volume can be accurately determined using the single power consumption coefficient.

In a telephone conversation on January 19, 2006, James Wood told me he thought the spreadsheet provided by Ryan Madsen was accurate. James Wood told me he thought Jeppesens' adherence to flow rate limits were a result of monitoring done by outside persons, not by Water District 01.

### **Questions Asked**

#### **Brown Letter of March 31, 2005**

*Is there a remedy to cancel the transfer and return Jeppesens' water rights back to the lower end of Moody Creek?*

Determining whether there is a remedy is a legal question I am not willing to answer.

*What will the Department do about irrigation of more than 200 acres?*

Prior to irrigating with Moody Creek water in 2006, Jeppesens should identify for IDWR the 200 acres that will be irrigated with Moody Creek water.

*Can you send me a photograph of the totalizing meter and lockable controlling works?*

The totalizing meter is discussed herein. I will ask Ryan Madsen to take a photograph during his next visit.

Friends of Moody Creek  
January 25, 2006  
Page 6 of 7

*What is right no. 22-4195? How much water can Jeppesens remove from the creek and how many acres can they irrigate?*

Answered herein.

*Did anybody ever measure the amount of flow at the termination of Moody Creek in August and September when Jeppesens claimed their original rights?*

I don't know of any measurement.

### **Friends of Moody Creek Letter of September 7, 2005**

*Who is responsible to monitor the number of acres irrigated?*

It is the responsibility of IDWR with assistance from the watermaster.

*Doesn't interconnection of water from all sources of water make it impossible to verify where water from Moody Creek is going?*

I am uncertain whether Jeppesens are commingling Moody Creek water with water from other sources. Jeppesens cannot commingle Moody Creek water with water from other sources to irrigate more than 200 acres unless IDWR determines historical consumptive use and limits the Moody Creek diversion by the historical use volume.

*Why isn't there a reliable and accurate measuring device?*

Prior to irrigating in 2006, Jeppesens must install a reliable measuring device. The measuring device must accumulate volume diverted and read instantaneous flow rate.

*Why aren't specific acreage restrictions enforced?*

See explanation herein.

### **Conclusion**

After reviewing all the information, I conclude the following: (1) Prior to irrigating with Moody Creek water in 2006, Jeppesens should either (i) identify for IDWR, the 200 acres that will be irrigated with Moody Creek water; or (ii) if Moody Creek water will be commingled with water from another source, submit historical crop use information spanning several recent years that will establish a historical consumptive use from which IDWR can determine an historical diversion volume; and (2) Jeppesens must install a reliable and in-field calibrated measuring

Friends of Moody Creek  
January 25, 2006  
Page 7 of 7

device that will accurately accumulate volume diverted and read instantaneous flow rate. By this letter, I am asking Ryan Madsen and Water District 01 to determine compliance by regularly visiting Jeppesens' diversion works unannounced and checking the flow meter to determine the flow rate diverted. The meter should also be calibrated at least once a year. By this letter, I am also asking Ryan Madsen and Water District 01 to discontinue use of the power consumption coefficient until IDWR is assured it can be used accurately.

I am sending this letter to Jeppesens and their attorney shown in IDWR records for comments and further input before implementing the above.

Sincerely,



Gary Spackman

Enclosure

Cc: Merle Jeppesen  
Bevan Jeppesen  
Jerry Rigby  
Lyle Swank  
Ryan Madsen  
George Brown

bcc: Dave T.

Jeppsen, Bevan and Dalan

| Date  | April | May | June | July | August | September | October |
|-------|-------|-----|------|------|--------|-----------|---------|
| 1     |       |     |      | 2.8  | 1.3    | 1.2       |         |
| 2     |       |     |      | 2.8  | 1.9    |           |         |
| 3     |       |     |      | 2.8  | 1.1    | 0.5       |         |
| 4     |       |     |      | 2.8  | 1.9    | 0.5       |         |
| 5     |       |     |      | 2.8  | 1.9    | 1.6       |         |
| 6     |       |     |      | 2.8  | 0.7    |           |         |
| 7     |       |     |      | 2.8  | 1.9    |           |         |
| 8     |       |     |      | 2.8  | 1.6    |           |         |
| 9     |       |     |      | 2.8  | 1.6    |           |         |
| 10    |       |     |      | 2.8  | 0.8    |           |         |
| 11    |       |     |      | 2.8  | 0.3    |           |         |
| 12    |       |     |      | 2.8  | 1.3    |           |         |
| 13    |       |     |      | 2.8  | 0.5    |           |         |
| 14    |       |     |      | 2.8  | 0.9    |           |         |
| 15    |       |     | 1.2  | 2.8  | 1.6    |           |         |
| 16    |       |     | 2.6  | 2.8  | 1.0    | 0.8       |         |
| 17    |       |     | 2.6  | 2.8  |        | 1.6       |         |
| 18    |       |     | 3.3  | 2.8  |        | 1.6       |         |
| 19    |       |     | 4.0  | 2.8  |        | 1.1       |         |
| 20    |       |     | 4.0  | 2.8  |        |           |         |
| 21    |       |     | 4.0  | 2.8  |        |           |         |
| 22    |       |     | 3.5  | 2.8  |        |           |         |
| 23    |       |     | 1.7  | 2.8  | 1.6    |           |         |
| 24    |       |     | 4.0  | 2.8  | 1.6    |           |         |
| 25    |       |     | 4.0  | 2.8  | 1.0    |           |         |
| 26    |       |     | 2.6  | 1.5  |        |           |         |
| 27    |       |     | 3.9  | 1.3  | 1.0    |           |         |
| 28    |       |     | 4.0  | 2.0  | 1.6    | 1.6       |         |
| 29    |       |     | 4.0  | 2.0  | 0.6    | 0.8       |         |
| 30    |       |     | 4.0  | 2.0  | 0.8    |           |         |
| 31    |       |     |      | 2.0  | 1.6    |           |         |
| Total |       |     | 53.4 | 80.4 | 29.9   | 11.1      |         |

Flow Rate  
PCC  
7/19/2005

2.72 cfs for single pump  
1.65 KWH/ hr pumping

24 hr cfs AF  
174.8 346.8

January 23, 2006

Director Karl J. Dreher  
Department of Water Resources  
P O Box 83720  
Boise, Idaho 83720

Re: Transfers nos. 2034 and 3002 restrict Jeppesen to irrigating 200 acres/year.

Dear Director Dreher,

In talking by telephone today to James Wood I learned that the employees from your Idaho Falls office who monitor Transfers nos. 2034 and 3002 check the flow but not the number of acres being irrigated from Moody Creek by Jeppesen.. Since your group in Boise knows of the violations of the 200 acre per year by Jeppesen, why did you not instruct and demand that your Idaho Falls monitors determine the number of acres actually being watered from Moody Creek by Jeppesen's? The Department of Water Resources has failed to enforce its own terms of transfers. Moreover, I suspect that Jeppesen's creek pumps still connect to his mainline that delivers water to his entire farm, just as it did in 2002 when an inspection was made.

If you verify these facts to be true, I ask you to immediately seek injunctive relief directing Mr. Jeppesen to cease this acre restriction violation of the transfers, to cancel the transfers because of the years of violating the terms of the transfers, and to fine Jeppesen the maximum each year for the last 20 years. Furthermore, you should collaborate with Director Steve Huffaker of the Idaho Fish and Game Department to verify that Merle Jeppesen has removed excessive amounts of water from Moody Creek. The cutthroat trout disappeared when Jeppesen started pumping water from the creek. Why doesn't Merle Jeppesen owe the State a cutthroat trout fishery in Moody Creek?

Please inform me if you receive this letter. If I do not hear from you in 2 weeks I'll send you a copy.

Sincerely yours,  
*George Brown, M.D.*  
George Brown, M.D.  
814 Northpoint Drive  
Salt Lake City, Utah 84103

cc: James Wood, Representative Dell Raybould, and Director Steve Huffaker of the Idaho Fish and Game Department

RECEIVED

JAN 23 2006

January 19, 2006

Director  
Idaho Fish and Game Department  
Boise, Idaho

Dear Director,

In 1980 the Fish and Game Department joined multiple others including me to protest the transfer of water rights to upper Moody Creek by Merle Jeppesen of Rexburg, Idaho. In view of the overwhelming support against the transfers, I thought the matter was closed forever. Unfortunately, I was wrong! But we were all correct to predict that there would be a loss of cutthroat trout habitat if critical water removal from Moody Creek occurred.

I have attached a copy of a letter sent to Director Karl Dreher of the Idaho Department of Water Resources on January 16, 2006 about Jeppesen's failure to comply with the terms of the transfers.

Personally, I have concluded that the Fish and Game Department has a mandate to demand that Merle Jeppesen restore the cutthroat trout fishery in Moody Creek. What say you?

Sincerely yours,



George Brown, M.D.  
814 Northpoint Drive  
Salt Lake City, Utah 84103

cc: Lyn and James Wood and Representative Dell Raybould

KARL  
RECEIVED

JAN 20 2006

DEPARTMENT OF  
WATER RESOURCES

Director Karl J. Dreher  
Dept. of Water Resources  
P O Box 83720  
Boise, Idaho 83720

January 16, 2006

Dear Director Dreher,

On 28 October 2002 Norman C. Young of your department informed Merle Jeppesen of the following: "Department review of 2002 satellite imagery indicate irrigation in excess of the 200 acre limit with the place of use authorized under transfer nos. 2034 and 3002." Isn't the 200 acres per year restriction still in place? Why have you not stopped this excess irrigation? One obvious solution would be to connect the creek pumps to a system which watered only 200 acres.

In the summer of 2002 Ron Carlson of the Water Board, Jamie Wood, Carol Brown, and I inspected Jeppesens' creek pumps and lines. The pumps were on and were connected to Jeppesens' mainline which irrigated their entire farm. At the time no deep well pumps were on so the violation was obvious.

Water removal from Moody Creek has produced a loss of cutthroat trout habitat and other ramifications in the ecosystem that I am sure the Water Board did not intend to happen.

Considering happenings through 2005, you (and the board if required) should rescind the transfers altogether because of Jeppesen's failure to comply with the terms of the transfers. Furthermore, these chronic violations warrant maximum fines levied by you, since this is your job.

Sincerely yours,

*George Brown, M.D.*  
George Brown, M. D.

814 Northpoint Dr.

Salt Lake City, Utah 84103

cc: Lyn and James Wood and Representative Dell Raybould

TUTHILL  
RECEIVED

SEP 14 2005

Department of Water Resources

## Friends of Moody Creek

P.O. Box 610  
Rexburg, ID 83440

September 7, 2005

Dave Tuthill, Administrator  
Idaho Dept of Water Resources  
1301 N. Orchard Street  
Boise, ID 83706

Re: Moody Creek

Dear Mr. Tuthill,

Moody Creek consistently ran dry in mid-irrigation season from 1999 to 2003, with the cause being attributed to the draught conditions. In 2004, the Watershed Council monitored Moody Creek and found adequate water flow for Jeppesens to pump their allotted water right and still leave an acceptable minimum stream flow in Moody Creek. In 2005, Friends of Moody Creek have monitored water levels above and below the Jeppesen pumping site and have also found that there is adequate water in Moody Creek to fulfill their water right and leave an acceptable minimum stream flow in Moody Creek. Draught conditions continued during the duration of these studies. After two years of studies we are coming to a few carefully drawn conclusions. We have had a suspicion that Moody Creek water was being mismanaged & after the 2004 and 2005 studies, it's apparent to us that our suspicions were well founded. Moody Creek water has been grossly mismanaged by the Idaho Department of Water Resources and Water District 1. Mismanagement of Moody Creek water by the Department and Water District 1 did not occur when the original transfer of water rights were made, but after. The original transfers had safeguards built in, restrictions were imposed that, if followed, would protect Moody Creek.

The restrictions that were originally imposed by the Idaho Department of Water Resources are as follows:

- 1) Not more than 200 acres (specifically designated) be irrigated with water from Moody Creek
- 2) Not more than 8cfs of water usage between April 1<sup>st</sup> to June 20<sup>th</sup> of each year
- 3) Not more than 4cfs of water usage between June 21<sup>st</sup> to November 1<sup>st</sup> of each year
- 4) The total diversion was not to exceed 288 acre feet per annum

We believe that if the water right transfer restrictions are strictly enforced, Moody Creek is not in eminent danger of being pumped dry. The Department assures us that there is a lockable control device and a totalizing meter installed (see enclosed pictures- reference #1), but the restriction that not more than 200 acres (specifically designated) be irrigated with water from Moody Creek is still not being enforced.

In a conference call with Ryan Madsen, Idaho Department of Water Resources Water District 1, we were told it is not his responsibility to monitor the number of acres being irrigated. Friends of Moody Creek would like to know whose jurisdiction this falls under? Mr. Madsen also told Friends of Moody Creek that the mainline transporting Moody Creek water and the mainline transporting water from the Jeppesens deep well turbines are all inter-connected. Doesn't this make it impossible to verify where water being pumped from Moody Creek is going??

To be certain of the entire amount of water being diverted from Moody Creek, a reliable and accurate totalizing meter must be installed at the point of diversion, as well as a device to measure the cubic feet per second being taken. The Idaho Department of Water Resources told Friends of Moody Creek that only the most technical measuring devices retain their calibration for any significant length of time, while others lose their metering accuracy in as little time as one month. As important as this issue is, how does the Department plan on addressing this concern?

Aren't the Idaho Department of Water Resources and Water District 1 obligated to the people of Idaho to enforce the restrictions they themselves put on the Jeppesen transfers? Those restrictions being - that the acreage restrictions of "85 acres for transfer # 2034" and the acreage restrictions of "115 acres for transfer # 3002" with a maximum of 200 acres to be irrigated in a crop season, and that those 200 acres be specifically designated before the irrigation season begins in that year. How is this to be accomplished? In transfers #2034 and #3002 the Idaho Department of Water Resources designated 380 acres in Township 5 North Range 41 East Section 20 and 135 Acres in Township 5 North Range 41 East Section 21 but stipulated that no more than 200 acres of this total be irrigated with water from Moody Creek in any one year. (See enclosed documents- reference #2, and reference #3)

To be able to enforce this restriction, Friends of Moody Creek believe the Jeppesens deep well mainline and the mainline carrying diverted Moody Creek Water cannot be connected, and that a possible solution is to completely separate the two mainlines. If they are connected how is the Idaho Department of Water Resources able to monitor accurately the amount and destination of the diverted water? It appears that the Department has some of the same concerns in a letter to Jeppesens from the Idaho Department of Water Resources dated October 28, 2002. (See enclosed letter- reference #4)

The Idaho Department of Water Resources mission statement reads as follows: "The dedicated men and women of IDWR work to make sure Idaho's water and energy natural resources are properly managed and conserved to sustain the quality of life for Idahoans today and in the future." We too believe that with proper management, and if we all work together we can find a solution that will be satisfactory to everyone. Please advise as to what the Idaho Department of Water Resources intends to do to insure that water from Moody Creek is used by the Jeppesens to irrigate no more than 200 specifically designated and permitted acres each year.

Of further concern is an application made in Statutory Claim no. 22-4195 for Merle and Janice Jeppesen through Woodmansee/Johnson to the Idaho Department of Water Resources to literally double their present water rights. We are deeply concerned about the devastating impact such an increase in water rights would have on Moody Creek. As Idahoans and as The Friends of Moody Creek we want to go on the record that we adamantly oppose this application for additional water to be removed from Moody creek. We ask that absolutely no more expansion of any kind (whether the expansion is in the form of additional water or an increase in acres) be allowed.

In a "Proposed Memorandum Decision and Order" issued by the Idaho Department of Water Resources dated November 16, 1983 (see reference #5), transfer # 2034 was denied. The original protesters ("friends" of Moody Creek) as well as reasons for the denial are shown. We echo these original issues and concerns and find they are still applicable to our current situation.

We realize that we've included a lot of information, but thank you for your careful consideration and attention to these very important matters.

Sincerely,

James & Lyn Wood  
George & Carol Brown  
Corey & Erin Wood  
David & Susie Wood  
Steve & Darlene Wood  
Jason & Lisa Wood  
Daniel & Jennifer Claunch  
Teddie Wood

Janice 208 356-8377  
317-4123

cc: Senator Brent Hill, Representative Dell Raybould, Representative Mack G. Shirley, Karl Dreher, Director-Idaho Dept. of Water Resources, Norman C. Young, Administrator-Idaho Dept. of Water Resources, Ronald D. Carlson, Idaho Dept. of Water Resources, Ryan Madsen, Associate Engineer, Idaho Dept. of Water Resources, Rod Robison, District Chairman- Madison Soil and Water Conservation District, Susan Steinmann -Co-facilitator, Henry's Fork Watershed Council, Dale Swensen- Executive Director, Fremont Madison Irrigation District, Kim Goodman, Trout Unlimited, Jim Fredricks, Idaho Fish and Game and the following Friends of Moody Creek: Nathan Ashcraft, Max & Marinda Barchie, Dean & Diane Brown, Phil & Pat Olsen, Ross & Ruby Parkinson, Kirk & Manette Shirley, Jim & Rita Smith, Rob & Sally Smith, Bud Summers, Kim Summers, Bart & Joann Webster, Byron & Joann Webster, John M. Wood, Richard S. Wood and Doug & Donna Yates.



Madison Soil and Water Conservation District  
263 E. 4th North - Rexburg, ID 83440 - Phone (208) 356-6931

TUTHILL  
RECEIVED

JUL 12 2005

DEPARTMENT OF  
WATER RESOURCES

Friends of Moody Creek  
Attn: James Wood  
4554 East, 2000 South  
Rexburg, ID 83440

Dear Mr. Wood:

This letter is in response to your letter sent on May 31, 2005 in which you express concerns about the amount of water being used by irrigators in Moody Creek. Your letter presented some misleading information on the role that the Madison Soil and Water Conservation District (SWCD) is playing in this matter. You stated that Cleve Bagley, on behalf of the Madison SWCD, would be continuing to provide funding for the future study of water flow on Moody Creek. Mr. Bagley works for the Natural Resources Conservation Service and is not a representative for the Madison SWCD. This summer, the Madison SWCD will be participating with the State of Idaho's Association of Soil Conservation District's to complete a Stream Visual Assessment Protocol study on Moody Creek and not a water flow study as you stated.

In the past three years, the Madison SWCD has provided partial funding for the completed studies of nutrient levels on Moody Creek and has provided partial funding for one year to study water quantity in Moody Creek. The results of these studies have been compiled and presented to the public by the Idaho Association of Soil Conservation Districts. The Madison SWCD has no plans to monitor Moody Creek's water levels in the future.

Thank you for your attention to this matter. If you have any questions regarding this letter, you may reach Emilie Cook at (208) 356-5701 ext. 101.

Sincerely,

Rod Robison, Chairman  
Madison SWCD

Cc: Senator Brent Hill  
Representative Dell Raybould  
Representative Mack Shirley  
Karl Dreher, Director-Idaho Dept. of Water Resources  
Norman Young-Administrator, Idaho Dept. of Water Resources  
Ronald Carlson-Idaho Dept. of Water Resources

George & Carol Brown  
Corey & Erin Wood  
Daniel & Jennifer Claunch  
Rob & Sally Smith  
Jim & Rita Smith  
Steve and Darlene Wood  
Ross Ruby Parkinson  
Nathan Ashcraft  
David & Susie Wood  
Teddie Wood Porter  
Dean & Diane Brown  
Bud Summers

## MEMORANDUM

**To:** Ron Carlson

**From:** Gary Spackman

**Thru:** David R. Tuthill, Jr.

**Regarding:** Diversion of Water from Moody Creek by Merle Jeppesen under water right no. 22-265 and Statutory Claim No. 22-4195

**Date:** June 23, 2005

On March 31, 2005, George Brown an owner of land along Moody Creek in Madison County, Idaho, wrote a letter to the Idaho Department of Water Resources. The letter alleges excessive diversion by Merle Jeppesen from Moody Creek. I previously sent you a copy of the letter and asked for verification about measuring devices and regulation by the watermaster.

The records of the department show that a portion of water right no. 22-265 was transferred to 85 acres of Jeppesen's land in 1977. The transfer authorized an upstream change in the point of diversion on Moody Creek. The transfer approval required installation of a measuring device approved by IDWR and limited the irrigation to 85 acres. The transfer did not impose a volume limitation. Nonetheless, the transfer as proposed stated that the 85 acres would be rotated within a 320 acre place of use.

In the early 1980's, Merle and/or Janice Jeppesen attempted to enlarge the place of use for portions of water right no. 22-265. The application was denied.

Jeppesens filed a subsequent application for transfer, numbered 3002. The application proposed diversion of an additional portion of water right 22-265. The application for transfer was approved. Irrigation with the portion of water right no. 22-265 transferred, was limited to 115 acres. Annual volume diverted was limited to 288 acre-feet. The water right holder was required to install a totalizing meter and lockable controlling works. The file contains computations about the historical beneficial use of water that determined 2.5 acre-feet per acre as the volume that should be allowed for the transfer.

Following the approval of these transfers, controversy about the diversion has stirred for almost two decades. A Notice of Violation was issued. In the settlement of the notice, the requirement for installation of adequate measuring devices was reiterated. In addition, adjudication claims for the Woodmansee -Johnson Ditch were discussed. A comparison of the Woodmansee -Johnson claims and their located points of diversion revealed that, although the Jeppesen property may receive additional waters from Woodmansee-Johnson, Jeppesen continues to maintain his own point of diversion from Moody Creek.

In a memo you wrote on August 18, 2003, you state that Jeppesens' installed a Grainland meter and a data logger but it was unreliable. You indicate that the flow meter would not read accurately, and that the Jeppesens attempted to recalibrate the meter multiple times. You also state that you developed a power consumption coefficient for the pump. In the last paragraph of your memo you state:

Because the transfer conditions are so confusing regulating more than the rate of diversion is difficult, even though (sic) there appears to be both a volume limit and an acreage limit on the transfer. Since the right Jeppesen has is the oldest water right in Water District 1, the right will never be cut, based strictly on priority. It appears that the authorized rate of diversion will never be exceeded by the Jeppesen pumps.

The quoted language above appears to indicate that you intend to only regulate the Jeppesen diversions based on flow rate.

Both transfers approved for Jeppesen's diversion require strict limitations. Jeppesen's diversion should be regulated both by flow rate and total volume diverted. Jeppesens should be able to divert the full flow rate to which they are entitled. The total diversion from Jeppesens' point of diversion should be limited to 500 acre-feet annually (applying the volumetric limitation of 2.5 acre-feet per acre). The 500 acre-feet should be measured accurately. The annual volume pumped should be measured with either a reliable meter or by a power consumption coefficient that can be applied to Jeppesens' diversion.

Because you developed a power consumption coefficient for the Jeppesen property, the power consumption coefficient can be used this year to determine the amount of volume pumped from the Jeppesen point of diversion. The volume of water should be computed by Water District 01 and forwarded to me at the end of the irrigation season in 2005. Diversion of volume in excess of 500 acre-feet by Jeppesens will result in a Notice of Violation to Jeppesens.



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: [www.idwr.state.id.us](http://www.idwr.state.id.us)

EASTERN REGION

D. TURNER  
RECEIVED

JUN 16 2005

Department of Water Resources

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

June 3, 2005

Friends of Moody Creek  
P.O. Box 610  
Rexburg, ID 83449

Dear Friends of Moody Creek,

I have reviewed the issues raised in your letter dated June 3, 2005.

I have attempted to summarize your complaint as follows: The IDWR approved a transfer application initiated by Merle and Janice Jeppesen that changed the point of diversion of a portion of water right 22-0265. As part of the transfer approval, the Idaho Department of Water Resources imposed conditions that you summarize as follows:

1. Not more than 200 acres be irrigated with water from Moody Creek.
2. Water usage be limited to 8 cfs from April 1<sup>st</sup> to June 20<sup>th</sup> of each year.
3. Water usage be limited to 4 cfs from June 21<sup>st</sup> to Nov 1<sup>st</sup> of each year.
4. Total diversion could not exceed 288 acre feet per annum.
5. A totalizing meter and lockable controlling works of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.

On October 7, 1977 the Jeppesens were approved for a water right transfer. This transfer was number 2034 for water right number 22-0265B. The conditions for this transfer authorized the diversion of 4 cfs at the described point of diversion until June 20<sup>th</sup> of each year. After that the right was reduced to 2 cfs. The place of use contains 240 acres. There is a condition that limits the used in any one year to 85 acres. The conditions of approval also specify a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works. Use of water under this water right is subject to control by the Watermaster of State Water District No. 01, Snake River.

The Jeppesen's applied to the department on Feb 17, 1984 requesting the transfer of an additional 4 cfs before June 20<sup>th</sup> and 2 cfs for the remainder of the season.

On July 22, 1985 the Jeppesen's transfer application was approved. This transfer number was 3002 which changed the point of diversion for water right 22-0265D. Conditions of this transfer were that the Jeppesens could divert 4 cfs from April 1<sup>st</sup> to June 20<sup>th</sup>. Then from June 21<sup>st</sup> to November 1<sup>st</sup> they were only allowed to divert 2 cfs. Trans. #3002 describes 515 acres as place of use and limits irrigation to 115 acres each year. The

conditions for this transfer are that a totalizing meter and lockable controlling works of a type approved by the Department shall be permanently installed and maintained as part of the diverting works. That the volume that can be diverted under this right shall not exceed 288 acre-feet/annum. The water right is subject to control by the Watermaster of the State Water District No. 01, Snake River. Between the two transfers there are 85 acres that may overlap.

The 288 acre-feet/annum that you are listing as a condition is for Trans. #3002. There is still Trans. #2034 provides for the irrigation of for 85 acres within the 515 acres listed in Trans. #3002.

The Watermaster has the authority to regulate the flow rate at every point of diversion within its district. The place of use remains undefined at this time because some of the lands owned by the Jeppsens have received water through the Woodmansee/Johnson system. SRBA claims to that effect have been filed with the court. I personally measured the Jeppesen's pump in 2002, 2003, and 2004. I am unaware of a time when they were diverting above the authorized rate of diversion. The Jeppesen's have installed a totalizer on their system that measures the flow rate and volume diverted. I personally calibrated their totalizer. It is of a type that is acceptable by the Department. Their pump has a lockable control device that complies with the standards stipulated in Section 42-701 (1), Idaho Code.

In your letter it is stated that, "Moody Creek has been pumped so aggressively as to quite literally dry up the creek and destroy the cutthroat trout fishery that used to thrive there".

In 2004 the Moody Creek Watershed Council was formed. It was formed with the objective to characterize the current flow regime in an upstream section of Moody Creek. Also it was created to evaluate the effect of a surface-water diversion on flow rates downstream of the diversion. Three sites were selected. One was just upstream of the Jeppesen's pump. The other at Wood's Crossing where there is a USGS staff gage, and lastly at a site located downstream from Woods Crossing at a location known as the "Elbow" of Moody Creek. The flow rate was measured at each site 23 times. The USGS staff gage was read 33 times. The preliminary conclusions of the study were:

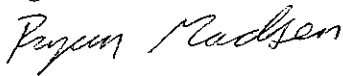
- The May discharge (during peak runoff) was greater at the upstream site than at the downstream sites, indicating that water was retained in riparian areas, beaver ponds, and/or in a near-surface aquifer.
- Discharges at all sites were approximately equal throughout September, following the end of diversion for irrigation.
- Water remained in the entire segment of Moody Creek monitored in 2004, indicating that water diverted for irrigation is not solely responsible for the absence of water below the "Elbow" of Moody Creek in most years.
- Factors controlling discharge in Moody Creek are more complicated than expected and more study is needed.

The Water District has participated in the Watershed Council for Moody Creek. It was the general consensus of the council that the major contributing factor for Moody Creek going dry in previous years was due to the drought and not because of the pumping of the Jeppesen's. The reason the flows were so high in 2004 was because of the precipitation that we received throughout the year. The monitoring of the Jeppesens was not a determining factor as to whether or not water flowed in Moody Creek in 2004.

You stated, "at the conclusion of the study it was recommended that there was no need to drill a well due to the fact that there was adequate water in Moody Creek if the conditions and restrictions for pumping were imposed and met by the Jeppesens". That statement is inaccurate. The reason that the option of drilling a well for the Jeppesen's was not considered beyond the initial discussion was the costs vs. benefits simply were not positive.

If I can be of any further assistance to you please feel free to contact me.

Regards,



Ryan Madsen  
Associate Engineer  
Idaho Dept. of Water Resources  
900 N. Skyline Dr., Suite A  
Idaho Falls, ID 83402  
(208) 525-7171

Cc: Senator Brent Hill, Representative Dell Raybould, Representative Mack G Shirley,  
Dave Tuthill, Administrator- Dept. of Water Resources,

Ref #1



7-19-05

Jeppesen's  
flow rate

Flow = 1223  $\frac{\text{gal}}{\text{min}}$



7-19-05

Jeppesen's  
Control  
Panel  
(Lockable Works)



7-19-05

Jeppesen's totalizer

Flow = 1762  $\frac{\text{gal}}{\text{min}}$

Name of applicant K. Merle &/or Janice Jeppesen Phone 356-3638

Post office address Rt. #2, Rexburg, Idaho 83440

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree to Martin Garn (Name)  
in case of Rexburg Irrigation Co. et al vs Teton Irrigation Co. et al  
dated 12/16/10 in 6th Judicial Dist. county of Fremont  
(Name of court)
- b. License No. \_\_\_\_\_ issued by the Idaho Department of Water Resources
- c. Claim No. \_\_\_\_\_ on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant \_\_\_\_\_  
From Martin Garn to Frank Garn to applicant (copy of deed attached)
3. Source of water Moody Creek tributary to Snake River
4. Date of priority March 15, 1879
5. Water is used for the following purposes:  
amount 9.60\* for Irrigation purposes from Apr. 1 to Nov. 1  
amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
(month/day — both dates inclusive)  
\* right reduced to 4.80 cfs after June 20
6. Total amount of water under right: a. 9.60\* cubic feet per second  
&/or  
b. \_\_\_\_\_ acre feet per annum
7. Location of original point of diversion is SE  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 13  
Township 6N Range 40E, B.M., in Madison County  
Additional points of diversion, if any \_\_\_\_\_
8. Lands irrigated or place of use:

| TWP.                                                                                                                                                                                                                                                                                                                                             | RANGE | SEC. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | TOTALS |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|                                                                                                                                                                                                                                                                                                                                                  |       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
| 6N                                                                                                                                                                                                                                                                                                                                               | 40E   | 13   |                  |                  |                  |                  | X                | X                | X                | X                |                  |                  |                  |                  |                  |                  |                  |                  | 160    |
|                                                                                                                                                                                                                                                                                                                                                  |       | 14   | X                |                  |                  | X                |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 80     |
|                                                                                                                                                                                                                                                                                                                                                  |       | (14) |                  |                  | 40               |                  |                  |                  |                  | 10               |                  |                  |                  |                  |                  |                  |                  |                  |        |
| NOTE: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ , (40 acres) and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , (10 acres) Sec. 14, T. 6N, R. 40E, was added to the above described lands in the late 30's or early 40's and has been considered a part of the original decree without benefit of filing a transfer. (see warranty deed, Instrument #78479) |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

Amount of water: a. 4.00\* cubic feet per second &/or

\*Reduced to 2.00 cf.s. after June 20

b. \_\_\_\_\_ acre feet per annum

Point of diversion SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 21 Township 5N

Range 41E, B.M., Madison County

Additional points \_\_\_\_\_

3. Place of use:

| RANGE | SEC. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | TOTALS |
|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
|       |      |                  |                  |                  |                  | 5                |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 5      |
| 40E   | 13   |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 80     |
|       | 14   | 40               |                  |                  | 40               |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 85     |

DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion

a. Amount of water to be diverted 4.00 c.f.s. &/or \_\_\_\_\_ acre feet  
Reduced to 2.00 after June 20

b. Point(s) of diversion SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 21 Township 5N

Range 41E, B.M., Madison County

Additional points \_\_\_\_\_

c. Description of diverting works water to be pumped from Moody Creek within the above description into a sprinkler system

d. Describe the reasons for applying for a change in the point(s) of diversion  
Better utilization of water at a point where it can be put to a beneficial use through pipeline before it sinks and is lost in the creek channel

2. Change in place of use

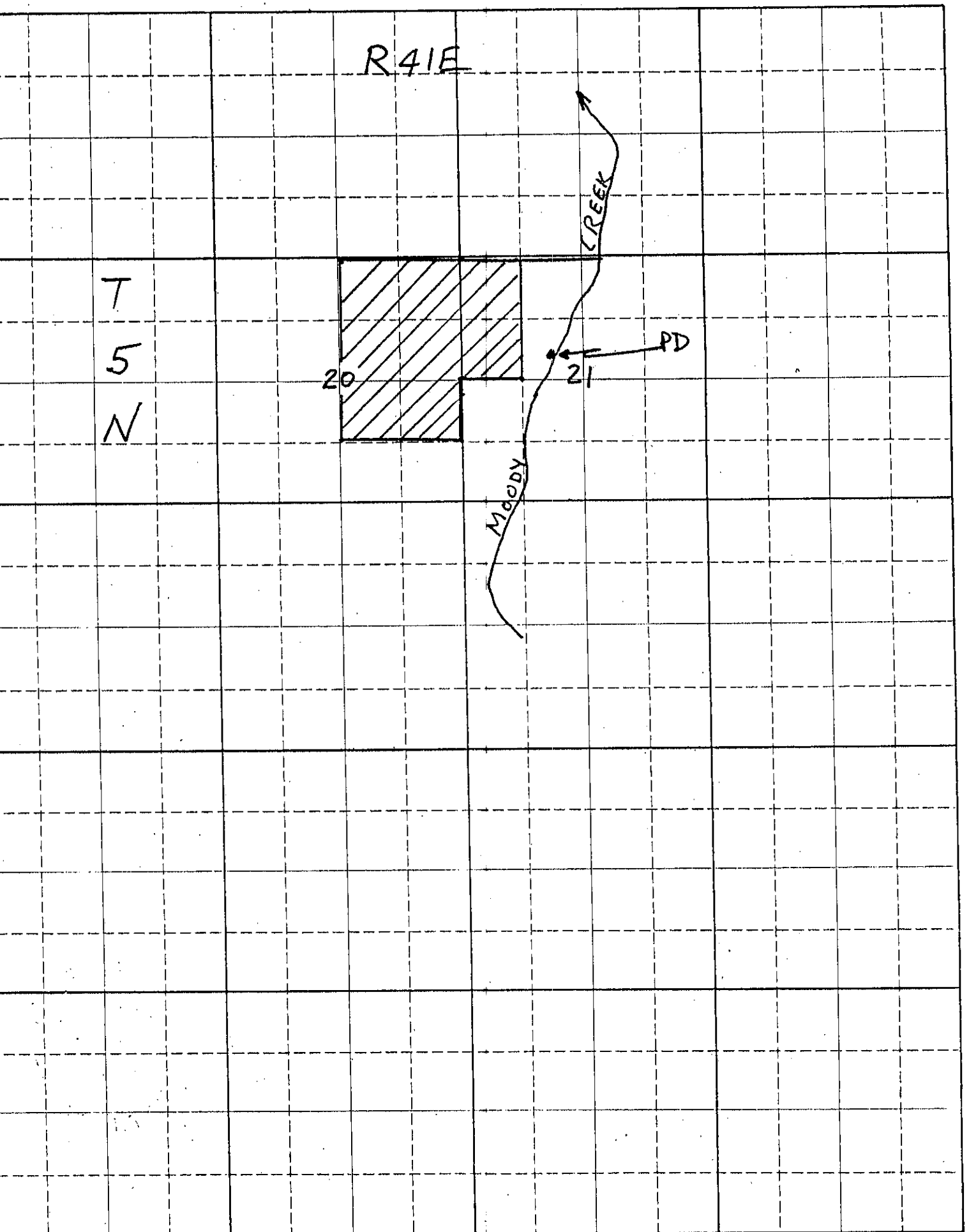
a. Describe the lands or place of use to which the right will be transferred:

| TWP. | RANGE | SEC. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | TOTALS |
|------|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|      |       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
| *5N  | 41E   | 20   | 40               | 40               | 40               | 40               |                  |                  |                  |                  |                  |                  |                  |                  | 40               | 40               |                  |                  | 240    |
|      |       | 21   |                  |                  |                  |                  |                  | 40               | 40               |                  |                  |                  |                  |                  |                  |                  |                  |                  | 80     |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

\*However, no more than 85 acres of this total will be irrigated in any one year. The place of use will be rotated annually.

Total number of acres to be irrigated 320

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

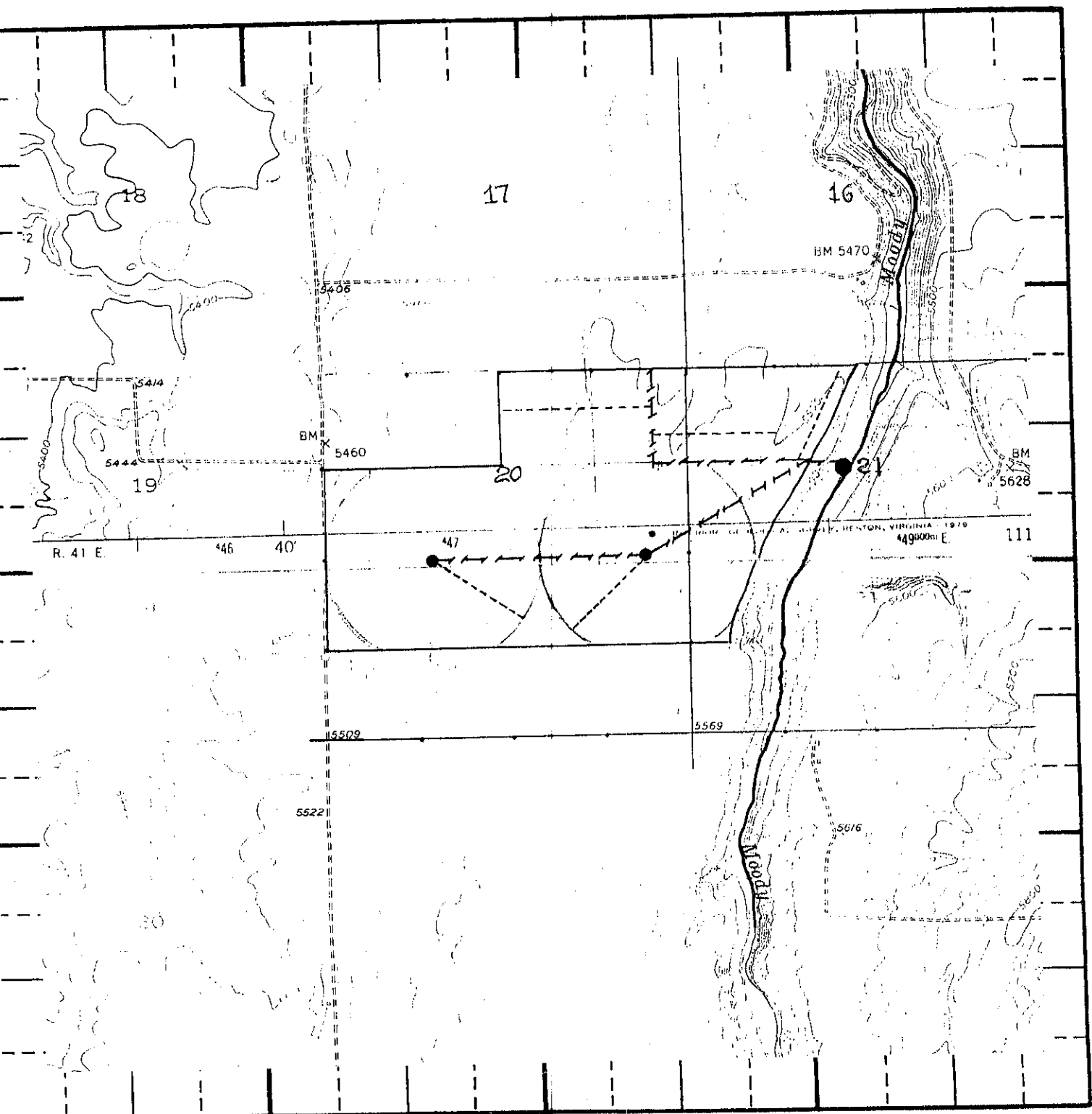


SCALE: 2 inches equal 1 mile. Draw plan in ink.

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
| 5N   | 41E   | 20   | 40  | 40  | 35  | 40  |     |     | 35  | 40  | 40  | 35  |     |     | 40  | 35  |     |     | 380    |
|      |       | 21   |     |     |     |     | 20  | 40  | 40  | 10  | 25  |     |     |     |     |     |     |     | 135    |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

No more than 115 acres of this total will be irrigated in any one year with water under this transfer. Total number of acres to be irrigated 515

- Describe any other water rights used for the same purpose as described above. T. #2034 covers 85 acres of the above lands.
- Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.





State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

Ref #4

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

October 28, 2002

RECEIVED  
OCT 31 2002  
Department of Water Resources  
Eastern Region

K. Merle and/or Janice Jeppesen  
434 Morgan  
Rexburg, Idaho 83440

Re: Water Right No. 22-265 and Approved Transfers No. 2034 & 3002

Dear Mr. and Mrs. Jeppesen:

Enclosed is an order to show cause issued in connection with the above referenced water right.

The order allows until December 2, 2002, in which to submit evidence why the Department should not issue a notice of violation and an order requiring installation and maintenance of controlling works and measuring devices.

If you have any questions, or if I can be of any assistance in explaining this matter, please feel free to contact me.

Sincerely,

Norman C. Young  
Administrator  
Water Management Division

:vw  
Encl.  
cc: Ron Carlson

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

RECEIVED  
OCT 31 2002  
Department of Water Resources  
Eastern Region

IN THE MATTER OF DIVERSION OF WATER )  
WITHOUT A VALID WATER RIGHT OR NOT )  
IN CONFORMANCE WITH A VALID WATER )  
RIGHT ON LANDS OWNED OR CONTROLLED )  
BY K. MERLE AND/OR JANICE JEPPESEN )

**ORDER TO SHOW CAUSE**

The Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or apparent violations of the provisions of the law relating to the appropriation, distribution and use of water, has conducted an investigation of certain diversions of water being made by or under approved transfer nos. 2034 and 3002.

Based upon the department's investigation, the department sets forth the presently known facts and applicable law as follows:

**FACTS**

1. Water right no. 22-265 was decreed in the case Rexburg Irrigation Co. vs. Teton Irrigation Co., dated December 16, 1910, in the Sixth Judicial District Court, Fremont County. The water right was decreed to Garn Martin for irrigation and other purposes in the amount of 480 inches (9.6 cfs) to be reduced to 240 inches (4.8 cfs) after June 20<sup>th</sup> of each year, with a source of Moody Creek and a priority date of March 15, 1879.
2. Transfer application no. 2034 was filed by K. Merle and/or Janice Jeppesen in 1976 to change the point of diversion and place of use for a portion of the right to be designated as right no. 22-265B. In 1977, the Idaho Department of Water Resources (department) approved the transfer of 4 cfs (2 cfs after June 20) to a new point of diversion and place of use upstream on Moody Creek and limited irrigation to 85 acres. One of the conditions of approval of the transfer was the requirement of a measuring device to be permanently installed and maintained as part of the diverting works.
3. Transfer application no. 3002 was filed by K. Merle and/or Janice Jeppesen in 1984 to change the point of diversion and place of use for an additional portion of the original decreed right to be designated as right no. 22-265D. In 1985, the department approved the transfer of 4 cfs (2 cfs after June 20) to a point of diversion and place of use at the same general location as approved under transfer no. 2034 and limited irrigation to 115 acres and 288 acre-feet per annum under the transfer. The approval

required a totalizing meter and lockable controlling works to be permanently installed and maintained as part of the diverting works.

4. A statutory claim (no. 22-4195) was filed by K. Merle and/or Janice Jeppesen in 1985 for irrigation of 530 acres with point of diversion and place of use at the same general location as transfer nos. 2034 and 3002. The claim lists a quantity of 4 cfs from Moody Creek with a priority date of July 15, 1965.

5. The department has received complaints and information from interested parties asserting that the use of water from Moody Creek on lands owned or controlled by K. Merle and/or Janice Jeppesen is in excess of authorized water rights and is not in compliance with the conditions of approval for transfer nos. 2034 and 3002, including the measuring device requirements. Department review of 2002 satellite imagery indicates irrigation in excess of the 200-acre limit within the place of use authorized under transfer nos. 2034 and 3002. Water was not available to fill statutory claim no. 22-4195 during the 2002 irrigation season due to drought conditions.

?  
Arbitration  
claim

### APPLICABLE LAW

1. Section 42-351(1), *Idaho Code*, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, *Idaho Code*, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-201(1), *Idaho Code*, provides in pertinent part as follows:

All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise.

3. Section 42-1701B(6), *Idaho Code*, provides in pertinent part as follows:

(a) Any person determined in a judicial civil enforcement action to have substantially violated any provision of title 42, *Idaho Code*, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to

exceed ten thousand dollars (\$10,000) per violation or one hundred fifty dollars (\$150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, *Idaho Code*, shall be liable for a civil penalty not to exceed:

- (ii) For irrigation uses, three hundred dollars (\$300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

4. Section 42-701(1), *Idaho Code*, requires appropriators or users of any public waters of the state of Idaho to maintain suitable headgates and controlling works at the point where the water is diverted. It also provides that each such appropriator shall construct and maintain an appropriate measuring device, when required by the director.

5. Diversion and use of the public waters of the state of Idaho in excess of that authorized under existing rights or not in compliance with existing water rights must be regulated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

6. The information available to the department indicates that the use of water on lands owned or controlled by K. Merle and/or Janice Jeppesen is in excess of existing water rights and is not in compliance with conditions of approval for transfer nos. 2034 and 3002.

### ORDER

IT IS HEREBY ORDERED as follows:

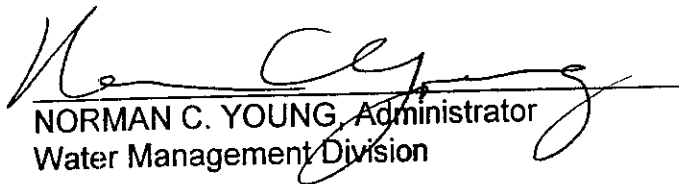
1. K. Merle and/or Janice Jeppesen shall show cause why the department should not issue a written notice of violation in accordance with the provisions of section 42-1701B, *Idaho Code*, for the illegal diversion or use of water from Moody Creek. Such explanation shall include a reporting of acres irrigated and total volume of water diverted during the current 2002 irrigation season from Moody Creek under transfer nos. 2034 and 3002 and any other water rights.

2. K. Merle and/or Janice Jeppesen shall show cause why the department should not issue an order requiring installation and maintenance of controlling works and measuring device(s) with totalizing meter for diversion(s) authorized under approval of transfer nos. 2034 and 3002 as provided in section 42-701(1), *Idaho Code*, and as required as a condition of approval for the transfers. Such explanation shall include a description of current means of control to ensure that the diversion of water is within authorized limits.

3. The information required above shall be submitted to the department by

December 2, 2002.

DATED this 28<sup>TH</sup> day of OCTOBER 2002.

  
NORMAN C. YOUNG, Administrator  
Water Management Division

(Ref #5)

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF  
WATER RIGHT NO. 22-0265 AND TRANSFER NO. 2034  
IN THE NAME OF K. MERLE AND/OR JANICE JEPPESEN

PROPOSED  
MEMORANDUM DECISION  
AND ORDER

On April 29, 1980, K. Merle and/or Janice Jeppesen filed with the Department of Water Resources (IDWR) an application involving the transfer of the point of diversion and place of use for both the remainder of Right No. 22-0265 and that portion of Right No. 22-0265 previously changed by Transfer No. 2034.

This right was originally decreed to Martin Garn in the case of Rexburg Irrigation Company, et al -vs- Teton Irrigation Company, et al, dated December 16, 1910. The portion of this right unchanged by Transfer 2034 provided for the diversion of 5.60 cubic feet per second between April 1 and June 20; and 2.80 cubic feet per second from June 21 to November 1, to be diverted from Moody Creek in the SE1/4NW1/4, Sec. 13, Twp. 6N, Rge. 40E B.M., Madison County; and is appurtenant to 155 acres in the NW1/4, Sec. 13, Twp. 6N, Rge. 40E. Transfer No. 2034, approved by IDWR in October of 1977, authorized the applicant to establish a new point of diversion in the SE1/4NW1/4, Sec. 21, Twp. 5N, Rge. 41E, B.M., Madison County; for the diversion of 4.00 cubic feet per second from April 1 to June 20 and 2.0 cubic feet per second from June 21 to November 1. This water was made appurtenant to 320 acres in the NE1/4, N1/2SE1/4, Sec. 20; W1/2NW1/4, Sec. 21; Twp. 5N, Rge. 41E, with a condition that no more than 85 acres be irrigated in any one year. The applicant was also required to install and maintain as part of the diverting works a measuring device of a type approved by IDWR so the use of water under this transfer could be controlled by the watermaster of State Water District No. 1, Snake River.

The applicant now proposes to transfer a total of 6.80 cubic feet per second of the April 1 to June 20 water and all of the 4.80 cubic feet per second designated for diversion between June 21 and November 1 to 515 acres in the NE1/4, S1/2NW1/4, N1/2S1/2, Sec. 20; NW1/4, NW1/4SW1/4, Sec. 21, Twp. 5N, Rge. 41E. This water would be diverted from Moody Creek in the SE1/4NW1/4, Sec. 21, Twp. 5N, Rge. 41E, B.M., which was the point of diversion previously established

by Transfer No. 2034. This change will leave 2.80 cubic feet per second of the April 1 to June 20 water appurtenant to 155 acres in the NW1/4, Sec. 13, Twp. 6N, Rge. 40 E.

Notice of the proposed change of water right was advertised in the Rexburg Journal on May 8 and 15, 1980. The first protest against approval of said transfer was received by IDWR on May 5, 1980 from the Department of Fish and Game. On May 19, 1980, a protest was received from Roger K. and Claudia Wood. Additional protests were received on May 27, 1980 from George R. Brown, Val R. Hill, Robert S. Wood, Roy Jeppesen, Sr., Roy Jeppesen, Jr., Brett Jeppesen, Gary Jeppesen; and on May 30, 1980, from George Brown, Carol A. Brown, Opal J. Wood, Ken Wood, Roger Wood, Claudia Wood, Irene Blunck, Leo Blunck, Gladys Randall, H. J. Randall, Ross Parkinson, Alice Parkinson, Karma Hoopes, Pamela J. Bowen, John D. Bowen, Robert Huskinson, Sue Huskinson, Owen Wood, Steven J. Wood, James Wood, Robert E. Smith, Gordon R. Smith, and Split Eight Farms.

There were four main issues cited by the protestants:

- 1) The change in point of diversion would cause that reach of Moody Creek included in the State of Idaho Easement No. 4491 to be dewatered.
- 2) That the supply of water in Moody Creek is not sufficient to warrant a change in the point of diversion and place of use proposed by the application.
- 3) The transfer would conflict with local public interest.
- 4) The transfer would reduce the quantity of water under existing water rights.

On June 24, 1980, IDWR received a withdrawal of protest from Leo Blunck, Irene Blunck, and Kenneth Blunck.

A conference in the matter was conducted by IDWR on June 26, 1980 in the Madison County Courthouse, Rexburg, Idaho. The applicant was present and represented by Rich Andrus, Attorney at Law. The Department of Fish and Game was represented by Paul W. Jeppson. The protestants, Roy Jeppesen, Sr., Roy Jeppesen, Jr., Brett Jeppesen, and Gary Jeppesen were present and represented by Roger Hoopes, Attorney at Law. Representatives for Wood Brothers Farms, Seth Wood Farms, Inc. and Brown Incorporated were present and represented by Mary Smith, Attorney at Law. Val R. Hill and J. D. Hancock, Attorney at Law, were present and represented Hill Enterprises. Roger K. Wood was present for Split Eight Farms, Inc. The protestants, Gladys Randall, H. J. Randall, Ross Parkinson, Alice Parkinson, Pamela J. Bowen, John D. Bowen, Robert Huskinson, Kenneth

Blunck, and Steven J. Wood, were present and represented themselves. Protestants who were not in attendance included Claudia Wood, Carol A. Brown, Opal J. Wood, Ken Wood, Karma Hoopes, Sue Huskinson, Owen Wood, Teddie Wood, Robert E. Smith, and Gordon R. Smith. At the conclusion of the conference, it was agreed by the protestants and the applicants, the Department of Water Resources should issue a Proposed Memorandum Decision and Order based on the information presented at the conference and information contained in the Department's official records. The hearing officer having reviewed the file for this application for transfer and the records of IDWR, and based upon his understanding of the law proposes the following Findings of Fact, Conclusions of Law, and Order.

#### FINDINGS OF FACT

1) The applicant has a lease agreement with Dean Graham, present holder of Right No. 22-0265, for the use of water under this right in exchange for water delivered through the East Teton Canal.

2) Under this application, the two portions of Right No. 22-0265 created by Transfer No. 2034, will be combined and delivered as a single right to provide for the diversion of 6.80 cubic feet per second from April 1 to June 20; and 4.80 cubic feet per second from June 21 to November 1 from the SE1/4NW1/4, Sec. 21, Twp. 5N, Rge. 41E, B. M., Madison County; and to be used for the irrigation of 515 acres within the NE1/4, S1/2NW1/4, N1/2S1/2, Sec. 20; NW1/4, NW1/4SW1/4, Sec. 21, Twp. 5N, Rge. 41E.

3) The application proposes to leave 2.80 cubic feet per second of water diverted between April 1 and June 20 appurtenant to 155 acres in the NW1/4, Sec. 13, Twp. 6N, Rge. 40E.

4) The Director of IDWR can approve an application for transfer provided no other water rights are injured, the change does not constitute an enlargement in use of the original right, and the change is found to be in the local public interest.

#### CONCLUSIONS OF LAW

1) There are two distinct rates of diversion specified for decreed Right No. 22-0265 which is appurtenant to 240 acres of land. These two rates of diversion are part of one right and cannot be treated independently without causing expansion of the right.

2) The irrigation of 515 acres as proposed by this application would represent an increase of the historical, consumptive use for Right No. 22-0265. A water right holder is entitled to the rate of diversion and the amount of

water necessary to irrigate the land to which the water is appurtenant, but not to exceed the maximum rate set by the decree, license or permit. During the time the maximum rate is not necessary for the irrigation of the land the water must be released for use by the next junior appropriator. This same analysis can be used for the amount of water diverted during the season. The water right entitles the holder to the amount of water necessary to irrigate the land to which it is appurtenant and if the water is not needed then it must be released to the next junior appropriator. The irrigation of an additional number of acres will also reduce the amount of water available to other appropriators. The amount of water "used" from a system consists of the amount consumed by the plants and the amount evaporated. The amount consumed in both cases directly increases with an increase in the number of acres irrigated. Therefore, an increase in the number of acres irrigated will increase the amount of water "used" even though there may have been no increase in the rate of diversion.

3) Approval of this application would result in an enlargement of Water Right No. 22-0265 and Transfer No. 2034.

4) The application should be denied.

#### ANALYSIS

The applicant also raised the issues of the standing of some of the protestants since he alleged they have no water rights and of the timeliness of some of the protests since they were submitted after the time allowed by Sec. 42-222, Idaho Code. Both of these issues are not discussed in the decision since a transfer cannot be approved that would result in an enlargement of the water right. The enlargement of a right must be considered whether or not there is a protest and, in this instance, an identical decision would have been reached even if no protests had been filed.

#### ORDER

IT IS HEREBY ORDERED and Application for Transfer of Water Right No. 22-0265 is DENIED.

Dated this 16 day of November, 1983.

  
BOBBY D. FLEENOR  
Hearing Officer

## **Spackman, Gary**

---

**From:** Carlson, Ron  
**Sent:** Monday, April 11, 2005 2:07 PM  
**To:** Spackman, Gary  
**Subject:** RE: Moody Creek - Jeppesen - Brown Complaint

Gary -

The measuring devices were ordered on and I had Ryan Madson field check them to make sure they were in place. His field report indicated that measuring devices had been installed. There has been a problem with the Grainland meter accuracy. Consequently Jeppesen has been sending in pump cards (which we prefer) and our field checks verify the accuracy of the pump card information.

Ron

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

**From:** Spackman, Gary  
**Sent:** Monday, April 11, 2005 11:01 AM  
**To:** Carlson, Ron  
**Cc:** Warner, Roger  
**Subject:** Moody Creek - Jeppesen - Brown Complaint

Ron,

The department received a letter on April 6, 2005 from George Brown complaining about use of water diverted from Moody Creek by Merle Jeppesen under water right nos. 22-265D and possibly under claim no. 22-4195. I'll fax you a copy of the letter. I've reviewed the file and recognize the complaints are not new.

Before I try to respond to Mr. Brown, I'd like you to give me whatever information you can about the complaint. Can you tell me what has been done to verify measuring device installation? Have the flows been measured and reported? Is Jeppesen limiting annual diversion to the volumes allowed for the acres irrigated?

Gary Spackman

GREEN SAXTON

RECEIVED

APR 06 2005

Department of Water Resources

Norman C. Young  
Administrator  
Idaho Dept. of Water Resources  
1301 North Orchard  
Boise, Idaho 83706

March 31, 2005

Re: Right no. 22-265B, Right no. 22-265D, and Right no. 22-4195

Dear Mr. Young,

I own property on Moody Creek below Jeppesens' pumps. I have opposed the transfer of water rights from the lower end of Moody Creek to the middle third of the creek for years. I think that your department made an serious mistake in allowing the transfer in the first place and that the people of Idaho have been shortchanged. Cutthroat trout and other wildlife in the area have suffered the consequences of the creek being pumped dry intermittently. Is there some remedy to cancel the transfer and return Jeppesens' water rights back to the lower end of Moody Creek?

Right no. 22-265B and Right no. 22-265D allow Jeppesens to irrigate a specific 200 acre field.

In the summer of 2002 Ron Carlson, Jamie Wood, Carol Brown, and I inspected Jeppesens' pumps and lines. The pumps were on and were connected to Jeppesens' mainline allowing him to water his entire farm from Moody Creek. I pointed this fact out to Mr. Carlson that day as a clear violation, yet nothing was done!

I know that satellite imagery documents and that Ron Carlson knows that more land than the 200 acre limit has been watered from the creek. What does your department intend to do about this clear violation? Would this be sufficient grounds to terminate his water rights? Can you send me a photograph of the totalizing meter and lockable controlling works permanently installed and maintained on this system? Do you know if they actually exist?

What is Right no. 22-4195? As of today, how much water may Jeppesens remove from the creek and how many acres may they water?

I favor minimum flow regulations for all streams retroactively to prevent such calamities. Did anybody ever measure the amount of flow at the termination of Moody Creek in August and September where Jeppesens claim their original rights? I have looked at that stream over the years before the transfer and I wonder if the Department of Water Resources transferred more water rights than actually existed.

Sincerely yours,  
*George Brown, M.D.*  
George Brown, M.D.  
814 Northpoint Dr.  
Salt Lake City, Utah 84103

Cc: Jamie Wood, Dell Raybould

|                        |                    |              |              |
|------------------------|--------------------|--------------|--------------|
| Post-it® Fax Note 7671 |                    | Date 4/11/05 | # of pages 1 |
| To Ron Carlson         | From Gary Spackman |              |              |
| Co./Dept. Eastern      | Co. IDWR-50        |              |              |
| Phone #                | Phone #            |              |              |
| Fax #                  | Fax #              |              |              |

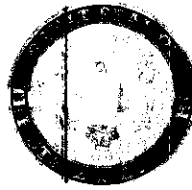
Done 4/11/05 @ 3:20pm - dg

# Moody Creek

Prepared for  
Karl J. Dreher  
Director  
Idaho Department of Water Resources

MICROFILMED  
SEP 03 2003

State Capitol  
P.O. Box 83720  
Boise, Idaho 83720-0081  
(Session only)



**BRENT HILL**

**Idaho State Senate**

Home Address:  
1010 South 2nd East  
Rexburg, Idaho 83440  
(208) 356-7495 or 356-3677  
E-mail: bhill@senate.state.id.us

**RECEIVED**

**AUG 15 2002**

August 13, 2002

Department of Water Resources

Mr. Karl J. Dreher  
Director  
Idaho Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706

Dear Karl,

I have received a great deal of feedback from a number of entities regarding the regulation of water flows in Moody Creek in Madison County. I understand you are aware of some of the issues that have been raised regarding the diversion of water from the creek. Neither the interested parties nor the Regional Director have been able to resolve the problems. I have done some research and visited various sites along the stream myself and believe a short meeting with you would be helpful to direct me toward a solution that would be agreeable to all the parties.

I will be in Boise for committee meetings on September 16 and 17. Would you possibly be available to meet with me either late afternoon or early evening on the 16<sup>th</sup> or late morning or early afternoon on the 17<sup>th</sup>? I would really appreciate your taking time to advise me regarding this matter. Please have your secretary contact my office at 208-356-3677 or by email at bhill@ruddco.com to let me know what time we can get together. I appreciate the great work you do for the Department of Water Resources. Few departments are more vital to the well-being of this state.

Sincerely,

A handwritten signature of Brent Hill in dark ink, written over a circular stamp.  
Brent Hill

**MICROFILMED**  
**SEP 03 2003**

**Moody Creek**  
Discussion Points  
Meeting between Karl Dreher and Brent Hill  
September 17, 2002

I have been contacted by a number of my constituents and other interested parties regarding whether or not the State of Idaho is honoring its responsibilities relating to the water rights of Merle Jeppesen on Moody Creek. I have had personal discussions with James Wood on the one side, and two sons of Merle Jeppesen on the other side, as well as a telephone conversation with Ron Carlson of the Idaho Department of Water Resources. Based on those discussions and the documentation provided me, I have outlined the pertinent facts as I understand them and posed some questions I hope we can address.

**FACTS:**

- A. K. Merle Jeppesen held water rights dating back to 1965 to divert water from Moody Creek in Madison County below where the Enterprise, Teton and East Teton canals flow into Moody Creek.
- B. In 1983, Jeppesen applied to change the point of diversion upstream approximately ten miles. The application was denied, evidently due largely to the objections of downstream property owners.
- C. In 1985 a new application was approved.

**QUERIES:**

1. Did the State follow appropriate legal procedures in the process of granting the transfer of water rights to Jeppesen?
2. Was additional public input sought and proper notification given?

**FACTS:**

The following restrictions were placed on Jeppesen's water rights at the time the transfer was approved:

- A. Not more than 200 acres were to be irrigated with water from Moody Creek.
- B. Water usage was limited to 8 cfs from April 1 to June 20 each year and to 4 cfs from June 21 to November 1.
- C. Total diversion could not exceed 288 acre-feet per annum.
- D. A totalizing meter was to be installed with a lockable control device to monitor the flow.

**QUERIES:**

1. Has the State sufficiently enforced each of the restrictions it required at the time the transfer application was approved?
2. What actions can be taken to assure concerned parties that the restrictions are being met and to protect Jeppesen from accusations that they are not?

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**SEP 03 2003**

FACTS:

In 1984, the Idaho Department of Fish and Game prepared a "Memorandum of Understanding," in which Jeppesen agreed to reduce diversion of water if necessary to maintain a minimum water flow downstream from the diversion to avert a loss of fishery.

QUERIES:

1. Was the "Memorandum of Understanding" ever executed and, if so, has it been honored?
2. Who is responsible to enforce the agreement?

FACTS:

- A. Moody Creek is a 303D listed stream and is being monitored by the Idaho Soil Conservation Commission. Referring to Moody Creek, the Commission reports, "There are high concentrations of ammonia and ortho phosphorus. It is possibly being caused by low flow and decomposing algae."
- B. The Greater Yellowstone Coalition and the Friends of the Teton River have expressed concerns regarding the lack of water flow below Jeppesen's diversion point and its adverse affect on fish and the aquatic ecosystem.

QUERIES:

1. Is the State in any way liable or responsible to protect state rivers and streams from unreasonable diversion of water?
2. Can or should the State restrict legal water rights to maintain at least a minimal flow to avoid the complete extermination of fish and other aquatic life?

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SEP 03 2003

## CONSTITUENT LETTERS

August 29, 2002

Senator Brent Hill  
Idaho Senate

Dear Senator Hill,

"The Idaho Department of Water Resources was created in 1895 to serve the people of Idaho by ensuring that water and energy are conserved and available for the sustainability of Idaho's economy, ecosystems, and resulting quality of life. They do that by controlled development, wise management, and protection of Idaho's surface and ground water resources, stream channels, and watersheds; and promotion of cost-effective energy conservation and use of renewable energy sources."

I am a farmer on the Rexburg Bench as were my father and forefathers. Moody Creek has served many generations of settlers, wildlife, and fishermen and is a pristine natural creek that starts and ends in Madison County. I am writing this letter to express my deep concern over the abuse of water rights on Moody Creek and the subsequent death of a creek and negative impact on the ecosystem that it supports. My roots run deep and so does my sense of responsibility to protect this natural resource. I own approximately one thousand acres on the Rexburg Bench, several hundred acres of which is located on the Moody Canyon. It is classified as "non-agricultural waste land", but is the most valuable acreage I own because of the creek which flows through it (Moody Creek).

Merle Jeppesen acquired water rights at the end of Moody Creek below the point where the Enterprise Canal, the Teton Canal, and the East Teton Canal flowed into Moody Creek. On November 16, 1983 Merle Jeppesen made an application for his existing water rights to be moved 10 miles up the Moody Creek and his application was denied. At his initial application there were approximately 40 landowners along the creek that objected strenuously to his request to move his water rights upstream. Early in 1984, he withdrew his request only to submit a new application in February of 1984. On July 22, 1985 his application was approved. It was approved with the stipulations that (1) not more than 115 acres be watered in any one year, (2) that on June 21, his water usage be significantly decreased, (3) that a totalizing meter be installed, and that (4) a lockable control device be installed.

The stipulations indicate why the board denied his application to start with. Moody Creek was simply not able to produce the amount of water necessary to meet Mr. Jeppesens pumping needs. Why was a request that was unanimously protested and declined, approved such a short time later without notification to opposed parties? Even though water rights were granted, they were issued with stipulations attached. One of those stipulations was that the water usage be restricted significantly after June 21<sup>st</sup>. The Department of Water Resources realized then, as is true today, that Moody Creek is simply not capable of supporting the amount of water that Mr. Jeppesen would like to pump. Mr. Jeppesen hasn't honored any of the stipulations that were set forth at the time water rights were granted, but has pumped large amounts of water well after June 21<sup>st</sup>, without a monitoring device of any kind. It also a fact that Mr. Jeppesen is irrigating substantially more acres than the original specified site.

The Department of Fish and Game indicated its concern over this same transfer of water rights when a Memorandum of Understanding was drawn ~~up between the~~ Department and Merle

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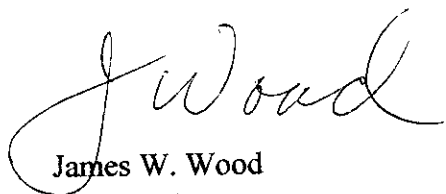
Jeppesen. It stated that if need be, Mr. Jeppesen was to reduce diversion to allow a minimum of 1.5 cfs in order to "avert the loss of fishery". This memorandum, as well as the restrictions imposed by the Department of Water Resources, has been ignored, and the fishery has in fact been lost. Moody Creek used to be an excellent fishing stream, but due to Mr. Jeppesens over-pumping, the required habitat below the diversion has not been maintained.

To allow irresponsible transferring of water rights and to condone such extensive pumping on a stream as to adversely affect the animal and fish habitat for miles below the diversion is an obscene misuse of our precious Idaho water. It is also contrary to the Department of Water Resources own mission statement, which I quoted in the first paragraph of this letter.

I ask that you and the Governor, who has jurisdiction over the Water Resource Board, to re-evaluate the water rights granted to Merle Jeppesen. We suggest that the best solution for Moody Creek would be to honor the initial denial of water rights made by the Department of Water Resources in November of 1983. At the very least we ask that the Department require Merle Jeppesen to adhere to the stipulations already in place and that the responsible use of our water be enforced. We further request that a minimum sustainable flow be maintained with a measuring device placed just upstream of the point where the Enterprise Canal flows into Moody Creek, located in Township 6N, Range 41E, Section 17. We would hope that the Department of Water Resources will ensure that water is available for the sustainability of Idaho's economy, ecosystems, and the resulting quality of life as is stated in their own mission statement.

Your help would be very much appreciated.

Sincerely,



James W. Wood

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SEP 03 2003

September 9, 2002

Dear Senator Hill,

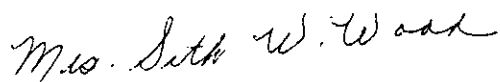
My grandfather and husbands father were homesteaders on the Rexburg Bench, and I have lived in Madison County all of my life. Moody Creek provided enough water to drink and maintain a household, it also provided us with a much needed recreation from the grind of farm life. I grew up fishing and wading in the Moody creek. The creek ran an abundant stream year-round and you could always catch a good-sized cutthroat.

Merle Jeppesen has been pumping enough water from Moody Creek to irrigate his crops. The creek simply can't support that kind of pumping. In the past several years, I've watched as the creek has dwindled at times to as little as a mossy dribble. The fish have died.

As taxpayers and citizens of this great state of Idaho, we depend on the Department of Water Resources to manage and protect our natural resources. The Department of Water Resources has ignored repeated requests for help in resolving this matter. Merle Jeppesen is not honoring stipulations set forth at the time his water right was granted, he is pumping far more than his water rights allow.

Any help that you can offer would be much appreciated.

Sincerely,



Mrs. Seth W. Wood

MICROFILMED

SEP 03 2003

Parkinson Farms Inc.

Ross Parkinson  
124 East 2<sup>nd</sup> North  
Rexburg, Id 83440  
(208) 356 - 3019

---

September 4, 2002

Dear Senator Hill,

We at Parkinson Farms are very much concerned over the Moody Creek on the Rexburg Bench, which is used by Merle Jeppesen to irrigate his crops. Mr. Jeppesen drains this creek to the point that there are only a few ponds left. Not only has he destroyed the fishing that we used to enjoy here, but he is also putting a strain on the farmers below him.

This matter has concerned all farmers below Mr. Jeppesen's farm for the last thirty years or more. The Fish and Game and several farmers even held a meeting at the Court House in Rexburg regarding this matter, but nothing was solved. We feel that there should be a limit as to how much water Mr. Jeppesen can pump from this creek.

Sincerely,



Parkinson Farms Inc.

Ross Parkinson and Family

MICROFILMED

SEP 03 2003

SEPT. 4, 2002

SENATOR BRENT HILL  
IDAHO SENATE

DEAR SENATOR HILL;

MY NAME IS DAVID WOOD. I AM A THIRD GENERATION FARMER ON MOODY CREEK. MY FARM IS LOCATED ON THE RIM OF MOODY CANYON 9 MILES EAST OF REXBURG. I OWN ABOUT 80 ACRES OF THE CANYON ITSELF WHERE MOODY CREEK FLOWS-----OR DID FLOW.

I AM WRITING TO YOU THIS DAY TO ASK THAT YOU PLEASE DO SOMETHING ABOUT THE REMOVAL OF OUR BEAUTIFUL MOODY CREEK FROM IT'S STREAMBED. I THINK THAT IS A TRAVESTY THAT THE WATER RESOURCES DEPARTMENT HAS ALLOWED THIS PROTESTED TRANSFER OF WATER RIGHTS. I CANNOT SIT BY AND LET MOODY CREEK WILDLIFE SUFFER ANY LONGER. FOR EXAMPLE: I CAN HONESTLY TELL YOU THAT IN THE EARLY 1980'S I COULD GO DOWN INTO THE CANYON RIGHT BELOW MY HOUSE AND CATCH 6 TO 10 LOVELY, LARGE NATIVE CUTTHROAT TROUT IN AN HOUR OR LESS. NOW, THERE ARE FEW, IF ANY FISH LEFT BECAUSE OF THE LACK OF SUFFICIENT STREAM FLOW. ANY BIOLOGIST WILL TELL YOU THAT A FISH NEEDS A MINIMUM FLOW TO PROPERLY OXYGENATE THE WATER.

WHY WOULD THE WATER RESOURCES DEPT. ALLOW THIS TRANSFER TO TAKE PLACE AND RUIN OUR COUNTY'S BEST FISHERY? I WOULD DEFINITELY LIKE TO SEE THE CREEK PUT BACK TO IT'S RIGHTFUL OWNERS-----THE WILDLIFE. THIS IS A BEAUTIFUL NATURAL STREAM, OR AT LEAST IT USED TO BE.

I AM ASKING YOU TO PLEASE LOOK INTO THIS MATTER AND I AM OFFERING MY HELP TO DO WHATEVER I CAN TO RESTORE MOODY CREEK BACK TO THE WILDLIFE.

THANK YOU,



DAVID WOOD  
MOODY CANYON FARMS  
280 SHOSHONE AVE.  
REXBURG, ID. 83440

SEP 03 2003

August 11, 2002

Senator Brent Hill  
Idaho Senate

Dear Senator Hill,

My six children, wife, and I own property below Merle Jeppesen's present point of water diversion on Moody Creek. I write to you not only for our personal loss but also for all those who object to the needless death of a creek and the surrounding canyon as far as wildlife is concerned.

I have watched Jeppesen literally pump the creek dry and remove excess water from the creek. Indeed, Jeppesen's pumps hook up with his mainline, which allows him to transfer creek water to his entire farm rather than just the 200 A. for which the Water Resource Board gave him a permit. I showed this fact to Ron Carlson of the Water Resource Board in Idaho Falls last year and we witnessed the creek pumps running while the specified adjacent 200 A. piece was not being irrigated. But to my knowledge no action has been taken to restrict Jeppesen. In fact, James Wood, my cousin, informed me Jeppesens have the gall to be asking the Water Resource Board for more water. Mr. Wood and I have analyzed the situation in depth and agree about the facts regarding this matter.

Jeppesen originally applied for a transfer of water rights from lower Moody Creek or perhaps an adjacent canal to the upper creek. All of us on the creek below this point of diversion petitioned the Water Resource Board to not allow this transfer at all. The Idaho Fish and Game Department joined us. Moody Creek was an excellent fishing creek before Jeppesens started pumping. I have not seen a fish in the creek for years.

I naively believed the Water Resource Board had permanently denied Jeppesen permission to remove water from upper Moody Creek, after considering the overwhelming evidence against it. But within a year or so, another meeting was held which I never heard about and the application granted. I contend that if no person formally objected to the transfer, the Water Resource Board had sufficient evidence from prior meetings to deny the transfer and do the right thing for the creek and all those who enjoy nature.

I ask you and the Governor, who has jurisdiction over the Water Resource Board, to correct this killing of Moody Creek! This exchange of water rights should have never been allowed in the first place. Let the creek flow as it did in the 1940's when I lived with my parents on Moody Creek and caught cutthroat trout from my backyard. Let me show my grandchildren what a delightful creek Moody Creek is without Mr. Jeppesen killing the creek by pumping.

MICROFILMED

SEP 03 2003

Where there is a will there is a way. Certainly the State of Idaho can undue this unwise grant and return Mr. Jeppesen's water rights back to the lower end of Moody Creek where the creek dumps into the Teton River. Furthermore, this action would be justified when one considers Mr. Jeppesen's behavior over the years when he has pumped excessively from upper Moody Creek.

But if there is no way the Governor and /or the Legislature can reverse this travesty of justice for over 99% of the people, get the Water Resource Board to enforce the present law.

Mr. Wood told me that he discussed the problem with Merle Jeppesen, who is unwilling to change despite the choking of the creek and objections of neighbors.

Your help would be most welcomed.

Sincerely yours,

*George Brown, M. D.*

George Brown, M. D.  
1439 Cambridge Drive  
Idaho Falls, Idaho

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SEP 03 2003



# Greater Yellowstone Coalition

13 South Willson, Suite 2 • P.O. Box 1874 • Bozeman, Montana 59771 • phone: (406) 586-1593  
fax: (406) 586-0851 • email: gyc@greateryellowstone.org • web: www.greateryellowstone.org

August 7, 2002

Senator Brent Hill  
1010 South 2<sup>nd</sup> East  
Rexburg, ID 83440

RE: Moody Creek

Dear Senator Hill:

I understand that you have spoken and met with James Wood concerning flows, or lack of flows in Moody Creek due to an upstream irrigation diversion. As you most likely know Moody Creek is one of the primary spawning tributaries for Yellowstone cutthroat trout for the lower Teton River.

The organization for which I work, the Greater Yellowstone Coalition (GYC), is a non-profit conservation organization based in Bozeman, MT with offices in Wyoming and Idaho. We have a keen interest in conserving and protecting riverine habitats such as Moody Creek, throughout the Greater Yellowstone Ecosystem. GYC has more than 12,000 individual members, with 90 member organizations and approximately 100 business/corporate members. We have approximately 700 members in Idaho, most of who reside in east Idaho. I am the Idaho Representative for GYC and work out of our Idaho Falls office.

Over the past several months I have had several conversations with Mr. Wood about the diminished flows in Moody Creek and how that problem might be remedied. The diminished flows are a result of the legal, upstream irrigation diversion controlled by a Merle Jeppesen. While Mr. Jeppesen's point of diversion was legally changed several years ago the Idaho Dept. of Water Resources apparently imposed some conditions on the diversion so that habitat for cold water aquatic species such as Yellowstone cutthroat trout would be maintained below the diversion.

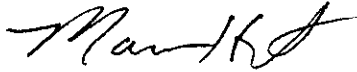
There is some question as to whether these stream flow conditions are being met in dry years such as this year and last. We ask that you inquire of IDWR and the Water Master for Water District O1 whether they have a systematic water quantity measuring device installed at Mr. Jeppesen's point of diversion and whether it can and does detect the actual quantity of water being diverted on a 24 hour basis. If it does not, the Dept. should

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require such a device to insure that the conditions agreed upon when Mr. Jeppesen's request for a change in point of diversion was granted.

Thank you for considering our request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marv Hoyt".

Marv Hoyt  
Idaho Representative

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## Mail Message



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**From:** ftr <ftr@tetontel.com>  
**To:** Brent Hill  
**Date:** Wednesday - August 7, 2002 1:59 PM  
**Subject:** James Wood  
 Mime.822 (2473 bytes) [\[View\]](#) [\[Save As\]](#)

Dear Senator,

I recently received a telephone call from James Wood regarding the withdrawal of water from Moody Creek, I am writing to you to express my concerns about potential stream dewatering below the diversion point. As I'm sure you know, Moody Creek is currently on the IDEQ 303 (d) list for impaired beneficial use and as such is quite vulnerable.

From Mr Wood's description the Jeppesens do not measure the amount of water that they withdraw from Moody Creek; although their water right is 4 cfs after June 20th it appears that no staff gauge or weir exists to measure the amount of water diverted. In a stream where flows often are quite low it is critical that withdrawals are accurately measured to protect both the fish and aquatic ecosystem and other users of the stream. I believe that a measurement device placed at the point of diversion that can be monitored frequently might resolve the conflict on Moody Creek and ensure the delivery of the legally entitled amount of water. Friends of the Teton River is a non-profit organization based in Driggs that is dedicated to developing a scientific understanding of water resources in the Teton Watershed and using that understanding to protect and improve these resources. Please feel free to contact me if you want to discuss this further, 354-3871.

Thank you very much for your interest in this matter,  
Lyn Benjamin, executive director FTR

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SEP 03 2003

## LEGAL CORRESPONDENCE

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**BILLY G. DUPREE, JR.**  
**ATTORNEY AT LAW**  
**P.O. Box 723 • 58 East First North • Rexburg, Idaho 83440**  
**Bus. (208) 356-0180 • Fax (208) 356-0238**

September 3, 2002

Mr. Ronald D. Carlson  
Idaho Department of Water Resources  
900 North Skyline  
Idaho Falls, Idaho 83402

Re: Moody Creek

Dear Mr. Carlson:

I received a letter from Jerry Rigby dated July 30, 2002 (copy enclosed) that was quite upsetting. I have given that letter and its message much thought. Mr. Rigby, on behalf of the Jeppesen's, essentially takes the position that the Idaho Department of Water Resources ("IDWR") believes that the Jeppesen's are in full compliance with the conditions, restrictions and limitations of their water rights and that nothing further need be done to ensure their compliance.

At one point in time through my communications with Jerry Rigby and your office, I felt that progress was being made toward obtaining compliance by the Jeppesen's. In fact, it was my understanding that IDWR expected and the Jeppesen's had committed to install a metering system this coming fall to accurately measure the amount of water pumped from Moody Creek. According to Ryan Madsen, it is not difficult and does not take much time to install an appropriate and functional metering device. Based on Mr. Madsen's two measurements taken on June 26th and July 2nd, however, apparently now the Jeppesen's and, according to Mr. Rigby, the IDWR, are fully satisfied that nothing further needs to be done. The following quotations from Mr. Rigby's letter are typical:

"Ryan Madsen and Ron Carlson believe the present method of metering meets or exceeds the 'metering' requirements of the original transfer. Therefore, according to them, no additional metering would be necessary."

"I truly believe that the Jeppesen's need to comply with the requirement of the transfer and not exceed their water rights. However, as far as the Department is concerned, the Jeppesen's have complied with and are not in violation of any transfer conditions."

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Mr. Ronald D. Carlson  
September 3, 2002  
Page 2

Mr. Rigby's letter was sent about a week after my letter to him dated July 24, 2002 (copy enclosed), in which I raised serious concerns that the Jeppesen's were taking more water from Moody Creek than permitted by their water rights. I sent a copy of that letter to you. I got no response to my letter from Mr. Rigby or from the IDWR to the concerns I raised. Instead, I received Mr. Rigby's July 30, 2002 letter that essentially said the IDWR was satisfied and the Jeppesen's didn't need to do anything further. If that is the IDWR's position, I would appreciate knowing why as it appears to me that the Jeppesen's have not met the requirements of their water rights. As a factual matter, Moody Creek has essentially gone dry below the Jeppesen's point of diversion for the last three years. Below that point, Moody Creek as an Idaho water resource and fish and game habitat resource has been substantially damaged. It would seem the IDWR would have an interest in fully enforcing the requirements of the Jeppesens' water rights to protect this valuable Idaho water resource as much as possible.

As you may recall, the Jeppesen's first request to change the diversion point of their water rights was opposed and denied. It was only after certain conditions and restrictions were included, that the opposition was dropped and the transfer approved. It is apparent that those conditions and restrictions were required to protect Moody Creek as an Idaho water resource and valuable fish and wildlife habitat. It appears, however, that over the years the IDWR has done very little to insure that the restrictions and conditions have been met. The water rights transferred upstream became identified as numbers 22-265B and 22-265D. These water rights also are referred to as combined in 22-265E. By action of the Department of Water Resources, dated July 22, 1985, the transfer of Water Right no. 22-265D was approved subject to the following limitations and conditions:

"1. A totalizing meter and lockable controlling works of a type approved by the Department shall be permanently installed and maintained as part of the diverting works. 2. Diversion under this right shall not exceed 288 acre-feet/annum. 3. Use of water under this right is subject to control by the water master of State Water District No. 01, Snake River."

As best I can tell, the Jeppesen's are not in compliance with these requirements.

Additional requirements included the following: (i) Water Right Number 22-0265B permits 4 cfs from April 1 through June 20 and 2 cfs from June 21 through November 1 but also requires that the water not be taken to irrigate more than 85 acres in any one year and (ii) Water Right Number 22-0265D permits 4 cfs from April 1 through Jun 20 and 2 cfs from June 21 through November 1 but also requires that water not be taken to irrigate more than 115 acres in any one year (in addition to the 288 acre-feet/annum limitation). It is apparent that these limitations were imposed to protect Moody Creek and it very well may be that full enforcement of these requirements would have improved and vastly preserved the condition of Moody Creek these past few years. When taking the requirements as a whole, it is readily apparent that the water rights as combined do not permit the Jeppesen's to divert 8 cfs from April 1 through June 20, 24 hours a day, 7 days a week and 4 cfs from

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Mr. Ronald D. Carlson

September 3, 2002

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June 21 through November 21, 24 hours a day, 7 days a week. If the Jeppesen's did that, they would divert much more water than needed to irrigate 200 acres, regardless of the type of crops. They also would significantly exceed the 288 acre-feet/annum limitation on Water Right No. 22-265D.

I am setting forth below calculations based on certain assumptions which I believe to be correct. I would appreciate a response to this letter, even if it is to say that the IDWR is not going to respond or do anything further relating to the Jeppesen's. I would prefer, however, a substantive response. If the IDWR agrees that my calculations are correct, the response should describe how the IDWR is going to proceed to insure the Jeppesens' future compliance with the limitations on the amount of water that can be diverted, including installation and maintenance of a permanent "meter and lockable controlling works." On the other hand, if the IDWR does not agree with my calculations or assumptions, I would appreciate a response to explain in what ways they are wrong. Parenthetically, I would like to point out that on June 25, 1985, less than a month before the IDWR approved the transfer of Water Right Number 22-265D, the Jeppesen's filed an additional Claim for Water Right Number 22-4195 seeking an additional 4 cfs from April 1 to November 1 from the same point of diversion. This claim was based on use. In other words, the Jeppesen's effectively admitted that they were already violating the limitations imposed on the transfer of their water right at the time that it was approved. Their continued pursuit of this additional water right constitutes an admission that they have diverted more water than permitted. If you have another explanation, I would appreciate hearing it.

Please consider the following assumptions and calculations:

Assumptions:

1. Irrigation of a potato crop requires approximately 25 acre-inches per acre per year.
2. Irrigation of a grain crop requires approximately 20 acre-inches per acre per year.
3. There are 14 irrigation weeks for a potato crop.
4. There are 10 irrigation weeks for a grain crop.
5. According to Ryan Madsen's measurements, during the 6 day period from June 26, 2002 to July 2, 2002, the Jeppesen's diverted 41.17 acre-feet (copy enclosed). This is equivalent to 48.03 acre-feet per week.
6. The Jeppesen's diverted 48.03 acre-feet per week for the entire irrigation period (this is probably significantly lower than actual diversion, since prior to June 21 the Jeppesen's may have been diverting twice as much or more water).

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Mr. Ronald D. Carlson  
September 3, 2002  
Page 4

Limitations:

1. The Jeppesen's may only irrigate 200 total acres from Moody Creek in any one year.
2. Based on the above assumptions, if all 200 acres were in grain, the total water required for the year would be approximately 333.33 acre-feet. The Jeppesen's are not entitled to divert water from Moody Creek to irrigate more than 200 acres. Therefore, this is all that should be diverted for 200 acres of grain.
3. Based on the above assumptions, if all 200 acres were in potatoes, the total water required for the year would be approximately 416.66 acre-feet. The Jeppesen's are not entitled to divert water from Moody Creek to irrigate more than 200 acres. Therefore, this is all that should be diverted for 200 acres of potatoes.

Calculations:

1. Grain Crop.  $10 \text{ weeks} \times 48.03 \text{ acre-feet} = 480.3 \text{ acre-feet}$  of total water diverted from Moody Creek.  $480.3 \text{ acre-feet} - 333.33 \text{ acre-feet} = 146.97 \text{ acre-feet}$  more water diverted than permitted.
2. Potato Crop.  $14 \text{ weeks} \times 48.03 \text{ acre-feet} = 672.42 \text{ acre-feet}$  of total water diverted from Moody Creek.  $672.42 \text{ acre-feet} - 416.66 \text{ acre-feet} = 255.76 \text{ acre-feet}$  more water diverted than permitted.

A reasonable conclusion is that the Jeppesen's are irrigating much more than 200 acres with the water they are pumping from Moody Creek and, therefore, exceeding their water right. The excessive diversion of water has adversely affected Moody Creek. In light of the damage to Moody Creek, I expect that the IDWR is very concerned with whether the Jeppesen's are satisfying all the requirements and limitations of their water rights. In this regard, it may be interesting to investigate why the Jeppesen's are making a claim for an additional 4 cfs based on useage whiie at the same time they claim they are complying with the limitations.

In closing, although Mr. Rigby's letter suggests that Mr. James Wood is the only one concerned about the damage that has been caused to Moody Creek, that is not true. It is my understanding that there are many people and groups who are very concerned and who would be interested in knowing that the IDWR is doing everything within its power to protect that valuable Idaho water resource.

Again, while I believ the assumptions and calculations above to be fair and accurate, if you disagree, I would appreciate your so advising and your describing any correction that is needed. In this regard, I belive it would be very informative, if the IDWR did obtain the Jeppesen's power usage

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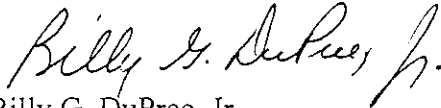
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Mr. Ronald D. Carlson  
September 3, 2002  
Page 5

records for their Moody Creek pumps for the entire year so that it can calculate how much water has actually been diverted.

I would be happy to meet with you in person, as Mr. Rigby has done, if that would be helpful. Otherwise, I thank you for your attention to the foregoing and look forward to hearing your response.

Very truly yours,

  
Billy G. DuPree, Jr.

BGD/law

cc: James and Lyn Wood  
Senator Brent Hill

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SEP 03 2003

*Law Offices*

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***VIA FAX 356-0238***

July 30, 2002

Billy G. Dupree, Jr.  
P.O. Box 732  
Rexburg, ID 83440-0732

**RE: Jeppesen Water Rights / Jaime Wood**

Dear Billy,

In response to your several inquiries and letters, I have just had a meeting with Ron Carlson from IDWR as well as Ryan Madsen who was sent by Ron to investigate the Water Rights issue which has been raised by Jaime. My understanding is that Jaime has apparently already spoken to Ryan and probably knows most of what I will address below. However, having now reviewed this matter carefully with the Department, as well as the search of the water rights which we have previously made in connection with this matter, my client now feels that he has gone as far as he is willing to go. As you know, we asked that the Department actually come up and perform a test to determine whether the Jeppesen's were exceeding their diversionary rate of 4.0 cfs. According to Ryan Madsen, who has been conducting the survey, the present methodology of metering has produced an average of 3.67 cfs. Both Ryan and Ron Carlson believe that the present method of metering meets or exceeds the "metering" requirement of the original transfer. Therefore, according to them, no additional metering would be necessary.

My client is very willing to continue to produce the power records to the Department, upon it's request, but is unwilling to produce the same to your client. As I told you before, I truly believe that the Jeppesen's need to comply with the requirements of the transfer and not exceed their water rights. However, as far as the department is concerned, the Jeppesen's have complied with and are not in any violation of the transfer conditions. For that reason, and because we believe that Mr. Wood has absolutely no standing to assert any additional requirements than those made by the Department, to do anything further would be unnecessary as far as any legal requirements are concerned.

Your client obviously can continue to complain to the Department and we are certain that he will do so. However, until and unless the Department informs us that there is some violation of the water

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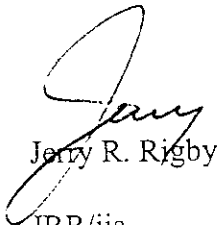
July 30, 2002

RE: Jeppesen Water Rights / Jaime Wood

Page 2

right itself by the Jeppesen's, the Jeppesen's have informed me that they do not desire to have any further contact with Mr. Wood. Therefore, I have been requested to discontinue any further communication with your office concerning this matter, having been assured by my clients that they ARE in compliance with their water rights and will continue to do so. I apologize for this abrupt manner in terminating our communications, however, my clients feel that they are unnecessarily paying attorney fees.

Sincerely yours,



Jerry R. Rigby

JRR/jjs

cc: Bevan Jeppesen

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BILLY G. DUPREE, JR.

ATTORNEY AT LAW

P.O. Box 723 • 58 East First North • Rexburg, Idaho 83440

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July 24, 2002

Jerry Rigby  
Rigby Thatcher Andrus Rigby Kam & Moeller  
25 North 2nd East  
P.O. Box 250  
Rexburg, Idaho 83440

Re: Moody Creek

Dear Jerry:

There is increasing concern that the Jeppesens are taking more water from Moody Creek than they are entitled. Although they currently claim a water right for 4cfs, the water taken from Moody Creek is to be limited to farm 200 acres and a total of 500 acre feet per year. Based on information provided by Ryan Madsen from his measurements at the Jeppesens' Moody Creek pump, I calculate that the Jeppesens are taking anywhere from one-third to one-half more water from Moody Creek than needed to irrigate 200 acres, even if all 200 acres were planted in potatoes. If the crops were grain or alfalfa, then the amount of excess water they are taking would appear to be even greater. It also appears that the Jeppesens will exceed their total annual limit by anywhere from one-third to one-half more than allowed.

The foregoing is very significant, since Moody Creek is again going stale and dry below where the Jeppesens take water from the creek. Algae and moss is growing, and the creek has deteriorated to such a point that animals don't even want to drink from it. On the other hand, above the Jeppesens' pump, the creek is high quality, with abundant water life. In other words, the Jeppesens' irrigation activities have a serious impact on the creek. While it would be preferable if the Jeppesens voluntarily managed their water usage so that Moody Creek had adequate stream flow below their pumps, at the very least their water usage from Moody Creek should be in accordance with the applicable limitations. If my calculations are correct, the Jeppesens are using water from Moody Creek to irrigate much more than 200 acres. In light of my concerns, I would appreciate it if you could contact me either to explain why my calculations and reasoning is incorrect or how the Jeppesens are going to insure that they are not exceeding the limitations to their use of water from Moody Creek. If I am correct in calculating that 4 cfs is more water than needed to irrigate 200 acres, the Jeppesens should be taking less than 4 cfs. In this regard, the Jeppesens should identify the 200 acres they are farming this year and the types of crops being grown as that affects the amount of water needed.

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Jerry Rigby  
July 24, 2002  
Page 2

In light of the serious impact to Moody Creek, I expect that the Idaho Department of Water Resources has an interest in ensuring that the Jeppesens are taking water from Moody Creek in accordance with the applicable limitations. Again, because of the serious impact to Moody Creek, I would expect the Department to strictly enforce the applicable limitations and requirements.

Thank you for your attention to the foregoing. I look forward to hearing from you.

Very truly yours,

  
Billy G. DuPree, Jr.

BGD/law

cc: Ronald D. Carlson, IDWR  
Jamie Wood

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July 3, 2002

Moody Creek Pump (Jepson)

Formulas used to determine the volume diverted by a pump.

KWh used/hrs pumped =  $(3.6 \times K_h \times \# \text{ of revolutions}) / \text{seconds}$

Hrs pumped =  $(\text{change in KWh}) / (\text{KWh used/hrs pumped})$

To determine the volume diverted:

1. Obtain a KWh reading
2. Determine the change in KWh from previous reading
3. Determine the hours pumped
  - a. Do this by dividing the change in KWh by KWh used/hrs pumped
4. Determine the 24 hr cfs
  - a. Divide the hours pumped by 24 and then multiply this number by the flow rate (in cfs).
5. Determine the volume pumped in acre-feet by multiplying the 24 hr cfs by 1.983

The Moody Creek pump was measured on June 26, 2002 and then again on July 2, 2002.

The total amount diverted was 41.17 acre-feet. Over the six-day period the average flow rate was 3.46 cfs or 1552.95 gal/min.

*Ryerson Hudson*

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Moody Creek  
July 2, 2002

LOG NAME: Moody  
START : 06-28 15:23  
END : 06-28 15:33  
INTERVAL: 00:01:00

06-28 15:23:00  
+5.849E+0 ft/s  
+1.761E+3 gal/m  
+3.923E+0 ft<sup>3</sup>/s  
+TOTAL 0003883 gal  
NORMAL

06-28 15:24:00  
+5.800E+0 ft/s  
+1.746E+3 gal/m  
+3.891E+0 ft<sup>3</sup>/s  
+TOTAL 0005633 gal  
NORMAL

06-28 15:25:00  
+5.777E+0 ft/s  
+1.739E+3 gal/m  
+3.875E+0 ft<sup>3</sup>/s  
+TOTAL 0007377 gal  
NORMAL

06-28 15:26:00  
+5.767E+0 ft/s  
+1.736E+3 gal/m  
+3.868E+0 ft<sup>3</sup>/s  
+TOTAL 0009126 gal  
NORMAL

06-28 15:27:00  
+5.850E+0 ft/s  
+1.761E+3 gal/m  
+3.924E+0 ft<sup>3</sup>/s  
+TOTAL 0010870 gal  
NORMAL

06-28 15:28:00  
+5.803E+0 ft/s  
+1.747E+3 gal/m  
+3.892E+0 ft<sup>3</sup>/s  
+TOTAL 0012624 gal  
NORMAL

06-28 15:29:00  
+5.757E+0 ft/s  
+1.733E+3 gal/m  
+3.862E+0 ft<sup>3</sup>/s  
+TOTAL 0014371 gal  
NORMAL

06-28 15:30:00  
+5.837E+0 ft/s  
+1.757E+3 gal/m  
+3.915E+0 ft<sup>3</sup>/s  
+TOTAL 0016123 gal  
NORMAL

06-28 15:31:00  
+5.844E+0 ft/s  
+1.759E+3 gal/m  
+3.920E+0 ft<sup>3</sup>/s  
+TOTAL 0017874 gal  
NORMAL

06-28 15:32:00  
+5.798E+0 ft/s  
+1.745E+3 gal/m  
+3.889E+0 ft<sup>3</sup>/s  
+TOTAL 0019626 gal  
NORMAL

06-28 15:33:00  
+5.841E+0 ft/s  
+1.758E+3 gal/m  
+3.918E+0 ft<sup>3</sup>/s  
+TOTAL 0021376 gal  
NORMAL

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Avg. Q = 1749 gpm

*All of these measurements were taken on 7-2-02  
RM*

|

**BILLY G. DUPREE, JR.**  
**ATTORNEY AT LAW**  
**P.O. Box 723 • 58 East First North • Rexburg, Idaho 83440**  
**Bus. (208) 356-0180 • Fax (208) 356-0238**

October 2, 2001

Mr. James Wood  
P.O. Box 610  
Rexburg, Idaho 83440

Re: Moody Creek

Dear Jamie:

Based on the information you provided to me earlier and the letter dated September 5, 2001 to Dr. George Brown from the Department of Water Resources, I believe I now have a better understanding of the water rights and related limitations and requirements. The following summary may be helpful to you:

1. The original decreed water right was for 9.6 cfs (4.8 cfs after June 20) with an original point of diversion in the SE1/4NW1/4 of Section 13, Township 6 North, Range 40 East, Boise Meridian.

2. Pursuant to Transfer Application No. 2034, the original water right was split in 1977. Water Right No. 22-0265A remained unchanged but was reduced to 5.6 cfs (2.8 cfs after June 20). Water Right No. 22-0625B was transferred upstream to a new point of diversion in the SE1/4NW1/4 of Section 21, T5N, R40E, Boise Meridian. This water was made appurtenant to 320 acres in the NE1/4 and N1/2SE1/4 of Section 20 and the W1/4NW1/4 of Section 21, with a condition that no more than 85 acres be irrigated in any one year. The applicant (K. Merle and/or Janice Jeppesen) also is required to install and maintain as part of the diverting works a measuring device of a type approved by the IDWR so the use of water under the transfer can be controlled by the watermaster of State Water District No. 1, Snake River. This condition is identified in the Proposed Memorandum of Decision and Order dated November 16, 1983 of the IDWR that denied Transfer Application No. 2436 discussed below. I do not have that document approving Water Right No. 22-0625B, so I do not know whether there are additional limitations or conditions.

3. In 1980, by Transfer Application No. 2436, Merle and Janice Jeppesen attempted to have water from Water Right No. 22-0265A transferred to the same point of diversion as Water Right No. 22-0265B. The transfer request included transferring all of the 4.80 cfs that was part of the original water right for use after June 20 to the new point of diversion. This application was opposed and subsequently withdrawn. This transfer was denied because approval of the application would have resulted in an enlargement of Water Right No. 22-0265 and Transfer No. 2034. Making the water

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Mr. James Wood  
October 2, 2001  
Page 2

right appurtenant to 515 acres as proposed by the application would have represented an increase of historical, consumptive use.

4. In 1984, by Transfer Application No. 3002, Merle and Janice Jeppesen obtained transfer of water in Water Right No. 22-0265A. The IDWR approved this application on July 22, 1985. This resulted in Water Right No. 22-0265A being split into Water Right No. 22-0265C (unchanged part) for 1.6 cfs (0.8 cfs after June 20) and Water Right No. 22-0265D for 4 cfs (2 cfs after June 20) that was transferred upstream to the new point of diversion in Moody Creek. The water in Water Right No. 22-0265D was made appurtenant to 515 acres (apparently even though this was grounds for denying Transfer Application No. 2436 discussed above) described as NE1/4, S1/2NW1/4, N1/2SW1/4 and N1/2SE1/4 of Section 20 (380 acres) and NW1/4 and NE1/4SW1/4 of Section 21 (135 acres), but was limited to no more than 115 acres being irrigated in any one year. The new point of diversion is SE1/4NW1/4 of Section 21, T5N, R40E, Boise Meridian, the same as Water Right No. 22-0625B. The approval of the transfer was subject to the following limitations and conditions:

"1. A totalizing meter and lockable controlling works of a type approved by the Department shall be permanently installed and maintained as part of the diverting works. 2. Diversion under this right shall not exceed 288 acre-feet/annum. 3. Use of water under this right is subject to control by the watermaster of State Water District No. 01, Snake River."

5. Subject to the limitations discussed above, it appears that the water available at the upstream point of diversion in Moody Creek now consists of the following:

Water right No. 22-0265B for 4 cfs (2 cfs after June 20) to irrigate 85 acres.

Water right No. 22-0265D for 4 cfs (2 cfs after June 20) to irrigate 115 acres.

The 320 acres appurtenant to Water Right No. 22-0265B are included within the 515 acres appurtenant to Water Right No. 22-0265D.

Based on the foregoing, I believe the following comments/questions are important:

1. When will a totalizing meter and lockable controlling works of a type approved by the IDWR be permanently installed and maintained as part of the new point of diversion?

2. What measures are being taken by the IDWR to insure that Water Right No. 22-0265B is being used to irrigate only 85 acres each year and water right No. 22-0265D is being used to irrigate only 115 acres each year?

1439. Cambridge

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Mr. James Wood  
October 2, 2001  
Page 3

3. What measures are being taken by the IDWR to insure that the water used under Water Right No. 22-0265D does not exceed 288 acre-feet/annum?

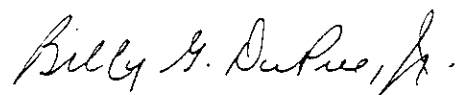
4. What controls are being implemented by the watermaster of State Water District No. 1, Snake River, relating to the use of water under Water Rights Nos. 22-0265B and 22-0265D?

Attached to this letter is an unsigned copy of a Memorandum of Understanding between Merle Jeppesen and the State of Idaho, Dept. of Fish and Game regarding the transfer of Water Right No. 22-0265. It appears to have been drafted in 1984 in connection with Transfer Application No. 3002. It would be interesting to learn whether this Memorandum of Understanding was ever signed and, if so, why it hasn't been implemented. If it was never signed, it would be interesting to learn whether the IDWR understood that this agreement was to be signed when it approved the transfer and, if so, why it wasn't signed. If this agreement has not been signed, however, it does not appear that it will provide much assistance, since it was not listed by the IDWR as a limitation or condition when it approved the transfer on July 22, 1985.

Based on the foregoing, it appears that the amount of water available to the new upstream point of diversion in Moody Creek is greater than originally explained. It, therefore, seems that at least one objective should be to have mechanisms in place to insure that the water diverted is used for the specific acres permitted and does not exceed the amount permitted. After you have had an opportunity to review the foregoing, please telephone me.

Although inquiries to the IDWR about these water rights should not affect the IDWR's dealings with you and your water rights, you should understand that this possibility does exist.

Very truly yours,



Billy G. DuPree, Jr.

BGD/law

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SEP 03 2003

September 10, 2001

Director Karl Dreher  
1301 N. Orchard St.  
Boise, ID 83706

Dear Director Dreher,

I am writing to you to express my concerns about Merle Jeppesen's abuse of water rights that have been issued to him.

On November 16, 1983 Merle Jeppesen made an application for water rights on the Moody Creek and received a "no" decision. Early in 1984, he withdrew his request only to submit a new application in February of 1984. On July 22, 1985 his application was approved with the stipulations that (1) not more than 115 acres be watered in any one year, (2) that on June 21, his water usage be significantly decreased, (3) that a totalizing meter be installed, and that (4) it be lockable.

It is obvious to me why the board returned a "no" decision to start with. Moody Creek is simply not able to produce the amount of water necessary to meet Mr. Jeppesens pumping needs. From the time that the "no" decision was given, until February of 1984 when there was a decision reversal, there certainly had to be a fair amount of maneuvering and quite possibly coercion on Mr. Jeppesens part. Even at that, water rights were issued with stipulations attached. One of those stipulations was that the water usage be restricted significantly after June 21<sup>st</sup>. They realized then, as is true today, that Moody Creek is simply not able to support the amount of water that Mr. Jeppesen has been pumping. Mr. Jeppesen hasn't honored any of the stipulations that the Board of Water Resources set forth at the time water rights were granted, but has pumped large amounts of water well after June 21<sup>st</sup>, without a monitoring device of any kind. This summer Ron Carlson from the Idaho Department of Water Resources and I drove up to Mr. Jeppesens pumping site. Mr. Carlson noted that Mr. Jeppesen is not only pumping much more water than he is allowed, but may not even be irrigating the original site that was specified.

We are farmers and are very aware how important our water rights are to us. To allow irresponsible transferring of water rights and to condone such extensive pumping on streams that it adversely affects animal and fish habitats downstream for miles, only serves to jeopardize all of our water rights in the future.

We ask that the Department of Water Resources re-evaluate the water rights granted to Merle Jeppesen. We ask that the guidelines first issued be enforced, that the responsible use of water rights be mandated and that legislation be pursued that would help regulate water right abuses.

Sincerely,

James W. Wood

Bill - please FAX  
make changes  
BACK please  
JAMIE

L-14  
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SEP 03 2003

BILLY G. DUPREE, JR.  
ATTORNEY AT LAW

P.O. Box 723 • 58 East First North • Rexburg, Idaho 83440  
Bus. (208) 356-0180 • Fax (208) 356-0238

September 7, 2001

Mr. Ron Carlson  
Idaho Department of Water Resources  
900 N. Skyline Drive  
Idaho Falls, ID 83402

Re: Moody Creek

Dear Mr. Carlson:

I am writing to follow up on your meetings and conversations with James Wood regarding water being pumped from Moody Creek by Merle Jeppesen. As I believe you understand, Moody Creek essentially dries up below Mr. Jeppesen because of the amount of water he pumps from the creek. This causes significant damage to the Moody Creek fishery and may adversely affect other wildlife. This also may seriously impact the values of the downstream properties.

Concern has been raised as to whether the amount of water being pumped by Mr. Jeppesen is within his water right and whether the water pumped is being used on land covered by the water right. There is no meter or lockable controlling works and, it appears, that the Idaho Department of Water Resources has not been monitoring the amount or use of the water being diverted by Mr. Jeppesen.

You advised Mr. Wood that you would send to him copies of Mr. Jeppesen's current water right pursuant to which he pumps water from Moody Creek and historical documents for that water right. In this regard, Mr. Wood understands that water rights initially requested by Mr. Jeppesen were denied. Mr. Wood would appreciate receiving documentation relating to the previous denials and changes, if any, in Mr. Jeppesen's request, that eventually resulted in his receiving the water right he is now using.

There is serious concern regarding the affects of Mr. Jeppesen's diversion of water from Moody Creek on the fish and wildlife habitat of Moody Creek. In this regard, if Mr. Jeppesen has a valid water right, he should only divert water consistent with the requirements of that water right. That is, Mr. Jeppesen should only pump the amount of water permitted and use that water on lands permitted by the water right.

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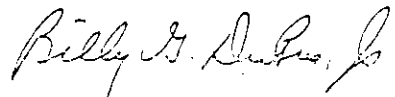
SEP 03 2003

Mr. Ron Carlson  
September 7, 2001  
Page 2

Mr. Wood appreciates the department's interest in assuring compliance with the applicable water right and taking steps to monitor the water usage. Mr. Wood also would appreciate your sending the documents relating to Mr. Jeppesen's water right as soon as possible.

Thank you for your attention to the foregoing.

Very truly yours,



Billy G. DuPree, Jr.

BGD/law

cc: Mr. James Wood ✓

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SEP 03 2003



State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

September 5, 2001

GEORGE R BROWN M D  
1439 CAMBRIDGE DRIVE  
IDAHO FALLS, ID 83401

Re: Water Right No. 22-265

Dear Dr. Brown:

The Idaho Department of Water Resources (IDWR) has received your August 28, 2001 letter regarding transfer of the water right referenced above. The purpose of this letter is to provide you with a short summary of the administrative actions taken on the transfer applications to date and to respond to your questions related to those actions.

Water Right No. 22-265 was originally decreed to Martin Garn for 9.6 cfs (4.8 cfs after June 20) from Moody Creek in the case of Rexburg Irrigation Company, et al vs. Teton Irrigation Company, et al dated December 16, 1910. Transfer Application No. 2034 was filed by K. Merle and/or Janice Jeppesen in 1976. The application was advertised without protest and approved in 1977 to change the point of diversion and place of use for a portion of the right. The transfer split the water right into two parts. Water Right No. 22-265A (unchanged part) provided 5.6 cfs (2.3 after June 20) and Water Right No. 22-265B (transferred part) provided 4 cfs (2 cfs after June 20) to a new point of diversion and place of use upstream on Moody Creek and was limited to irrigation of 85 acres.

Transfer Application No. 2436 was filed by K. Merle and/or Janice Jeppesen in 1980. The application proposed to move a portion of Water Right No. 22-265A upstream to the same general location as approved under Transfer No. 2034. The application was protested by numerous people, was initially denied by IDWR after a hearing was conducted on the matter and was ultimately withdrawn by the applicant.

Transfer Application No. 3002 was filed by K. Merle and/or Janice Jeppesen in 1984. The application was advertised and a single protest was filed by Garry J. Jeppesen and was later withdrawn subject to conditions. The application was approved in 1985 to change the point of diversion and place of use of a portion of 22-265A to the same general location as approved under Transfer No. 2034. The transfer split the water right into two parts. Water Right No. 22-265C (unchanged part) provided 1.6 cfs (0.8 cfs after June 20) and Water Right No. 22-265D (transferred part) provided 4 cfs (2 cfs after June 20) for irrigation of 115 acres at the new location.

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SEP 03 2003

To answer your question regarding an appeal of the decisions approving the transfer(s), since the transfers were approved many years ago, all time for appeals has passed and the decisions have become final. IDWR relies on the application and protest process provided under statute to raise any injury, enlargement, public interest or other issues related to an application. Protests of applications and appeals of IDWR decisions must be timely filed in order to ensure the opportunity for further review.

These rights are claimed in the ongoing Snake River Basin Adjudication (SRBA) and will be reviewed and recommended to the SRBA court for decree within the next few years. Objections to IDWR's recommendations can be filed by water users who disagree with the Department's findings. Please contact our Eastern Region office at 525-7161 for more information regarding the SRBA.

Regarding minimum flow laws, Chapter 15, Title 42, Idaho Code provides that the Idaho Water Resource Board can file an application to appropriate water for minimum stream flow purposes. The application can be approved if it meets certain criteria, including the requirement that the appropriation cannot interfere with any vested water right, permit or application with an earlier priority date. As with any new appropriation, senior rights are protected based on the principle that "first in time is first in right." Anyone can request that the Idaho Water Resource Board consider the appropriation of a minimum stream flow of the unappropriated waters of any stream.

If you need additional information regarding the transfers or minimum stream flows, please feel free to contact the Department.

Sincerely,



Jeff Peppersack, Manager  
Water Right Permits Section

JP:klt

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SEP 03 2003

August 28, 2001

Director Karl Dreher  
1301 N. Orchard Street  
Boise, Idaho 83706

Dear Director Dreher,

Some 25 or so years ago, the Director of the Water Resource Department overruled the local group of Water Resource people and singly granted a transfer of water rights from the termination of Moody Creek in Madison County to a point of diversion approximately eight miles up Moody Canyon. This has essentially killed Moody Creek below the point of diversion and adversely affected the ecosystem below the point of diversion.

Merle Jeppsen owns the water rights.

Can you undue this action of the former director? Where does one appeal the injustice done by granting the present point of diversion?

I grew up in the area of Moody Creek shut off by Jeppsen. With the neighbors affected, we protested at the open board meeting regarding the transfer. To my recollection, the Director of the Department of Water Resources was not present. A representative of the Fish and Game Department presented cutthroat trout caught one day before the water meeting from my backyard and urged that the present point of diversion not be granted. It has been years since I last saw a cutthroat in the creek. Jeppsen has dried up the creek almost every year he has been allowed to pump. But before, the creek always maintained itself, even in severe drought years like this one.

Ron Carlson was nice enough to travel to the area with us a week ago. He noted the lack of flow below the pump and guessed that the creek was flowing at least 2,000 gallon per minute above the pump.

Would you support minimum flow laws and could you help motivate the legislature to pass them?

I appreciate the right to own property. The lack of a flowing creek through my property has adversely affected its value. But as far as water rights are concerned, does the owner have the right to kill a stream? If he does, we need some significant changes retroactively now.

Sincerely yours,

*George R. Brown, M.D.*

George R. Brown, M.D.  
1439 Cambridge Drive  
Idaho Falls, Idaho 83401

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SEP 03 2003

# DOCUMENTS

MEMORANDUM OF UNDERSTANDING

BETWEEN

MERLE JEPPESEN

AND

STATE OF IDAHO, DEPT. OF FISH AND GAME

REGARDING THE TRANSFER OF RIGHT NO. 22-0265

It is hereby agreed that during those periods when the above water right reduces flow of Moody Creek to 1.5 cfs at the U.S.G.S. measuring station, then Merle Jeppesen will reduce diversion of water to maintain 1.5 cfs flows. When natural flow drops to or below 1.5 cfs, upon notification of Idaho Department of Fish and Game, flows below 1.5 cfs will be considered on a case by case basis for short durations to maintain and finish a crop so long as sufficient water is available to avert a loss of fishery.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1984.

\_\_\_\_\_  
MERLE JEPPESEN

\_\_\_\_\_  
DEPT. OF FISH AND GAME

*Ever  
Signed?*

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SEP 03 2003

Form No. 243

3/8/2

Claim No. A-22-4195

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES



# CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that K. Merle Jeppesen

(Name of Claimant)

434 Morgan Drive, Rexburg, Idaho 83440

Telephone No. : 356-3638

(Mailing Address)

(Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) July 15, 1965

A claim is not acceptable on a ground water source with a priority later than March 26, 1953 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Moody Creek tributary to Teton River, tributary to Snake Ri.

[3] Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

{Cf9, 21}

(Domestic, Irrigation, Stock, Etc.)

(Both dates inclusive)  
(Mo., Day) (Mo.,

(Mo., Day)

{Mo., Day}

Quantity 4.0 Use irrigation Period of Use From 4-1 To 11-1

| Quantity | Use | Period of Use From | To |
|----------|-----|--------------------|----|
|          |     |                    |    |

| Quantity | Use | Period of Use From | To |
|----------|-----|--------------------|----|
|          |     |                    |    |

| Quantity | Use | Period of Use From | To |
|----------|-----|--------------------|----|
|          |     |                    |    |

| Quantity | Use | Period of Use From | To |
|----------|-----|--------------------|----|
|----------|-----|--------------------|----|

(4) 4.0 c.f.s TOTAL QUANTITY USED.

(cfr. 9f)

(3) A) Point of diversion: (Location of point where water is diverted from its source)

SE ¼ NW ¼, Sec. 21 Twp. 5 N Rge. 41 E. 8 M., County of Madison

Additional points of diversion:

None

5) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Existing pump, switch panel, mainline, together with extension of mainline and sprinkler pipes used in connection with Permit No. 29036.

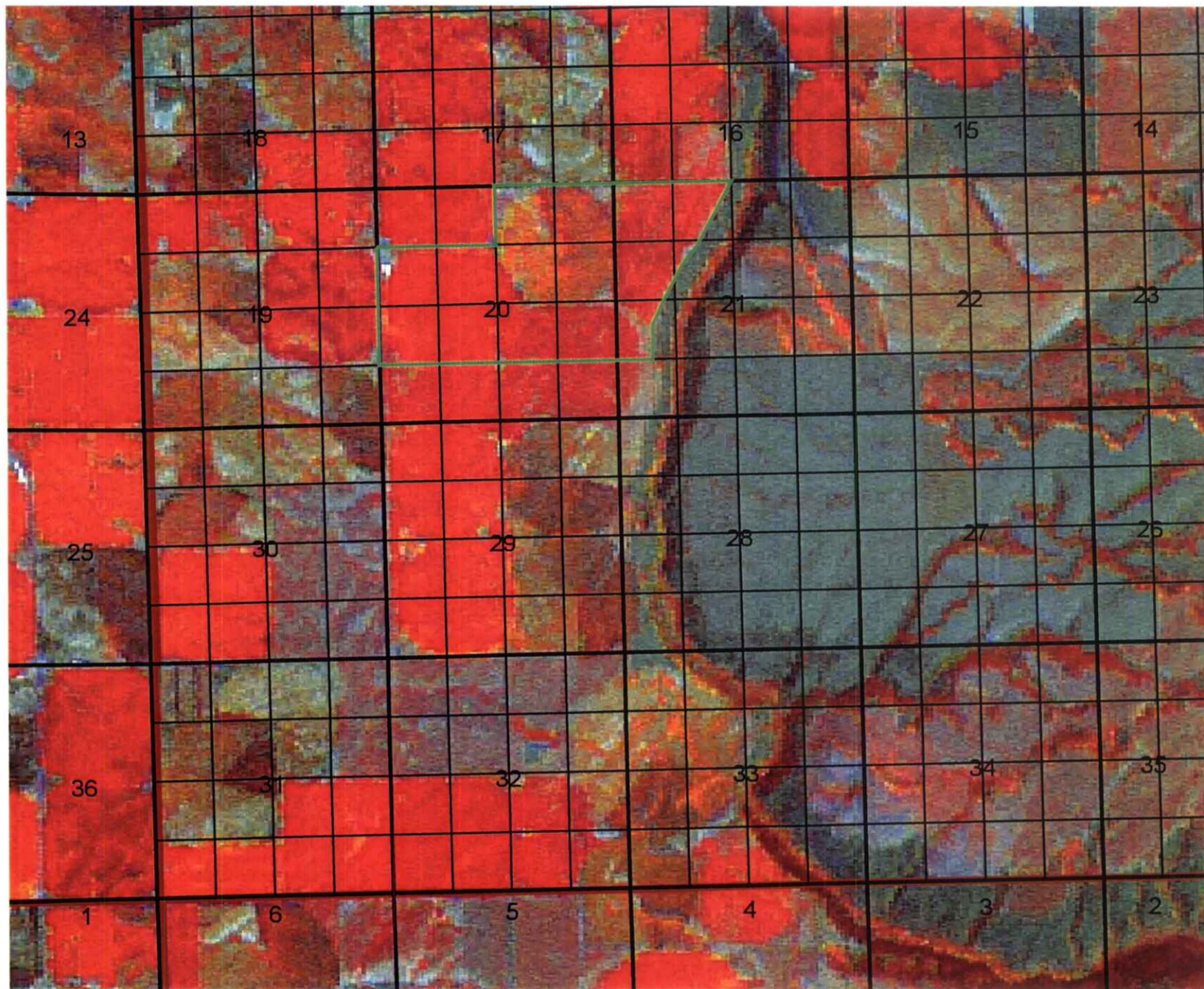
(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

SEP 03 2003

T5N R41E

# Jeppesen - T2034 and T3002



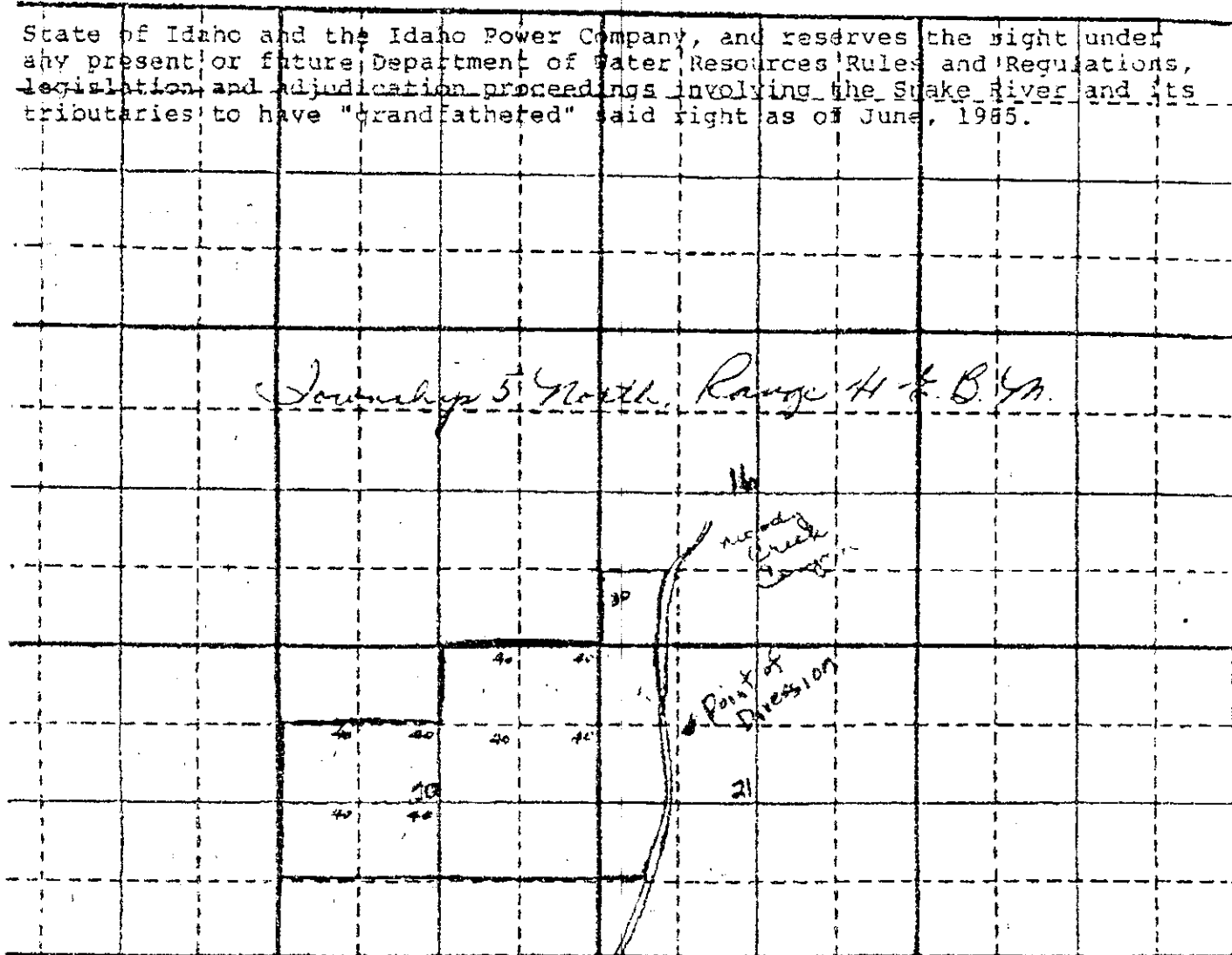
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1 0 1 2 Miles

Imagery: 7/12/2002 - Landsat  
Created: 10/11/2002 JP

(8) Remarks The above-described acreages have been irrigated since June 1965 from a pump and irrigation system located at the point of diversion shown below as described in State of Idaho Permit No. 29036. Therefore, Applicant claims the benefit of the provisions contained in paragraph 7.D of the Swan Falls Framework Contract executed by the Governor and Attorney General of the

State of Idaho and the Idaho Power Company, and reserves the right under any present or future Department of Water Resources Rules and Regulations, legislation and adjudication proceedings involving the Snake River and its tributaries to have "grandfathered" said right as of June, 1985.



2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho )  
County of Madison ) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

*K. Merle Dufree Jr.*  
K. Merle Dufree Jr. (Submittal)

Sworn to before me this 25<sup>th</sup> day of June 1985.

SEP 03 2003

Close

IDAHO DEPARTMENT OF WATER RESOURCES  
Adjudication Claim Report

06/20/2002

WATER RIGHT NO. 22-4195

| Owner Type    | Name and Address                                                        |
|---------------|-------------------------------------------------------------------------|
| Current Owner | K MERLE JEPPESEN<br>434 MORGAN DR<br>REXBURG, ID 83440<br>(208)356-3638 |

Priority Date: 07/15/1965

Basis: Statutory Claim

Status: Active

| Source      | Tributary   |
|-------------|-------------|
| MOODY CREEK | TETON RIVER |

| Beneficial Use   | From | To    | Diversion Rate | Volume |
|------------------|------|-------|----------------|--------|
| IRRIGATION       | 4/01 | 11/01 | 4 CFS          |        |
| Total Diversion: |      |       | 4 CFS          |        |

Location of Point(s) of Diversion:

|             |       |        |              |           |                |
|-------------|-------|--------|--------------|-----------|----------------|
| MOODY CREEK | SE NW | Sec 21 | Township 05N | Range 41E | MADISON County |
|-------------|-------|--------|--------------|-----------|----------------|

Place(s) of use:

Place of Use Legal Description: IRRIGATION MADISON County

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SEP 03 2003

## Water Right Report

| Township | Range | Section | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | A |
|----------|-------|---------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|---|
| 05N      | 41E   | 16      |     | SESW  | 30    |     |       |       |     |       |       |     |       |   |
|          |       | 20      |     | NENE  | 40    |     | NWNE  | 40    |     | SWNE  | 40    |     | SENE  | 4 |
|          |       |         |     | SWNW  | 35    |     | SENE  | 40    |     |       |       |     |       |   |
|          |       |         |     | NESW  | 40    |     | NWSW  | 35    |     |       |       |     |       |   |
|          |       |         |     | NESE  | 40    |     | NWSE  | 40    |     |       |       |     |       |   |
|          |       | 21      |     | NENW  | 20    |     | NWNW  | 40    |     | SWNW  | 40    |     | SENE  | 1 |
|          |       |         |     | NWSW  | 25    |     |       |       |     |       |       |     |       |   |

Total Acres: 555

Dates:

Licensed Date:

Claim Received Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 01

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

SEP 03 2003

Close

IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report

06/20/2002

WATER RIGHT NO. 22-4195

| Owner Type    | Name and Address                                       |
|---------------|--------------------------------------------------------|
| Current Owner | MERLE K JEPPESEN<br>434 MORGAN DR<br>REXBURG, ID 83440 |

Priority Date: 07/15/1965

Basis: Statutory Claim

Status: Active

| Source      | Tributary   |
|-------------|-------------|
| MOODY CREEK | TETON RIVER |

| Beneficial Use  | From | To    | Diversion Rate | Volume |
|-----------------|------|-------|----------------|--------|
| IRRIGATION      | 4/01 | 11/01 | 4 CFS          |        |
| Total Diversion |      |       | 4 CFS          |        |

Location of Point(s) of Diversion:

|             |      |         |              |           |                |
|-------------|------|---------|--------------|-----------|----------------|
| MOODY CREEK | SENW | Sec. 21 | Township 05N | Range 41E | MADISON County |
|-------------|------|---------|--------------|-----------|----------------|

Place(s) of use:

Place of Use Legal Description IRRIGATION MADISON County



Water Right Report

| Township | Range | Section | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Ac |
|----------|-------|---------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|----|
| 05N      | 41E   | 16      |     | SWSW  | 30    |     |       |       |     |       |       |     |       |    |
|          |       | 20      |     | NENE  | 40    |     | NWNE  | 40    |     | SWNE  | 40    |     | SENE  | 40 |
|          |       |         |     | SWNW  | 40    |     | SENE  | 40    |     |       |       |     |       |    |
|          |       |         |     | NESW  | 40    |     | NWSW  | 40    |     |       |       |     |       |    |
|          |       |         |     | NESE  | 40    |     | NWSE  | 40    |     |       |       |     |       |    |
|          |       | 21      |     | NWNW  | 40    |     | SWNW  | 40    |     |       |       |     |       |    |
|          |       |         |     | NWSW  | 20    |     |       |       |     |       |       |     |       |    |

Total Acres: 530

Dates:

Licensed Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 01

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

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SEP 03 2003

State of Idaho  
Department of Water Resources

CLAIM ANALYSIS SHEET  
G. F. RAMSEY

INITIAL REVIEW BY: SEP 4 1985 *S.M. 9-10-85*

Right Number 22-4195

Applicant K. MELLE LEPPERSON

NOTE: IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period.
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received.
- ☒ Claim published correctly.
- ☒ Exceptions processed.

By Ernest Carlson Date Oct 16, 1985

STATE OFFICE PROCESSING:

- ☒ Claim review complete.

By SC Date 10/21/85

*10-07-85*

SCANNED  
JAN 19 2004

RECEIVED  
OCT 1 1985

Department of Water Resources  
RECEIVED  
OCT 1 1985

Department of Water Resources  
WATER DISTRICT 1  
*Lepper*

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STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

---

150 Shoup Ave., Suite 15  
Idaho Falls, Idaho 83402  
(208) 525-7161

OCTOBER 7, 1985

MERLE K. JEPPESEN  
434 MORGAN DRIVE  
REXBURG

ID 83440

RE: Claim No. 22-4195

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

RONALD D. CARLSON  
Eastern Region Supervisor

Enclosure

**MICROFILMED**



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

150 Shoup — Suite 15  
Idaho Falls, Idaho 83402  
(208) 525-7161

July 19, 1985

K. Merle Jeppesen  
434 Morgan Drive  
Rexburg, ID 83440

SLR  
Department of Water Resources  
Eastern District Office

Dear Mr. Jeppesen:

On reviewing your "Claim to a Water Right" the following information is incomplete and must be filled in prior to processing.

1. Item #1 (insure day month and year are included).
2. Item #4 (this should be the sum total of items in #3).
3. Item #6 does not agree with the map drawn in item #8.

I am returning your check for \$105.00 and your original claim. Please correct the above items and then return the form to me together with a check for \$200.00 to cover the filing fee for this claim.

If you have any questions please call 525-7161 or come to the Idaho Falls office.

Sincerely,

  
GERALD F. RAMSEY  
Radiologic Specialist

GFR/ct

Enclosure

Attachment: Check 92-80 for \$105.00.

*Corrections made  
& resubmitted*

**MICROFILMED**

July 19, 1985

K. Merle Jeppesen  
434 Morgan Drive  
Rexburg, ID 83440

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Enclosure

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**MICROFILMED**

State of Idaho  
Department of Water Resources

CLAIM ANALYSIS SHEET

**G. F. RAMSEY**

INITIAL REVIEW BY: JUL 1 1985

Right Number \_\_\_\_\_

Applicant K. MERLE JENSEN

NOTE: IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period.
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received.
- ☒ Claim published correctly.
- ☐ Exceptions processed.

By EMC Date OCT 08 1985

STATE OFFICE PROCESSING:

- ☐ Claim review complete.

By \_\_\_\_\_ Date \_\_\_\_\_

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Rexburg, Idaho 83440  
June 22, 1985



JUN 27 1985

Ronald D. Carlson  
Eastern Regional Supervisor  
Department of Water Resources  
150 Shoup Avenue - Suite 15  
Idaho Falls, Id 83402

Department of Water Resources  
Eastern District Office

Dear Mr. Carlson:

Re: Water Right - K. Merle Jeppesen

On September 13, 1960, J. Elmo Jeppesen and Keith Jeppesen, whose address was Rexburg, Madison County, Idaho, filed an application for a permit to appropriate 8.0 cfs of the subterranean waters of the State of Idaho by application number 37004. On September 21, 1960, the State Reclamation Engineer granted said permit and assigned to it no. 29036, which permit stated that the work would have to be completed and the beneficial use of the water made on or before September 21, 1965.

The Department of Water Resources, formerly Idaho State Reclamation Engineer, advises K. Merle Jeppesen, by letter dated November 8, 1984, that said permit lapsed through failure of the holder to make proof of completion of works due September 21, 1965.

Keith L. Jeppesen, one of the original applicants, by affidavit, which is enclosed, states that pursuant to that permit, an irrigation system was installed on the lands described in the permit as the intended place of use of said water right and was used as is set forth in detail in said letter. He further states that he never received the letter written to his brother, Elmo Jeppesen, and never knew that the right had expired. He assumed that he is using a water right that had been granted to them all these years.

The said Elmo Jeppesen, by affidavit, which is enclosed, acknowledges that K. Merle Jeppesen commencing irrigating the lands described in the permit in the year 1966.

Pursuant to the provisions of Section 42-218(a), Idaho Code, K. Merle Jeppesen files herewith late proof and proof of beneficial use of the water, asking for a priority date of September 13, 1960, and submits herewith as proof that the water diverted and appropriated to a beneficial use from Moody Creek, a tributary of Teton River, in accordance with said permit, the following documents:

- a. Copy of original application and permit;
- b. Copy of Order of Cancellation;

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Department of Water Resources  
Page 2  
June 22, 1985

- c. Affidavit of Keith L. Jeppesen;
- d. Affidavit of Elmo Jeppesen;
- e. Department of Water Resources statement of account dated April 10, 1981;
- f. Department of Water Resources statement of account dated June 18, 1982;
- g. Letter from Department of Water Resources dated November 8, 1984;
- h. Copy of Systems Leasing Company documents concerning Lease No. S-1227;
- i. Gem State Irrigation Company list of items of irrigation system;
- j. Letter and Electric Service Agreement from Utah Power and Light Company;
- k. Letter and statement of account of Federal Land Bank concerning money borrowed.

This water was diverted and eventually placed in a pipeline system by K. Merle Jeppesen, assignee of the original applicants. The 1484 acres has been irrigated pursuant to said original permit. Therefore, applicant claims the rights under paragraph 7.D of the Swan Falls Framework Contract entered into between the Governor of the State of Idaho, the Attorney General of the State of Idaho, and the Idaho Power Company, and reserves the right under any present or future Department of Water Resources rules and regulations, legislation and adjudication proceedings involving the Snake River and its tributaries to have "grandfathered" said right as of September 21, 1960.

Because of the statutory limitation on time to file claims or applications (June 30, 1985), applicant, in the alternative, and only if the above application for license is not approved, files herewith an application for permit.

Yours very truly,

Ray W. Rigby

  
K. Merle Jeppesen

RWR:pae

Enclosures

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22-4195

JEPPESEN, MERLE K.

434 MORGAN DRIVE, REXBURG, ID 83440

Source: MOODY CREEK trib. to TETON RIVER

Priority Date: 07/15/1965

Diversion Pt: SENW Sec 21 T 05N R 41E

Use: IRRIGATION (4.00 CFS)

In: SWSW Sec 16 T 05N R 41E NENE NWNE SWNE SENE SWNW SENW NESW NWSW NESE NWSE  
Sec 20 T 05N R 41E NWNW SWNW NWSW Sec 21 T 05N R 41E FOR 530 ACRES

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