

Not possible
20-07
Main Photo BC

- 20-96
 Glen Valley
 SW CATTLE PUMP OFF
 SEC 29 well OFF.
 P/riest in south part of
 SEC 29 OFF
 p/riest in NW sec 29 = OFF
 p/riest in SE sec 19 = OFF *
 p/riest in NW sec 20 = OFF
 well in NW 1/4 sec 20 = OFF
 p/riest in SW 1/4 sec 20 = OFF
 Sec well OFF
 - p/riest in SE 1/4 sec 20 =

Application 4703: 154 Acres

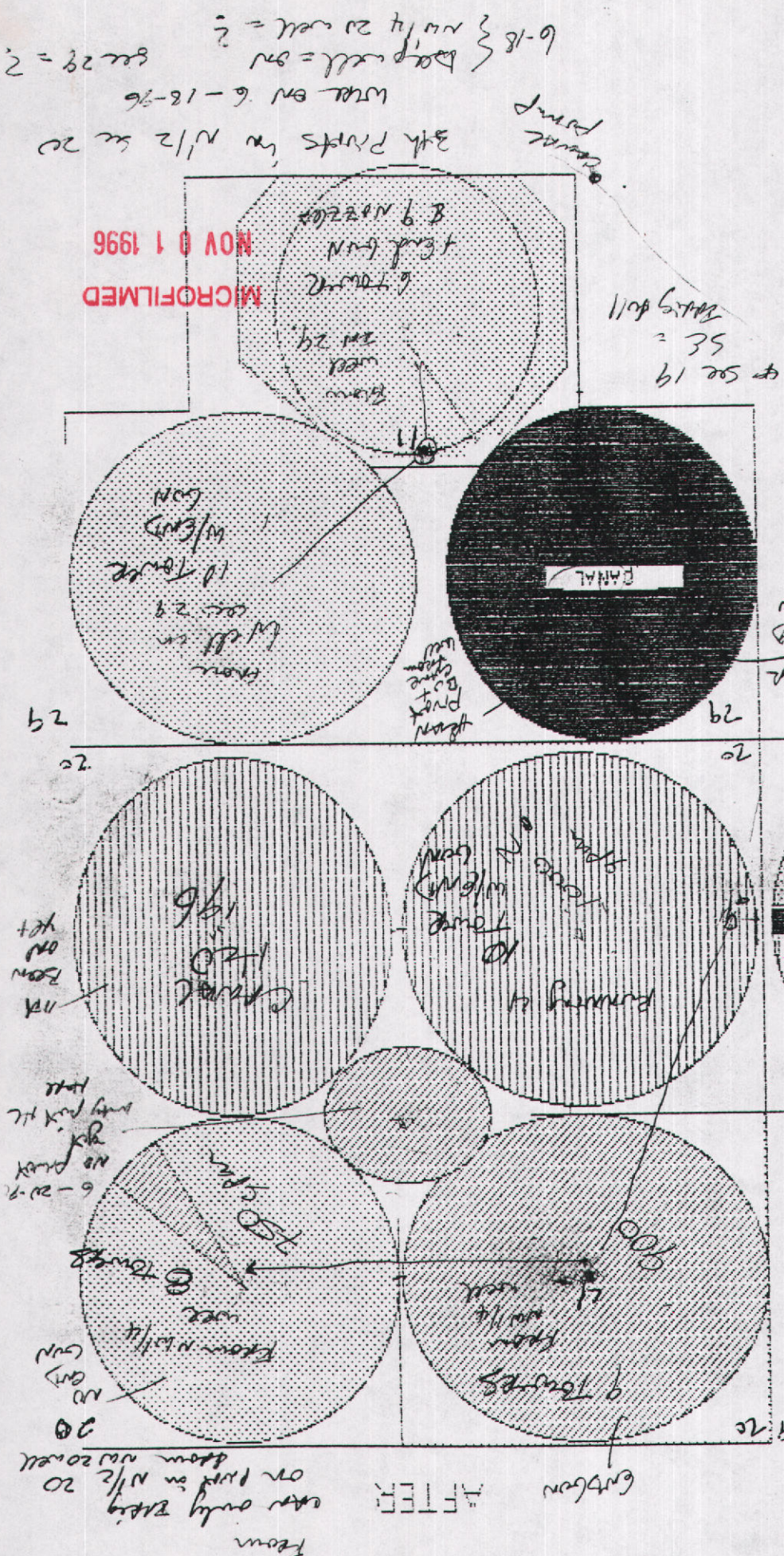
Application 4704: 309 Acres

Application 4705: 345 Acres

Continuing

Chad Norbury
Glen Valley Farms

Investing 4 dollars in
1-2 between 20 wells



WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
13-07261	GEM VALLEY FARMS	C	09/10/1979	L/	GROUNDWATER	IRR	WR
X13-07261	GEM VALLEY FARMS	C	09/10/1979	L/	GROUNDWATER	IRR	WR

13-07261	CHRISTENSEN, DWAIN K	C	09/10/1979	L/	GROUNDWATER	IRR	AJ

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JUN 14 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

This is to certify that: GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 13-02259 : IRRIGATION Priority: 08/05/1963	04/15 to 10/15	* 2.10 CFS	553.0 AF *
Right No. 13-07198C : IRRIGATION Priority: 06/20/1977	04/15 to 10/15	* 1.66 CFS	385.0 AF *
Right No. 13-07165 : IRRIGATION Priority: 04/06/1977	04/15 to 10/15	** 3.12 CFS	546.0 AF **
Right No. 13-07261 : IRRIGATION Priority: 09/10/1979	04/15 to 10/15	** 2.00 CFS	535.5 AF **
Right No. 13-07198B : IRRIGATION Priority: 06/20/1977	04/15 to 10/15	** 0.64 CFS	147.0 AF **
TOTAL:		*** 8.88 CFS	2005.5 AF ***

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION:

NENW , Sec. 20, Township 09S, Range 40E
SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

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TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S	40E	16	SWNW 30	SENE 30	NESW 37	
			NWSW 37	NESE 30	NWSE 30	
			SWSE 30	SESE 30		254
		19	NESE 37	NWSE 30	SWSE 30	
			SESE 27			124
		20	NENE 37	NWNE 37	SWNE 37	
			SENE 30	NENW 37	NWNW 30	
			SWNW 37	SENE 37	NESW 37	
			NWSW 37	SWSW 30	SESW 30	
			NWSE 5			421
Total number of acres irrigated:						799 ****

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this right may be affected by an agreement between the protestant and the right holder.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for all authorized points of diversion. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
7. Two points of diversion are located within NENW, S20, T09S, R40E.
8. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/1 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/15 and after 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.
- **** 9. Right 13-02259 is limited to the irrigation of 158 acres within the place of use described above in a single irrigation season.

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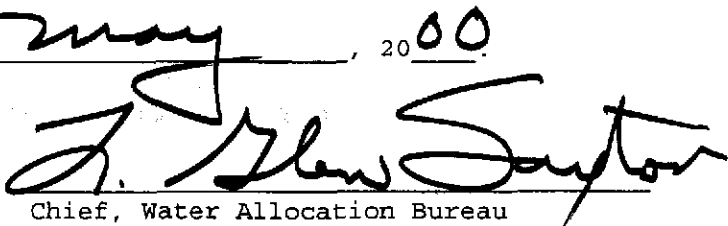
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TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

CONDITIONS OF APPROVAL AND REMARKS

- **** 10. Right 13-07165 is limited to the irrigation of 156 acres within the place of use described above in a single irrigation season.
- **** 11. Right 13-07198B is limited to the irrigation of 42 acres within the place of use described above in a single irrigation season.
- **** 12. Right 13-07198C is limited to the irrigation of 110 acres within the place of use described above in a single irrigation season.
- **** 13. Right 13-07261 is limited to the irrigation of 153 acres within the place of use described above in a single irrigation season.
- * 14. Rights 13-02259 and 13-07198C when combined shall not exceed a total diversion rate of 3.76 cfs, a total annual maximum diversion volume of 924.0 af at the field headgate, and the irrigation of 264 acres.
- ** 15. Rights 13-07165, 13-07261 and 13-07198B when combined shall not exceed a total diversion rate of 5.12 cfs, a total annual maximum diversion volume of 1081.5 af at the field headgate, and the irrigation of 309 acres.
- *** 16. The total instantaneous diversion of water from all points of diversion under Transfer 5545 shall not exceed 8.88 cfs, nor total combined annual volume of 2005.5 af, nor the irrigation of 573 acres.
- 17. This approval does not authorize the construction of any new well or the deepening or enlargement of any existing well.
- 18. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

Dated this 4th day of May, 2000


Chief, Water Allocation Bureau

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4703, 4704 & 4705
WATER RIGHT NO. 13-02259/13-07198C/13-07165
13-07261/13-07198B & 13-07198A

This is to certify that: **GEM VALLEY FARMS**
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

RIGHT NO. 13-02259
Priority: 08/05/1963

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	
IRRIGATION	04/15 to 10/15	2.10 CFS	
<u>LOCATION OF POINT(S) OF DIVERSION:</u>		NENW , Sec. 20, Township 09S, Range 40E CARIBOU County	
<u>PLACE OF USE: IRRIGATION</u>			
<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES TOTAL</u>
09S 40E 20	SWNE 7	SENE 8	NENW 29
	NWNW 29	SWNW 30	SENE 37
	NESW 7	NWSE 7	
		Total number of acres irrigated:	154

RIGHT NO. 13-07198C
Priority: 06/20/1977

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	
IRRIGATION	04/15 to 10/15	1.66 CFS	
<u>LOCATION OF POINT(S) OF DIVERSION:</u>		NENW , Sec. 20, Township 09S, Range 40E CARIBOU County	
<u>PLACE OF USE: IRRIGATION</u>			
<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES TOTAL</u>
09S 40E 20	NENE 29	NWNE 30	SWNE 30
	SENE 21		
		Total number of acres irrigated:	110

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TRANSFER NO. 4703, 4704 & 4705
 WATER RIGHT NO. 13-02259/13-07198C/13-07165
 13-07261/13-07198B & 13-07198A

RIGHT NO. 13-07165
 Priority: 04/06/1977

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/15 to 10/15	3.12 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
 CARIBOU County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S 40E 19	NESE 29	NWSE 29	SWSE 15	73
20	NESW 30	NWSW 29	SWSW 30	
	SESW 29	NESE 29	NWSE 30	
	SWSE 30	SESE 29		236
Total number of acres irrigated:				309

RIGHT NO. 13-07261
 Priority: 09/10/1979

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/15 to 10/15	2.00 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
 CARIBOU County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S 40E 19	NESE 29	NWSE 29	SWSE 15	73
20	NESW 30	NWSW 29	SWSW 30	
	SESW 29	NESE 29	NWSE 30	
	SWSE 30	SESE 29		236
Total number of acres irrigated:				309

RIGHT NO. 13-07198B
 Priority: 06/20/1977

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/15 to 10/15	0.64 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
 CARIBOU County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S 40E 19	SWSE 15	SESE 27		42
Total number of acres irrigated:				42

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TRANSFER NO. 4703, 4704 & 4705
 WATER RIGHT NO. 13-02259/13-07198C/13-07165
 13-07261/13-07198B & 13-07198A

RIGHT NO. 13-07198A
 Priority: 06/20/1977

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/15 to 10/15	2.93 CFS

LOCATION OF POINT(S) OF DIVERSION: SENW , Sec. 29, Township 09S, Range 40E
 CARIBOU County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S	40E	29	NENE 29	NWNE 30	SWNE 37	
			SENE 29	SENE 7	NESW 31	
			NWSE 30			193
Total number of acres irrigated:						193

SOURCE

GROUNDWATER

CONDITIONS OF APPROVAL AND REMARKS

Right Nos. 13-02259, 13-07165, 13-07261 and 13-07198 Parts A-C are subject to the conditions of the Final Order in the matter of Application for Transfer Nos. 4703, 4704 and 4705.

Dated this 28th day of June, 1996.

Acting for Norman C Young
 Chief, Water Alloc. Bureau

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

IN THE MATTER OF APPLICATIONS FOR)	
TRANSFER NO. 4705 (WATER RIGHT NO.)	
13-07198); NO. 4703 (WATER RIGHT NO.)	FINAL ORDER
13-02259); AND NO. 4704 (WATER RIGHT)	
NOS. 13-07165 & 13-07261) IN THE NAME)	
OF GEM VALLEY FARMS)	
_____)	

On March 7, 1996, the Department of Water Resources (Department) conducted a hearing regarding protests filed against an application filed by Gem Valley Farms (Gem Valley), numbered in the Department files as application for transfer nos. 4705 (water right no. 13-07198), application for transfer no. 4703 (water right no. 13-02259), and application for transfer no. 4704 (water right no. 13-07165 & 13-07261). The application for transfer was protested by Lloyd Farms, Phil Yost and Warren & Jennie Lloyd.

The applications for transfer are related because some of the water rights do not describe sufficient acreage for an entire proposed system of circular pivots, and the remaining portion of the place of use had to be described by another water right. Each application for transfer describes how an individual water right (or two water rights) will be allocated to parts of three different systems, rather than each application for transfer describing an independent system.

A recommended order was issued on April 26, 1996. The parties did not request reconsideration, and they did not file exceptions.

The Director issues the following findings of fact, conclusions of law and order as a final order.

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FINDINGS OF FACT

1. Gem Valley filed application for transfer nos. 4703, 4704, and 4705 for the purpose of rearranging its irrigation from a combined system of circular pivots, wheel lines and hand lines, some of which irrigated the corners on the borders of the circular pivots, to systems which operate only as circular systems. If approved, the applications for transfer would remove water traditionally applied to corners bordering the circular pivots and place the water on additional circular pivot systems. The total number of acres irrigated pursuant to the water right would not change.

2. Applicant's exhibit no. 4 depicts the place of use of the water right sought to be transferred as described by the Bancroft-Lund Adjudication. The water rights sought to be transferred are described as follows:

WATER RIGHT NO. 13-02259

FLOW RATE 2.10 cfs	SOURCE Groundwater	PRIORITY 8/5/1963	POINT OF DIVERSION T9S, R40, Section 20, NENW ¹
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NENW	38	
T9S, R40E, Section 20	NWNW	37	
T9S, R40E, Section 20	SWNW	39	
T9S, R40E, Section 20	SENW	40	
TOTAL		154	

WATER RIGHT NO. 13-07165

FLOW RATE 3.12 cfs	SOURCE Groundwater	PRIORITY 4/6/1977	POINT OF DIVERSION T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NESW	40	
T9S, R40E, Section 20	NWSW	39	
T9S, R40E, Section 20	SWSW	38	
T9S, R40E, Section 20	SESW	39	
TOTAL		156	

¹Public land survey descriptions of 40 acre parcels in this decision with the fraction following the quadrant description assume a fractional component of "1/4" stated as "quarter."

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WATER RIGHT NO. 13-07261

FLOW RATE 2.00 cfs	SOURCE Groundwater	PRIORITY 9/10/1979	POINT OF DIVERSION² T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 19	NESE	37	
T9S, R40E, Section 19	NWSE	38	
T9S, R40E, Section 19	SWSE	39	
T9S, R40E, Section 19	SESE	39	
TOTAL		153	

WATER RIGHT NO. 13-07198

FLOW RATE 5.23 cfs	SOURCE Groundwater	PRIORITY 6/20/1977	POINT OF DIVERSION T9S, R40E, Section 29, SESW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 29	NENE	32	
T9S, R40E, Section 29	NWNE	32	
T9S, R40E, Section 29	SWNE	32	
T9S, R40E, Section 29	SENE	32	
T9S, R40E, Section 29	NENW	32	
T9S, R40E, Section 29	NWNW	32	
T9S, R40E, Section 29	SWNW	32	
T9S, R40E, Section 29	SESW	32	
T9S, R40E, Section 29	NESW	39	
T9S, R40E, Section 29	SESW	3	
T9S, R40E, Section 29	NWSE	40	
T9S, R40E, Section 29	SWSE	7	
TOTAL		345	

² Same well as the point of diversion described by water right no. 13-07261

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3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704, and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 20	NENE	29	13-07198C
T9S, R40E, Section 20	NWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	7	13-02259
T9S, R40E, Section 20	SENE	21	13-07198C
T9S, R40E, Section 20	SENE	8	13-02259
T9S, R40E, Section 20	NENW	29	13-02259
T9S, R40E, Section 20	NWNW	29	13-02259
T9S, R40E, Section 20	SWNW	30	13-02259
T9S, R40E, Section 20	SENW	37	13-02259
T9S, R40E, Section 20	NESW	7	13-02259
T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

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CENTER SYSTEM
(three large pivots)
Point of Diversion: T9S, R40E, Section 20, SWSW

Water Right		Flow Rate (cfs)	
13-07165		3.12	
13-07261		2.00	
13-07198B		0.64	
TOTAL		5.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 19	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 19	NWSE	29	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07198B
T9S, R40E, Section 19	SESE	27	13-07198B
T9S, R40E, Section 20	NESW	30	13-07165 & 13-07261
T9S, R40E, Section 20	NWSW	29	13-07165 & 13-07261
T9S, R40E, Section 20	SWSW	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESW	29	13-07165 & 13-07261
T9S, R40E, Section 20	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 20	NWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESE	29	13-07165 & 13-07261
TOTAL		351	

SOUTH SYSTEM
(one large pivot, one medium pivot)
Point of Diversion: T9S, R40E, Section 29, SENW

Water Right		Flow Rate (cfs)	
13-07198A		2.93	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 29	NENE	29	13-07198A
T9S, R40E, Section 29	NWNE	30	13-07198A
T9S, R40E, Section 29	SWNE	37	13-07198A
T9S, R40E, Section 29	SENE	29	13-07198A
T9S, R40E, Section 29	SENW	7	13-07198A
T9S, R40E, Section 29	NESW	31	13-07198A
T9S, R40E, Section 29	NWSE	30	13-07198A
TOTAL		193	

4. Gem Valley does not propose to cumulatively irrigate any more acres than are described by the water rights as approved by the Bancroft-Lund Adjudication.

5. The protestants expressed primary concern regarding the use of a well located in the SWSW Section 20, T9S, R40E, B.M. This well was referred to in the hearing as well no. 9, and was labeled as well no. 9 on applicant's exhibit no. 5 and on protestants' exhibit no. 1. The applications for transfer propose diversion from well no. 9 (hereafter referred to as the center well) for irrigation of lands by the center system.

6. Paul Christensen (Christensen), who owned a farm and several wells surrounding the center well site, was at the drilling site almost every day when the center well was drilled. Christensen testified that the well driller, after having drilled the well to approximately 130 feet, drilled into a layer of blue clay. Christensen testified the well driller ceased drilling and tested the well for productivity. He stated the well did not produce a significant flow of water and sand was pumped from the well.

7. A well log for the initial drilling was filed with the Department naming Leo Christensen as the owner. According to the well log, construction started in May of 1977 and concluded in July of 1977. The lithologic log describes "gray lava" beginning at a depth of ten feet and extending down to a depth of 175 feet. Water was encountered below a depth of 142 feet. The driller described a "sand & clay brown" strata between a depth of 175 feet and 200 feet. Between depths of 200 feet and 235 feet, the driller described black or gray lava. Finally, between a depth of 233 feet and the bottom of the well at 235 feet, the driller described "brown sand & lava." The driller wrote a comment across the lithologic log that the "hole [was] never

pumped. There is another rig on [the] hole now." The driller recorded a static water level of 143 feet.

8. According to Christensen, the owner of the well determined that he would drill deeper. Christensen testified the well driller cased the well to the upper boundary of the blue clay and drilled the well to a depth of approximately 500 feet, where he encountered a water bearing layer of gravel. Christensen testified that the water level in the well rose to a depth of between 130 and 200 feet below land surface.

9. Another well log in the Department files describes the deepening of the center well, completed in July, 1978. The well log describes a 16 inch diameter casing installed to a depth of 235 feet, the bottom of the first well hole. It also describes perforations in the casing between depths of 140 and 150 feet. The well log describes intermittent dry and water bearing zones to a depth of 525 feet deep, with a 25 foot water bearing strata at the bottom of the well from 500-525 feet. The well log also states that the static water level stood at 140 feet.

10. The well driller did not complete any of the pump testing portions of the well log. Warren Lloyd testified that when the well was test-pumped, it produced about "fourteen feet" (cfs) of water. A flow of fourteen cfs from the well described by the well logs is probably unrealistic. A Department examiner measured a flow of 5.24 cfs from the well in 1980 while examining the well for beneficial use. A flow of 5.24 cfs exceeds the combined authorized flow rate of 5.12 cfs authorized by water right nos. 13-07165 and 13-07261.

11. Warren Lloyd established that when the center well was tested for productivity, his well, located approximately three miles away in the NESE, Section 23, T9S, R39E, B.M., was affected within seven to eight hours of the productivity test. His well had never pumped sand prior to the productivity test for the center well. After the center well was test pumped, Warren Lloyd testified his wheel lines and hand lines partially filled with sand. He testified that when the center well productivity test was complete, the water in his well cleared up, but as soon as the water was pumped from the center well again for irrigation, his pump again began pumping sand. He testified that the water levels in his well have declined since the completion of and pumping from the center well. Because of the declines, Warren Lloyd had to drill a new well.

12. Protestants established that there is a direct relationship between water levels in their wells and water pumped from the center well. Phil Yost testified his wells begin to "suck air" two to three days after the center well begins pumping. Paul Christensen testified that he believes the center well affects a domestic well he owns (labeled as well no. 2 on protestant's exhibit no. 1) more than other wells, and that all the wells had plenty of water before the center well was drilled and began pumping.

13. George Kimball owns a fish propagation facility in Black Canyon, approximately five miles south of the center well. He owns water rights which authorize diversion of water from springs that emit from the north and west canyon wall of Black Canyon. George Kimball testified that on October 16, 1992, he lost 2,000 three-quarter pound fish because of a two cfs reduction in flow to his raceways. He surveyed the nearby wells and found that the center well was pumping.

The only other well pumping in the area was a well owned by Don Rigby, located approximately ten miles north of the center well.

14. There is a general hydrologic relationship between ground water in that portion of basin 13 located within the Bancroft-Lund Ground Water Management Area and spring flows that discharge from Black Canyon into the Bear River.

15. There is a general hydrologic relationship between all of the wells in basin 13 that are located within the Bancroft-Lund Ground Water Management Area.

16. Approval of these applications for transfer will result in the irrigation of 42 more acres by the center well than was authorized by water right nos. 13-07165 and 13-07261. Approximately one-third (42 acres) of the circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. is proposed as a place of use for water right no. 13-07198, which currently only authorizes diversion of water from the well located in the SENW, Section 29, T9S, R40E, B.M.

17. The center well is the most productive well of the wells owned by Gem Valley. The center well will continue to produce water when the wells located in the NENW, Section 20, (north well) and the SENW, Section 29 (south well), T9S, R40E, B.M. cannot produce the flow rates authorized by the water rights. Chad Neibaur testified that water from the center well was pumped to irrigate lands that should be irrigated by the north well (identified as well no. 4 on the exhibits) since 1993 because of sand in the north well and because he finally couldn't pump water out of the north well.

18. Warren Lloyd testified that he noticed greater declines in the water levels in his well after Gem Valley started delivering water from the center well to lands that should have been irrigated by the north well.

19. Chad Neibaur testified that because of the installation of pivots and better application efficiency, the flow rate from the center well will be 1600 gallons per minute (3.57 cfs) instead of 2300 gallons per minute (5.12 cfs). A greater annual volume of water could be pumped from the center well, however, and more water will be consumed from the center well as a result of the application of water from the well to 42 additional acres.

20. The protestants argued that some of the corners alleged to be irrigated by Gem Valley and from which water is sought to be transferred have not been irrigated for more than five years. No significant proof was offered to support the allegations.

CONCLUSIONS OF LAW

1. *Idaho Code* § 42-222 provides in pertinent part as follows:

The Director of the Department of Water Resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the

change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. In determining the issue of enlargement, the Department reviews whether there will be an increase in three components of the water right: the instantaneous flow rate, the annual volume of water diverted and the annual consumptive use of water. In determining whether there will be an increase in consumptive use or annual volume, the number of acres described as a place of use by the water right, and on which the water is beneficially used, is compared to the number of acres proposed as a place of use. These criteria are generally, but not necessarily in total, satisfied by Gem Valley's applications.

3. The difficult legal question is whether, after the protestants have established that the center well directly affects their ability to divert water, the Department should microscopically refuse to allow more diversion of water from the center well and deny or limit the applications for transfer.

4. The protestants established through testimony that pumping from the center well reduces the quantity of water available in other nearby wells, particularly the well owned by Warren Lloyd.

5. Protestants established that pumping from the center well reduces the spring flows in Black Canyon diverted by George Kimball for fish propagation use.

6. The irrigation of 42 additional acres from the center well will result in greater consumptive use of water, and although the flow rate diverted will not increase, the total volume of water diverted will probably increase.

7. Irrigation from the center well must be limited to 309 acres. The place of use for the center system must be reduced by 42 acres.

8. As an alternative, if Gem Valley can prove, through well interference testing, that diversion from the center well has no more effect on nearby wells than pumping from the south well, the applications for transfer can be fully approved.

9. If Gem Valley can show no difference in the effect on other wells when pumping from the center well or the south well, Gem Valley may irrigate 351 acres from the center well. The place of use irrigated by the center well must be limited to circular pivots located in the S ½ of Section 20 and a circular pivot located in the SE 1/4 of Section 19.

10. An application for transfer is not approved until the final order is issued. This final order is being issued midway through the irrigation season. Prior to this decision, Gem Valley was only authorized to divert and apply water as described by the water rights prior to the filing of the applications for transfer or issuance of the recommended order.

11. Without proper safeguards, final approval of an application for transfer midway through the irrigation season could result in application of water to both the old place of use and the new place of use authorized by the final order.

12. Gem Valley may only irrigate lands described by water right nos. 13-07168, 13-02259, 13-07165 and 13-07261 prior to this final order from ground water unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated by ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well, located in the SWSW Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

13. A water right is forfeited if water is not beneficially used pursuant to the right for a period of five consecutive years. Forfeiture must be established by clear and convincing evidence. The party alleging forfeiture bears the burden of proof to establish forfeiture. The protestants did not present clear and convincing evidence that any of the rights sought to be transferred were forfeited.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4703, 4704, and 4705 are APPROVED subject to the following conditions:

1. Irrigation from the well located in the SWSW, Section 20, T9S, R40E, B.M. (center well) is limited to 309 acres located within two circular pivots in the S ½ of Section 20, T9S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the SE1/4 of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No land in the SESE, Section 19, T9S, R40E, B.M. may be irrigated with ground water or with surface water unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined right nos. 13-02259 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 acre feet, nor the total combined annual irrigation of 264 acres.

3. Combined right nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 acre feet, nor the total combined annual irrigation of 309 acres.

4. This approval does not authorize the construction of any new well or the deepening or enlargement of any existing well.

5. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with ground water unless the ground water and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

9. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

10. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of Section 29, T9S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, Section 20, T9S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

IT IS FURTHER ORDERED that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of Section 20 and the SE1/4 of Section 19, T9S, R40E, B.M. may be irrigated by the well located in the SWSW, Section 20, T9S, R40E, B.M., only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, Section 20, T9S, R40E, B.M., and for the well located in the SENW, Section 29, T9S, R40E, B.M. The effect on wells owned by Warren Lloyd, Keith Lloyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, Section 20, T9S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, Section 29, T9S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

16. The well test must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

17. Written results of the well test must be distributed to the Department and to the protestants for review.

18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code § 42-1701A.

19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined right nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, nor the total combined annual irrigation of 352 acres.

IT IS FURTHER ORDERED that Gem Valley may only irrigate lands authorized for irrigation by water right nos. 13-07198, 13-02259, 13-07165 and 13-07261 from ground water as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

Signed this 28TH day of June, 1996.

for 
KARL J. DREHER
Director

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CERTIFICATE OF MAILING

I do hereby certify that on this 28th day of June, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

David Lloyd
1917 Lund Rd.
Bancroft, ID 83217

Phil Yost
1760 Rich Rd.
Grace, ID 83241

Warren & Jennie Lloyd
1475 Mountain Rd.
Bancroft, ID 83217

William R. Forsberg
Attorney at Law
40 West Main
St. Anthony, ID 83445


DEBORAH DREW-ELLIS
Legal Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF)
WATER BY GEM VALLEY FARMS)
AND/OR CHAD NEIBAUR WITHOUT)
A VALID WATER RIGHT OR NOT IN)
CONFORMANCE WITH A VALID)
WATER RIGHT)

**NOTICE OF VIOLATION
AND CEASE AND DESIST
ORDER**

The Director of 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 attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, has investigated the use of water by Gem Valley Farms (Gem Valley) and/or Chad Neibaur (Neibaur).

Based upon the Department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

FINDINGS OF FACT

1. Gem Valley owns or has control of water rights decreed as follows in the Bancroft-Lund adjudication.

WATER RIGHT NO. 13-02259

FLOW RATE 2.10 cfs	SOURCE Groundwater	PRIORITY 8/5/1963	POINT OF DIVERSION T9S, R40, Section 20, NENW ¹
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NENW	38	
T9S, R40E, Section 20	NWNW	37	
T9S, R40E, Section 20	SWNW	39	
T9S, R40E, Section 20	SENW	40	
TOTAL		154	

¹Public land survey descriptions of 40 acre parcels in this decision without a fraction following the quadrant description assume a fractional component of "1/4" stated as "quarter."

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WATER RIGHT NO. 13-07165

FLOW RATE 3.12 cfs	SOURCE Groundwater	PRIORITY 4/6/1977	POINT OF DIVERSION T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NESW	40	
T9S, R40E, Section 20	NWSW	39	
T9S, R40E, Section 20	SWSW	38	
T9S, R40E, Section 20	SESW	39	
TOTAL		156	

WATER RIGHT NO. 13-07261

FLOW RATE 2.00 cfs	SOURCE Groundwater	PRIORITY 9/10/1979	POINT OF DIVERSION² T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 19	NESE	37	
T9S, R40E, Section 19	NWSE	38	
T9S, R40E, Section 19	SWSE	39	
T9S, R40E, Section 19	SESE	39	
TOTAL		153	

² Same well as the point of diversion described by water right no. 13-07165.

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WATER RIGHT NO. 13-07198

FLOW RATE 5.23 cfs	SOURCE Groundwater	PRIORITY 6/20/1977	POINT OF DIVERSION T9S, R40E, Section 29, SENW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 29	NENE	32	
T9S, R40E, Section 29	NWNE	32	
T9S, R40E, Section 29	SWNE	32	
T9S, R40E, Section 29	SENE	32	
T9S, R40E, Section 29	NENW	32	
T9S, R40E, Section 29	NWNW	32	
T9S, R40E, Section 29	SWNW	32	
T9S, R40E, Section 29	SENW	32	
T9S, R40E, Section 29	NESW	39	
T9S, R40E, Section 29	SESW	3	
T9S, R40E, Section 29	NWSE	40	
T9S, R40E, Section 29	SWSE	7	
TOTAL		345	

2. Gem Valley filed application for transfer nos. 4703, 4704 and 4705 proposing to change the place of use and point of diversion as follows:

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NORTH SYSTEM
 (two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 20	NENE	29	13-07198C
T9S, R40E, Section 20	NWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	7	13-02259
T9S, R40E, Section 20	SENE	21	13-07198C
T9S, R40E, Section 20	SENE	8	13-02259
T9S, R40E, Section 20	NENW	29	13-02259
T9S, R40E, Section 20	NWNW	29	13-02259
T9S, R40E, Section 20	SWNW	30	13-02259
T9S, R40E, Section 20	SENW	37	13-02259
T9S, R40E, Section 20	NESW	7	13-02259
T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

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CENTER SYSTEM
(three large pivots)
Point of Diversion: T9S, R40E, Section 20, SWSW

Water Right		Flow Rate (cfs)	
13-07165		3.12	
13-07261		2.00	
13-07198B		0.64	
TOTAL		5.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 19	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 19	NWSE	29	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07198B
T9S, R40E, Section 19	SESE	27	13-07198B
T9S, R40E, Section 20	NESW	30	13-07165 & 13-07261
T9S, R40E, Section 20	NWSW	29	13-07165 & 13-07261
T9S, R40E, Section 20	SWSW	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESW	29	13-07165 & 13-07261
T9S, R40E, Section 20	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 20	NWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESE	29	13-07165 & 13-07261
TOTAL		351	

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SOUTH SYSTEM
(one large pivot, one medium pivot)
Point of Diversion: T9S, R40E, Section 29, SENW

Water Right		Flow Rate (cfs)	
13-07198A		2.93	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 29	NENE	29	13-07198A
T9S, R40E, Section 29	NWNE	30	13-07198A
T9S, R40E, Section 29	SWNE	37	13-07198A
T9S, R40E, Section 29	SENE	29	13-07198A
T9S, R40E, Section 29	SENW	7	13-07198A
T9S, R40E, Section 29	NESW	31	13-07198A
T9S, R40E, Section 29	NWSE	30	13-07198A
TOTAL		193	

3. On April 26, 1996, a recommended order was issued which recommended approval of the application for transfer with conditions. A final decision was issued on June 27, 1996, which approved the applications for transfer. The following conditions have particular relevance to this order:

Irrigation from the well located in the SWSW, Section 20, T9S, R40E, B.M. (center well) is limited to 309 acres located within two circular pivots in the S ½ of Section 20, T9S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the SE1/4 of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No land in the SESE, Section 19, T9S, R40E, B.M. may be irrigated with ground water or with surface water unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

... Gem Valley may only irrigate lands authorized for irrigation by water right nos. 13-07198, 13-02259, 13-07165 and 13-07261 from ground water as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

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(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

4. On June 20, 1996, an employee of the Department of Water Resources investigated the use of water by Gem Valley.

5. The investigation showed that Gem Valley is applying water to places of use located in the NE1/4 of Section 20, T9S, R40E, B.M. from the well located in the SWSW, Sec. 20, T9S, R40E, B.M. (center well). Irrigation of this parcel from this well is not authorized under the water rights as they existed prior to or after the approval of the transfers described in Finding No. 2.

6. The investigation also showed that Gem Valley applied and is applying ground water from the well located in the SENW, Section 29, T9N, R40E, B.M. (south well) to a circular pivot located in the NW1/4 of Section 29, T9N, R40E, B.M. Prior to issuance of the recommended order, water right no. 13-7198A authorized irrigation of these lands. The applications for transfer recommended order proposed removal of water right no. 13-7198A from the circular pivot to other lands. Gem Valley proposed to irrigate the circular pivot with surface water.

7. The investigation also shows that the land under the entire circular pivot in the SE1/4 of Section 19, T9S, R40E, B.M., was being irrigated.

CONCLUSIONS OF LAW

1. Idaho Code § 42-350(1) states in pertinent part:

If the Director of the Department of Water Resources finds, on the basis of available information at any time after a license is issued, that the licensee . . . has wilfully or intentionally failed to comply with the provisions of law governing the license, then the Director of the Department of Water Resources may issue . . . an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license or in violation of the provisions of the law governing the license.

2. Idaho Code § 42-351(1) states in pertinent part:

If the Director of the Department of Water Resources finds, on the basis of available information, that a person is . . . applying water or has applied water not in conformance with a valid water right, then the Director of the Department of Water Resources . . . may commence an administrative enforcement action by issuing the person a written notice of violation

directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right. . . . The notice of violation shall state the remedy, including any restoration and mitigation measures, and the civil penalty the director seeks for redress of the violation. . . .

3. Idaho Code § 42-352 states, in pertinent part:

Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person, shall be subject to a civil penalty to be imposed by the Director of the Department of Water Resources not to exceed one hundred dollars (\$100.00) per diversion for each calendar day, or any part of a calendar day following service of the cease and desist order in which the illegal diversion of water occurs.

4. Investigation by the Department found that water was being applied to the old place of use described by the water rights prior to the filing of applications for transfer nos. 4703, 4704, and 4705.

5. An application for transfer is not approved until the final order is issued. Prior to the final order, Gem Valley was only authorized to divert and apply water as described by the water rights prior to the filing of the applications for transfer or issuance of the recommended order.

6. Irrigation of land located in the NE1/4 of Section 20, T9S, R40E, B.M. was not approved before the final order and is not presently approved by the Department during 1996.

7. Irrigation of any land not identified by the water rights as recorded prior to filing of the applications for transfer is a violation of the final order of the Director until a plan of implementation is approved by the Department.

8. Gem Valley has failed to adhere to the requirements of the law, the authorized water rights and the conditions of approval of the transfer.

9. The Director should issue a Notice of Violation instructing the water user to immediately cease and desist diverting water to lands not described as a place of use as originally authorized.

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ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall immediately cease and desist diverting water and applying it to lands not in accordance with the water rights as the water rights were described prior to the filing of the applications for transfer, unless and until the Department approves diversion from other wells and application of water to other lands.
2. For failure to comply with the law and the authorized water rights, Gem Valley shall pay a one-thousand dollar (\$1,000.00) civil penalty to the Department. The penalty shall be paid by July 20, 1996.
3. For any future diversion of water or application of water to lands not authorized by the water rights, the final order, or by subsequent decision by the Department, the water user shall pay a civil penalty of one hundred dollars (\$100.00) per violation for each day that water is diverted or water is applied not in conformance with the water rights, the final order, or subsequent decision by the Department.
4. The cease and desist orders shall remain in effect during 1996 and future years.
5. Gem Valley is entitled to a **Compliance Conference** with Department staff if Gem Valley submits a written request for a conference to the Department within fifteen (15) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.
6. Gem Valley shall have the opportunity to enter into a **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 28TH day of June, 1996.


NORMAN C. YOUNG
Administrator
Water Management Division

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BEFORE
THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

**IN THE MATTER OF APPLICATIONS FOR)
TRANSFER NO. 4705 (WATER RIGHT NO.)
13-07198); NO. 4703 (WATER RIGHT NO.)
13-02259); AND NO. 4704 (WATER RIGHT)
NOS. 13-07165 & 13-07261) IN THE NAME)
OF GEM VALLEY FARMS)**

RECOMMENDED ORDER

On February 15, 1996, the Department scheduled a hearing regarding protests filed against an application filed by Gem Valley Farms (Gem Valley), numbered in the Department files as application for transfer no. 4705 (water right no. 13-07198). The application for transfer was protested by David Lloyd, Phil Yost and Warren & Jennie Lloyd.

At the hearing, Keith Lloyd appeared instead of David Lloyd and stated that David Lloyd filed the protest on behalf of Lloyd Farms. After discussing the protested application for transfer with the parties, the hearing officer discovered that two other applications for transfer, numbered in the Department files as application for transfer no. 4703 (water right no. 13-02259) and application for transfer no. 4704 (water right no. 13-07165 & 13-07261), are related to application for transfer no. 4705. The applications are related because some of the water rights do not describe sufficient acreage for an entire proposed system of circular pivots, and the remaining portion of the place of use had to be described by another water right. Each application for transfer describes how an individual water right (or two water rights) will be allocated to parts of three different systems, rather than each application for transfer describing an independent system. Processing of only one application for transfer would result in partial approval of a proposed system.

After discovery of the above-described relationship, the hearing officer determined that all of the applications for transfer are dependent on each other, postponed the hearing, and determined that all three applications for transfer should be considered at the same hearing. The hearing officer granted intervention to the protestants for application for transfer nos. 4703 and 4704. A hearing was rescheduled for March 7, 1996.

The hearing having been conducted, the hearing officer recommends the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Gem Valley filed application for transfer nos. 4703, 4704, and 4705 for the purpose of rearranging its irrigation from a combined system of circular pivots, wheel lines and hand lines, some of which irrigated the corners on the borders of the circular pivots, to systems which operate only as circular systems. If approved, the applications for transfer would remove water traditionally applied to corners bordering the circular pivots and place that water on additional circular pivot systems. The total number of acres irrigated pursuant to the water right would not change.

2. Applicant's exhibit no. 4 depicts the place of use of the water right sought to be transferred as described by the Bancroft-Lund Adjudication. The water rights sought to be transferred are described as follows:

WATER RIGHT NO. 13-02259

FLOW RATE 2.10 cfs	SOURCE Groundwater	PRIORITY 8/5/1963	POINT OF DIVERSION T9S, R40, Section 20, NENW ¹
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NENW	38	
T9S, R40E, Section 20	NWNW	37	
T9S, R40E, Section 20	SWNW	39	
T9S, R40E, Section 20	SENW	40	
TOTAL		154	

WATER RIGHT NO. 13-07165

FLOW RATE 3.12 cfs	SOURCE Groundwater	PRIORITY 4/6/1977	POINT OF DIVERSION T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NESW	40	
T9S, R40E, Section 20	NWSW	39	
T9S, R40E, Section 20	SWSW	38	
T9S, R40E, Section 20	SESW	39	
TOTAL		156	

¹Public land survey descriptions of 40 acre parcels in this decision without a fraction following the quadrant description assume a fractional component of "1/4" stated as "quarter."

WATER RIGHT NO. 13-07261

FLOW RATE 2.00 cfs	SOURCE Groundwater	PRIORITY 9/10/1979	POINT OF DIVERSION² T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 19	NESE	37	
T9S, R40E, Section 19	NWSE	38	
T9S, R40E, Section 19	SWSE	39	
T9S, R40E, Section 19	SESE	39	
TOTAL		153	

WATER RIGHT NO. 13-07198

FLOW RATE 5.23 cfs	SOURCE Groundwater	PRIORITY 6/20/1977	POINT OF DIVERSION T9S, R40E, Section 29, SESW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 29	NENE	32	
T9S, R40E, Section 29	NWNE	32	
T9S, R40E, Section 29	SWNE	32	
T9S, R40E, Section 29	SENE	32	
T9S, R40E, Section 29	NENW	32	
T9S, R40E, Section 29	NWNW	32	
T9S, R40E, Section 29	SWNW	32	
T9S, R40E, Section 29	SESW	32	
T9S, R40E, Section 29	NESW	39	
T9S, R40E, Section 29	SESW	3	
T9S, R40E, Section 29	NWSE	40	
T9S, R40E, Section 29	SWSE	7	
TOTAL		345	

² Same well as the point of diversion described by water right no. 13-07165.

3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704 and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 20	NENE	29	13-07198C
T9S, R40E, Section 20	NWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	7	13-02259
T9S, R40E, Section 20	SENE	21	13-07198C
T9S, R40E, Section 20	SENE	8	13-02259
T9S, R40E, Section 20	NENW	29	13-02259
T9S, R40E, Section 20	NWNW	29	13-02259
T9S, R40E, Section 20	SWNW	30	13-02259
T9S, R40E, Section 20	SENW	37	13-02259
T9S, R40E, Section 20	NESW	7	13-02259
T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

CENTER SYSTEM
(three large pivots)
Point of Diversion: T9S, R40E, Section 20, SWSW

Water Right		Flow Rate (cfs)	
13-07165		3.12	
13-07261		2.00	
13-07198B		0.64	
TOTAL		5.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 19	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 19	NWSE	29	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07198B
T9S, R40E, Section 19	SESE	27	13-07198B
T9S, R40E, Section 20	NESW	30	13-07165 & 13-07261
T9S, R40E, Section 20	NWSW	29	13-07165 & 13-07261
T9S, R40E, Section 20	SWSW	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESW	29	13-07165 & 13-07261
T9S, R40E, Section 20	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 20	NWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESE	29	13-07165 & 13-07261
TOTAL		351	

SOUTH SYSTEM
(one large pivot, one medium pivot)
Point of Diversion: T9S, R40E, Section 29, SENW

Water Right		Flow Rate (cfs)	
13-07198A		2.93	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 29	NENE	29	13-07198A
T9S, R40E, Section 29	NWNE	30	13-07198A
T9S, R40E, Section 29	SWNE	37	13-07198A
T9S, R40E, Section 29	SENE	29	13-07198A
T9S, R40E, Section 29	SENW	7	13-07198A
T9S, R40E, Section 29	NESW	31	13-07198A
T9S, R40E, Section 29	NWSE	30	13-07198A
TOTAL		193	

4. Gem Valley does not propose to irrigate any more acres than are described by the water rights as approved by the Bancroft-Lund Adjudication.

5. The protestants expressed primary concern regarding the use of a well located in the SWSW Section 20, T9S, R40E, B.M. This well was referred to in the hearing as well no. 9, and was labeled as well no. 9 on applicant's exhibit no. 5 and on protestants' exhibit no. 1. The applications for transfer propose diversion from well no. 9 (hereafter referred to as the center well) to irrigate the center system.

6. Paul Christensen (Christensen), who owned a farm and several wells surrounding the center well site, was at the drilling site almost every day when the center well was drilled. Christensen testified that the well driller, after having drilled the well to approximately 130 feet, drilled into a layer of blue clay. Christensen testified the well driller ceased drilling and tested the well for productivity. He stated the well did not produce a significant flow of water and sand was pumped from the well.

7. A well log for the initial drilling was filed with the Department naming Leo Christensen as the owner. According to the well log, construction started in May of 1977 and concluded in July of 1977. The lithologic log describes "gray lava" beginning at a depth of ten feet and extending down to a depth of 175 feet. Water was encountered below a depth of 142 feet. The driller described a "sand & clay brown" strata between a depth of 175 feet and 200 feet. Between depths of 200 feet and 235 feet, the driller described black or gray lava. Finally, between a depth of 233 feet and the bottom of the well at 235 feet, the driller described "brown sand & lava." The driller wrote a comment across the lithologic log that the "hole [was] never

pumped. There is another rig on [the] hole now." The driller recorded a static water level of 143 feet.

8. According to Christensen, the owner of the well determined that he would drill deeper. Christensen testified the well driller cased the well to the upper boundary of the blue clay and drilled the well to a depth of approximately 500 feet, where he encountered a water bearing layer of gravel. Christensen testified that the water level in the well rose to a depth of between 130 and 200 feet below land surface.

9. Another well log in the Department files describes the deepening of the center well, completed in July, 1978. The well log describes a 16 inch diameter casing installed to a depth of 235 feet, the bottom of the first well hole. It also describes perforations in the casing between depths of 140 and 150 feet. The well log describes intermittent dry and water bearing zones to a depth of 525 feet deep, with a 25 foot water bearing strata at the bottom of the well from 500-525 feet. The well log also states that the static water level stood at 140 feet.

10. The well driller did not complete any of the pump testing portions of the well log. Warren Lloyd testified that when the well was test-pumped, it produced about "fourteen feet" (cfs) of water. A flow of fourteen cfs from the well described by the well logs is probably unrealistic. A Department examiner measured a flow of 5.24 cfs from the well in 1980 while examining the well for beneficial use. A flow of 5.24 cfs exceeds the combined authorized flow rate of 5.12 cfs authorized by water right nos. 13-07165 and 13-07261.

11. Warren Lloyd established that, when the center well was tested for productivity, his well, located approximately three miles away in the NESE, Section 23, T9S, R39E, B.M., was affected within seven to eight hours of the productivity test. His well had never pumped sand prior to the productivity test for the center well. After the center well was test pumped, Warren Lloyd testified his wheel lines and hand lines partially filled with sand. He testified that when the center well productivity test was complete, the water in his well cleared up, but as soon as the water was pumped from the center well again for irrigation, his pump again began pumping sand again. He testified that the water levels in his well have declined since the completion of and pumping from the center well. Because of the declines, Warren Lloyd had to drill a new well.

12. Protestants established that there is a direct relationship between water levels in their wells and water pumped from the center well. Phil Yost testified his wells begin to "suck air" two to three days after the center well begins pumping. Paul Christensen testified that he believes the center well affects a domestic well he owns (labeled as well no. 2 on protestant's exhibit no. 1) more than other wells, and that all the wells had plenty of water before the center well was drilled and began pumping.

13. George Kimball owns a fish propagation facility in Black Canyon, approximately five miles south of the center well. He owns water rights which authorize diversion of water from springs that emit from the north and west canyon wall of Black Canyon. George Kimball testified that on October 16, 1992, he lost 2,000 three-quarter pound fish because of a two cfs reduction in flow to his raceways. He surveyed the nearby wells and found that the center well was pumping.

The only other well pumping in the area was a well owned by Don Rigby, located approximately ten miles north of the center well.

14. There is a general hydrologic relationship between ground water in that portion of basin 13 located within the Bancroft-Lund Ground Water Management Area and spring flows that discharge from Black Canyon into the Bear River.

15. There is a general hydrologic relationship between all of the wells in basin 13 that are located within the Bancroft-Lund Ground Water Management Area.

16. Approval of these applications for transfer will result in the irrigation of 42 more acres by the center well than was authorized by water right nos. 13-07165 and 13-07261. Approximately one-third (42 acres) of the circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. is proposed as a place of use for water right no. 13-07198, which currently only authorizes diversion of water from the well located in the SENW, Section 29, T9S, R40E, B.M.

17. The center well is the most productive well of the wells owned by Gem Valley. The center well will continue to produce water when the wells located in the NENW, Section 20, (north well) and the SENW, Section 29 (south well), T9S, R40E, B.M. cannot produce the flow rates authorized by the water rights. Chad Neibaur testified that water from the center well was pumped to irrigate lands that should be irrigated by the north well (identified as well # 4 on the exhibits) since 1993 because of sand in the north well and because he finally couldn't pump water out of the north well.

18. Warren Lloyd testified that he noticed greater declines in the water levels in his well after Gem Valley started delivering water from the center well to lands that should have been irrigated by the north well.

19. Chad Neibaur testified that because of the installation of pivots and better application efficiency, the flow rate from the center well will be 1600 gallons per minute (3.57 cfs) instead of 2300 gallons per minute (5.12 cfs). A greater annual volume of water could be pumped from the center well, however, and more water will be consumed from the center well as a result of the application of water from the well to 42 additional acres.

20. The protestants argued that some of the corners alleged to be irrigated by Gem Valley and from which water is sought to be transferred have not been irrigated for more than five years. No significant proof was offered to support the allegations.

CONCLUSIONS OF LAW

1. *Idaho Code § 42-222* provides in pertinent part as follows:

The Director of the Department of Water Resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the

change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. In determining the issue of enlargement, the Department reviews whether there will be an increase in three components of the water right: the instantaneous flow rate, the annual volume of water diverted and the annual consumptive use of water. In determining whether there will be an increase in consumptive use or annual volume, the number of acres described as a place of use by the water right, and on which the water is beneficially used, is compared to the number of acres proposed as a place of use. These criteria are satisfied by Gem Valley's applications.

3. The difficult legal question is whether, after the protestants have established that the center well directly affects their ability to divert water, the Department should microscopically refuse to allow more diversion of water from the center well and deny or limit the applications for transfer.

4. The protestants established through testimony that pumping from the center well reduces the quantity of water available in other nearby wells, particularly the well owned by Warren Lloyd.

5. Protestants established that pumping from the center well reduces the spring flows in Black Canyon diverted by George Kimball for fish propagation use.

6. The irrigation of 42 additional acres from the center well will result in greater consumptive use of water, and although the flow rate diverted will not increase, the total volume of water diverted will probably increase.

7. Irrigation from the center well must be limited to 309 acres. The place of use for the center system must be reduced by 42 acres.

8. As an alternative, if Gem Valley can prove, through well interference testing, that diversion from the center well has no more effect on nearby wells than pumping from the south well, the applications for transfer can be fully approved.

9. If Gem Valley can show no difference in the effect on other wells when pumping from the center well or the south well, Gem Valley may irrigate 351 acres from the center well. The place of use irrigated by the center well must be limited to circular pivots located in the S ½ of Section 20 and a circular pivot located in the SE 1/4 of Section 19.

10. A water right is forfeited if water is not beneficially used pursuant to the right for a period of five consecutive years. Forfeiture must be established by clear and convincing evidence. The party alleging forfeiture bears the burden of proof to establish forfeiture. The protestants did not present clear and convincing evidence that any of the rights sought to be transferred were forfeited.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4703, 4704, and 4705 are APPROVED subject to the following conditions:

1. Irrigation from the well located in the SWSW, Section 20, T9S, R40E, B.M. (center well) is limited to 309 acres located within two circular pivots in the S $\frac{1}{2}$ of Section 20, T9S, R40E, B.M., and one circular pivot located in the SE $\frac{1}{4}$ of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the S $\frac{1}{2}$ of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation in the SWSE, Section 19, T9S R40E, B.M. is limited to 15 acres. No lands in the SESE, Section 19, T9S, R40E, B.M. can be irrigated.
2. Combined right nos. 13-02259 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 af, nor the total combined annual irrigation of 264 acres.
3. Combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 af, nor the total combined annual irrigation of 309 acres.
4. This approval does not authorize the construction of any new well or the deepening or enlargement of any existing well.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
6. A totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.
8. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
9. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
10. Approval of this transfer does not authorize use of canal water on the circular system located in the NW $\frac{1}{4}$ of Section 29, T9S, R40E, B.M.
11. The rate of flow diverted from the well located in the SWSW, Section 20, T9S, R40E, B.M. shall not exceed 5.12 cfs.

IT IS FURTHER ORDERED that, as an alternative, 351 acres can be irrigated by the well located in the SWSW, Section 20, T9S, R40E, B.M., upon satisfaction of the following conditions within one year of final approval of these transfers:

12. A well interference test is conducted for the well located in the SWSW, Section 20, T9S, R40E, B.M., and for the well located in the SENW, Section 29, T9S, R40E, B.M. The effect on wells owned by Warren Lloyd, Keith Lloyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, Section 20, T9S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, Section 29, T9S, R40E, B.M.

13. A plan for the well tests must be submitted to the Department and approved prior to the tests being conducted.

14. The well tests must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

15. Written results of the test must be distributed to the Department and to the protestants for review.

16. The Department will issue another decision following submittal of the written report. The parties may request a hearing as provided by Idaho Code § 42-1701A.

Signed this 26th day of April, 1996.



GARY SPACKMAN
Hearing Officer

CERTIFICATE OF MAILING

I do hereby certify that on this 29th day of April, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **RECOMMENDED ORDER** to the following:

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

David Lloyd
1917 Lund Rd.
Bancroft, ID 83217

Phil Yost
1760 Rich Rd.
Grace, ID 83241

Warren & Jennie Lloyd
1475 Mountain Rd.
Bancroft, ID 83217

William R. Forsberg
Attorney at Law
40 West Main
St. Anthony, ID 83445


JULIE L. YARBROUGH
Senior Secretary

RECEIVED

AUG 10 1992

143995

FILED

'92 JUL 28 PM 1 56

CARIBOU COUNTY CLERK

STATE OF IDAHO }
County of Caribou } SS.

I hereby certify that this instrument was filed at the request
of Department of Water Resources
at 10:00 o'clock A m this 5th day of
August, 1992 in my office and duly
recorded in Microfilm Records
Rebecca Jenkins-Smith
Stephanie Lansberry nel
Ex-Officio Recorder Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CARIBOU

In the Matter of General	)	Civil No. 2919
Determination of the Rights to	)	
the Use of Surface and	)	
Groundwater in the Bancroft-Lund	)	FINAL DECREE
Area.	)	

R. Keith Higginson, Director of the Idaho Department of Water Resources, filed a Motion for Final Decree on July 1, 1992, 1992. The motion came on for hearing July 28, 1992.

Based on the motion and the argument presented at hearing, the court finds and concludes as follows:

The Director's Report for the Bancroft-Lund Area was filed November 15, 1992. The court entered an Order Amending Report, which amended Finding of Fact No. 14 and Conclusions of Law 16 and 18, and amended the List of Claims/Rights Not Recommended.

Last Chance Canal Company and Utah Power & Light Company filed objections to the report.

The adjudication statute provides for entry of partial decree of uncontested matters, entry of further partial decrees as

FINAL DECREE, Page 1

MAY 14 1996

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JUN 02 2004

necessary to resolve objections and final decree incorporating all partial decrees. Idaho Code §42-1412(8)(9)(10). A List of the Uncontested Portions of Director's Report has been filed with the court as required by Idaho Code §42-1412(9), and hearing on the partial decree of uncontested matters is set for July 28, 1992.

A Stipulation Resolving Objections of Utah Power & Light Company and Last Chance Canal Company has been filed with the court along with a motion seeking approval of the stipulation. Hearing on the motion was set for July 28, 1992, immediately preceding hearing on partial decree of uncontested matters. Upon entry of the order approving stipulation there were no contested matters remaining to be resolved. Therefore, no partial decrees are necessary and the court may proceed with entry of the final decree completing the Bancroft-Lund adjudication.

THEREFORE, IT IS HEREBY ADJUDGED AND DECREED that:

All rights to the use of surface and groundwater from the Bancroft-Lund Area are as described in the Director's Report, except that:

1. The Findings of Fact and Conclusions of Law attached hereto are substituted for the Findings of Fact and Conclusions of Law in the Director's Report.

2. List of Claims/Rights Not Recommended attached hereto are substituted for the List of Claims/Rights Not Recommended in the Director's Report.

DATED this 28th day of July, 1992.

151
DANIEL C. HURLEY
District Judge

MAY 14 1996
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STATE OF IDAHO)
)
COUNTY OF CARIBOU) ss.

I, Rebecca A. Jenkins, Clerk of the District Court of the Sixth Judicial District of this State of Idaho, in and for the County of Caribou, do hereby certify the foregoing to be a full, true and correct copy of the Judgment duly made and entered on the minutes of the said District Court in the above entitled action, and that I have compared the same with the original, and the same in a correct transcript therefrom, and or the whole thereof.

ATTEST, my hand and the Seal of said District Court this 28th day of July 1992.

REBECCA JENKINS-SMITH, Clerk

by: Keda Mascareñas
Deputy Clerk

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MAY 14 1996

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IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-12-1991
PAGE: A-75

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: GROUNDWATER						
29-07472	RAOUL WISTISEN P.O. BOX 157 BANCROFT ID 83217	01/23/1979	DOMESTIC	01-01 12-31	.04 1.2	CFS AFY LICENSE
NON-IRRIGATION-USES: DOMESTIC, 1 HOME POINT OF DIVERSION: T08S R39E S08 PLACE OF USE: DOMESTIC						
SENE NESE T08S R39E S08						
29-00576	DATE E. YOST 1846 LUND RD. BANCROFT ID 83217	05/01/1979	DOMESTIC	01-01 12-31	.04 1.2	CFS AFY BENEFICIAL USE
NON-IRRIGATION-USES: DOMESTIC, 1 HOME POINT OF DIVERSION: T08S R39E S34 PLACE OF USE: DOMESTIC						
SWNE SWNE T08S R39E S34						
13-07261	DWAIN K. CHRISTENSEN 1651 RICH RD. GRACE ID 83241	09/10/1979	IRRIGATION	04-15 10-15	2.00 459.0	CFS AFY LICENSE
POINT OF DIVERSION: T09S R40E S20 PLACE OF USE: IRRIGATION						
SWSW NESE 37.0 NWSE 38.0 SESE 39.0 T09S R40E S19 153.0 ACRES TOTAL						
TOTAL QUANTITY: CONSUMPTIVE USE:						

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JUN 12 2004

MEMORANDUM

TO: FILE 13-07261

FROM: PAM SKAGGS

RE: TRANSFER # 5545

DATE: 8/31/99

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 18-02259.

MICROFILMED
JUN 14 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1999

Gem Valley Farms
C/o Chad Neibaur
1550 Bancroft Rd
Bancroft, ID 83217

Re: Notice of Violation and Cease and Desist Order; Diversion of Water from Second Well in the NW1/4 of Section 20, T9S, R40E

Dear Mr. Niebaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion facilities under Transfer No.s 4703, 4704 and 4705, and failure to comply with the Agreement and Consent Order dated July 23, 1996. Please note all civil penalties and compliance dates stipulated in the attached order. Please also note your opportunity to request a compliance conference concerning this matter. Please also note on the order the time frame and manner in which such a request must be made.

The purpose of this letter is to also formally notify you that you are prohibited from using both your old well and your replacement well located in the NW1/4 of Section 20, T9S, R40E, B.M. You may use one of the two wells this irrigation season, but not both wells unless and until a water right transfer has been approved which adds a second point of diversion to the rights authorized to be diverted from this location. The transfer that you filed last year, Transfer No. 5353, did not request adding a second point of diversion. The advertising and processing of that transfer did not involve the addition of a second point of diversion. As a result, a new transfer must be approved in order to use both wells at this location. The department suggests that you immediately file a water right transfer if you intend to use a second well at this location. It is possible the department could allow diversion of water from a second well if a transfer is filed and processing is completed to some point. However, you are prohibited from using a second well until you have received some formal approval from IDWR. Department staff and the water district watermaster will monitor the water use and power consumption at this location.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tim Luke', written over a horizontal line.

Tim Luke

Cc: Craig Shuler, Watermaster
Howard Jones, Eastern Region
Norman C. Young, IDWR

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JUN 14 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF DIVERSION OF	)	
WATER BY GEM VALLEY FARMS	)	
AND/OR CHAD NIEBAUR NOT IN	)	NOTICE OF VIOLATION
CONFORMANCE WITH AGREEMENT	)	AND CEASE AND DESIST
AND CONSENT ORDER OR NOT IN	)	ORDER
CONFORMANCE WITH VALID	)	
<u>WATER RIGHTS</u>	)	

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing specific certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to appropriation and distribution of water; has investigated the use of water by Gem Valley Farms, Inc. and/or Chad Neibaur (herein collectively termed "Gem Valley").

Based on the department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

FINDINGS OF FACT

1. That on July 23, 1996, the Director of the department and Gem Valley entered into an Agreement and Consent Order, pursuant to Section 42-351, Idaho Code whereby the department ordered Gem Valley to comply with certain provisions specified in the consent order.
2. That the findings of fact and conclusions of law contained in the Agreement and Consent Order are incorporated herein by reference.
3. That pursuant to the Agreement and Consent Order, Gem Valley agreed to endeavor to divert and use water in compliance with the water rights as recorded.
4. That pursuant to the Agreement and Consent Order, Gem Valley was required to immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights No.s 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer No.s 4703, 4704, and 4705.
5. That pursuant to the Agreement and Consent Order, Gem Valley was required to pay a civil penalty of \$1000.00 if it failed to comply with the terms of the Agreement and Consent Order.

MICROFILMED

JUN 14 2000

6. That based on investigation by department staff, Gem Valley has not installed or maintained measuring devices on any of the diversion facilities authorized under those water rights and transfers identified under Finding of Fact No. 3 above.

7. That Gem Valley has for the past three irrigation seasons commingled surface water with ground water from a well located in the SENW of Section 29, T9S, R40E, B.M., and thereby used ground water on lands not authorized by those water rights and Transfers identified in Finding of Fact No. 4.

8. That on October 10, 1996, staff from the Idaho Department of Water Resources found and documented that Gem Valley had diverted water from a well located in the SWSW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

9. That the Watermaster of Water District 13-T that was duly elected and appointed during 1998, reported to the Department that on July 8, 1998, Gem Valley had diverted water from the well located in the NESW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

10. That Gem Valley has not endeavored to use water in compliance with the water rights as recorded.

CONCLUSIONS OF LAW

1. Idaho Code 42-1701B(6)(a) states, in pertinent part:

...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.

2. Investigation by the department found that Gem Valley has not installed or maintained measuring devices on the diversion facilities identified under the water rights and transfers identified under Finding of Fact No. 4.

3. Past investigation by the department and monitoring by the water district watermaster has shown that Gem Valley has irrigated land from diversion facilities not authorized by water rights held by Gem Valley.

4. Gem Valley has failed to adhere to the requirements of the law, the terms of the Agreement and Consent Order dated July 23, 1996, and the authorized water rights as approved by Transfer No.s 4703, 4704 and 4705.

5. Gem Valley should pay a \$1000.00 civil penalty for failure to comply with the terms of the Agreement and Consent Order.

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JUN 14 2000

6. The director should issue a Notice of Violation instructing Gem Valley to immediately cease and desist diverting water to lands not described as a place of use as authorized by Gem Valley's water rights.

ORDER

IT IS HEREBY ORDERED as follows:

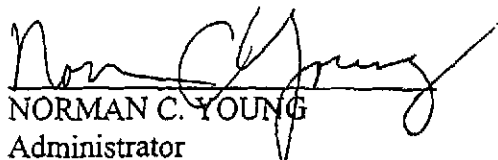
1. Gem Valley shall cease and desist diverting water from the diversion facilities under Transfers 4703, 4704 and 4705, by July 8, 1998 unless and until:
 - a) Gem Valley installs measuring devices as required by the Agreement and Consent Order, and;
 - b) Gem Valley configures its diversion and conveyance facilities in the SWSW of Section 20 and in the SENW of Section 29, T9S, R40E, B.M., in a manner that is consistent with its water rights. Specifically, Gem Valley must configure its well in Section 29 so that ground water use from the well is limited to use on the pivot in the NE1/4 of Section 29, and on 68 acres within the NESW, NWSE and SENW of Section 29. Gem Valley must also configure its diversion in the SWSW of Section 20 so that ground water diverted from this well is not diverted to the pivots located in the N1/2 of Section 20, the W1/2 of Section 16 as proposed by Transfer No. 5353, or the mini-pivot located in the center of section 20.
2. For failure to comply with the Agreement and Consent Order of July 23, 1996, Gem Valley shall pay a one thousand-dollar (\$1,000.00) civil penalty to the department. The penalty shall be paid by July 23, 1999.
3. For any future diversion of water or application of water to lands not authorized by the water rights, transfers, or by subsequent order and decision by the department, the water user shall pay a civil penalty of three hundred dollars (\$300) annually per acre for each acre that is irrigated and that is not in conformance with the water rights, the final order, or subsequent decision by the department.
4. Gem Valley is entitled to a **Compliance Conference** with department staff if Gem Valley submits a written request for a conference to the department within fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

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5. Gem Valley shall have the opportunity to enter into a second **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 22ND day of June, 1999.


NORMAN C. YOUNG
Administrator
Water Management Division

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JUN 14 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

July 30, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CHAD NEIBAUR
GEM VALLEY FARMS
1550 CENTRAL RD
BANCROFT, ID 83217

Re: Review of Approved Transfer No.s 4704 & 4705

Dear Mr. Neibaur:

My recent field inspections of your ground water irrigation systems described under the above transfers revealed some inconsistencies between the approved transfers and the actual irrigation operation. We discussed these inconsistencies at your office on July 18. Specifically, the place of use under transfer 4704 (water rights 13-07165 & 13-07261) did not match the actual 1997 irrigated place of use. The pivot in the SE1/4 of section 19, T9S R40E was irrigating a full circle instead of omitting 42 acres in the SESE and SWSE of this section as directed by the final order approving transfer no. 4704. In addition, several corners (approximately 15 acres) in the SE 1/4 of section 19 and the SW1/4 of section 20, T9S R40E were being irrigated but were not authorized to be irrigated under the final order.

Based on our meeting, it is my understanding that you have chosen not to implement approved transfer no. 4704 which involved use of the well in the SW1/4 of section 20 to irrigate the two pivots in the S1/2 of section 20 and a third pivot in the SE1/4 of section 19 (system was described as the center system under the final order). Rather than perfect the transfer, you are instead using rights 13-07165 and 13-07261 as they were recorded prior to the approval of transfer 4704. If this understanding is correct, then the Department requests that you submit a written statement verifying that the transfer has not been accomplished. Upon receiving your verification, we will then change water rights 13-07165 and 13-07261 to the place of use as recorded prior to approval of the transfers. You do not need to file a second transfer if there has been no change to the two rights.

We also ask that you submit a statement regarding that portion of transfer 4705 which created right 13-07198B. This right is appurtenant to 42 acres in the SE1/4 of section 19. Since transfer 4704 has not been implemented, it seems that this portion of transfer 4705 has also not been accomplished. Right 13-07198B is not part of the center pivot system and does not need to identify the 42 acres in section 19 or the well in the SW1/4 of section 20. It seems more appropriate for this right to revert back to the original place of use and point of diversion in section 29 (Christensen well). You may need to file a second transfer to move the 42 acres from section 19 to section 29 since we can not match the original location where all of the 42 acres would revert. Filing a new transfer will allow you to choose the location of the

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42 acres.

Finally, I want to remind you that a condition of approval for the approved transfers required installation of totalizing measuring devices on the points of diversion under the transfers. I am not certain if the condition applies to the well in the SW1/4 of section 20 if the transfer has not been accomplished. I believe that power records can be used for this well to estimate total annual withdrawals as long as the well is used to irrigate the two pivots and handlines in the SW1/4 of section 20 and the SE1/4 of section 19. We probably need to remeasure the power consumption coefficients from last year since you added the corners and handlines in 1997. I have asked the watermaster to visit with you and review the plumbing and valving for this well so that he can confirm that the pivot in the SE1/4 of section 20 will not be irrigated from the well in the SW1/4 of section 20 (i.e.; as originally proposed and approved under transfer 4704).

The measuring device requirement is still in effect for the wells in section 29 (Christensen well) and the NW1/4 of section 20 (Hansen well). A measuring device must be installed for the Christensen well since this is a complicated system which can not be estimated accurately using power records. Any device or devices installed for this system must measure the ground water diversion separate from the commingled surface water.

Although a device has not been installed for the Hansen well, I think we can consider relaxing this condition and instead use power records to estimate withdrawals since this system does not appear to be too complicated. This approach will work if you can track the hours of operation or percent of seasonal use for the different conditions of use. The watermaster may be able to assist in monitoring the operating conditions. I have enclosed a tracking form to help you in tracking the operating conditions for this well. If operating conditions are not monitored properly, then IDWR may insist on the installation of a measuring device.

We ask that your written statement regarding transfer 4704 be submitted as soon as possible. If a statement is not submitted within 30 days, IDWR will assume that you have no further intention to accomplish transfer 4704 and will take action to change rights 13-07165 and 13-07261 as recorded before approval of the transfer. Further action may be taken on the portion of transfer 4705 involving right 13-07198B if you fail to provide us with direction regarding this right. You may contact me directly at 327-7864 if you have any further questions.

Respectfully,



Tim Luke

cc: Wayne Waddoups, Watermaster
Norm Young, IDWR
Jim Johnson, IDWR
Harold Jones, Eastern Region

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JUN 14 2000

Glen —
please file.
BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

AUG 19 1996

Department of Water Resources

**IN THE MATTER OF DIVERSION OF)
WATER BY GEM VALLEY FARMS)
AND/OR CHAD NEIBAUR WITHOUT)
A VALID WATER RIGHT OR NOT IN)
CONFORMANCE WITH A VALID)
WATER RIGHT)**

**AGREEMENT AND
CONSENT ORDER**

The Director of the Idaho Department of Water Resources (department), being charged with the duty of enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations of the provisions of law relating to appropriation and distribution of water, hereby enter into this Agreement and Consent Order with Chad Neibaur, acting on his own behalf and for Gem Valley Farms, Inc. (herein collectively termed "Gem Valley").

NOW, THEREFORE, following a compliance conference and before the taking of any testimony herein, and without hearing or contested administrative adjudication of any issue of fact or law, and upon the consent of the parties, it is HEREBY STIPULATED AS FOLLOWS:

FINDINGS

1. That on June 28, 1996, the department issued a Notice of Violation and Cease and Desist Order, pursuant to the provisions of Section 42-351, Idaho Code, ordering Gem Valley immediately to cease diverting water and applying it to lands not in accordance with the water rights for those lands.

2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.

3. That a compliance conference, pursuant to Section 42-351, Idaho Code, was held on June 10, 1996, at Grace, Idaho. Gem Valley provided information demonstrating that ground water is being used for the 1996 irrigation season at lower diversion rates and on fewer acres than authorized under the applicable water rights. However, some ground water has been applied to lands from wells other than those authorized under the water rights.

4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

AGREEMENT AND ORDER

Based upon the foregoing findings and pursuant to agreement of the parties, the department orders as follows:

1. That Gem Valley will endeavor to divert and use water in compliance with the water rights as recorded.
2. That Gem Valley will pay a civil penalty of \$100 per diversion for each day or part thereof that water is used in violation of the terms and conditions of the applicable water rights after service of the Notice of Violation and Cease and Desist Order. Civil penalties will be paid within 30 days of notice given by the department.
3. That Gem Valley will immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights Nos. 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer Nos. 4703, 4704, and 4705.
4. That Gem Valley will not operate pivot systems located in the NW quarter of Section 29 and the SW quarter of Section 20, Township 9S, Range 40E, B.M., at any time canal water is not being supplied at a rate adequate to supply these pivot systems.
5. The department will suspend imposition of the \$1000.00 civil penalty due under provision No. 2. of the Notice of Violation pending compliance with this Agreement and Consent Order. The department will require payment of the \$1000.00 civil penalty if Gem Valley fails to fully comply with the terms of this Agreement and Consent Order.
6. This Agreement and Consent Order shall be effective immediately for the 1996 irrigation season only upon signing by both parties. Compliance with the Agreement and Consent Order by Gem Valley shall preclude any civil enforcement action by the department for the violations alleged in the Notice of Violation.
7. By signing this Agreement and Consent Order, Gem Valley hereby waives any right that it otherwise has to contest the provisions of the Agreement and Consent Order.
8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by law.

9. Upon a determination by the director of the department that unauthorized use of ground water by Gem Valley is injuring the use of another water right, the department may take action in accordance with applicable law to prevent continued unauthorized use.

10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this RD23 day of July, 1996.

KARL J. DREHER
Director


Norman C. Young
Water Management Division

CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this ____ day of July, 1996.


CHAD NEIBAUR
Gem Valley Farms

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

4a. Article Number

P326 991512

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X *Chad Neibaur*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

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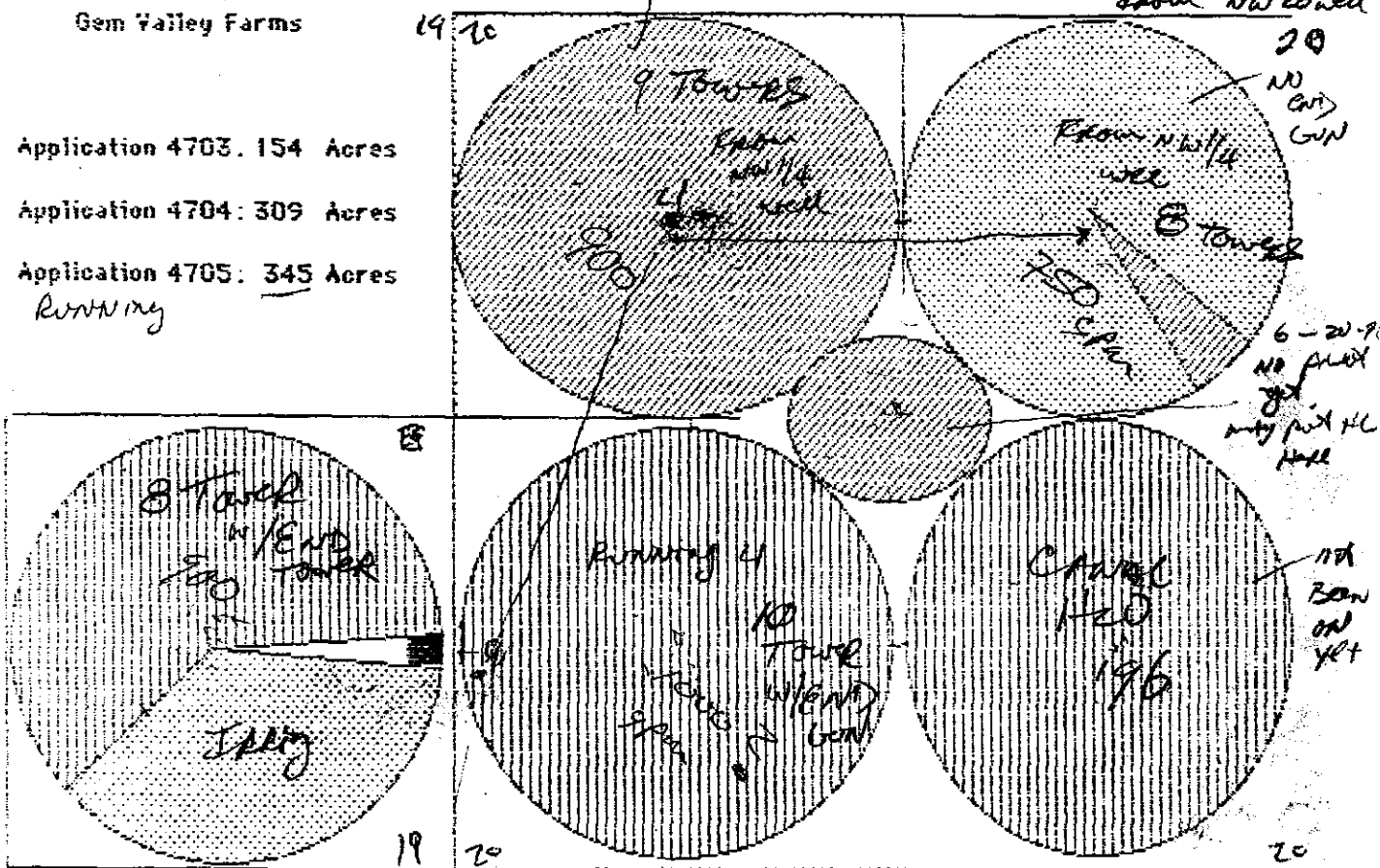
NOV 01 1996

Chad Meibaur
Gem Valley Farms

Application 4703: 154 Acres
Application 4704: 309 Acres
Application 4705: 345 Acres
Running

6/25/68 AFTER

Flour
can only rise
on proof in N 1/2 20
from NW 20 well



-20-96

Gen VALLEY

SW CANAL pump OFF

Sci 29 well off.

Pivot in south part of
sec 29 off

placed in NW sec 29 = off

private in SE sec 19 - off *

Pivot in NW sec 20 - c&F

well in NW 1/4 sec 20 = off

- pivot on SW 1/2 or 20' off
dig well off

- 1/20 in $\leq 1/4$ sec 20 =

min phord sc
20 off
not available



10
Tower
w/END
CEN

from
privat
B +
come
from
well

See 19
SE =
Paving full

General Pump

34th Privats in N 1/2 sec 20
well on 6-18-76

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NOV 01 1996

6-18 { Deep well = on see 29 = ?
NW 1/4 20 well = ?



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 23, 1996

COPY

Chad Neibaur
Gem Valley Farms
1550 Central Road
Bancroft, ID 83217

Re: Agreement and Consent Order for Gem Valley Farms

Dear Mr. Neibaur:

On July 12, 1996 a draft Agreement and Consent Order was faxed to you for your review and comment. Your faxed response accompanying the diversion data and place of use map did not specifically address the draft agreement but does indicate your intent to work cooperatively on this matter. Accordingly, please find enclosed two original Agreement and Consent Orders. Please sign both originals of the Agreement, return one original to me and retain one original for your records. I am enclosing a postage-paid envelope for your convenience in returning one original to this office.

If you have any questions, please do not hesitate to contact me or my office.

Sincerely,

Norman C. Young
Administrator
Water Management Division

NCY/dde
Encl.

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NOV 01 1996

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

IN THE MATTER OF DIVERSION OF	)	
WATER BY GEM VALLEY FARMS	)	AGREEMENT AND
AND/OR CHAD NEIBAUR WITHOUT	)	CONSENT ORDER
A VALID WATER RIGHT OR NOT IN	)	
CONFORMANCE WITH A VALID	)	
WATER RIGHT	)	
	)	

The Director of the Idaho Department of Water Resources (department), being charged with the duty of enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations of the provisions of law relating to appropriation and distribution of water, hereby enter into this Agreement and Consent Order with Chad Neibaur, acting on his own behalf and for Gem Valley Farms, Inc. (herein collectively termed "Gem Valley").

NOW, THEREFORE, following a compliance conference and before the taking of any testimony herein, and without hearing or contested administrative adjudication of any issue of fact or law, and upon the consent of the parties, it is **HEREBY STIPULATED AS FOLLOWS:**

FINDINGS

1. That on June 28, 1996, the department issued a Notice of Violation and Cease and Desist Order, pursuant to the provisions of Section 42-351, Idaho Code, ordering Gem Valley immediately to cease diverting water and applying it to lands not in accordance with the water rights for those lands.
2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.
3. That a compliance conference, pursuant to Section 42-351, Idaho Code, was held on June 10, 1996, at Grace, Idaho. Gem Valley provided information demonstrating that ground water is being used for the 1996 irrigation season at lower diversion rates and on fewer acres than authorized under the applicable water rights. However, some ground water has been applied to lands from wells other than those authorized under the water rights.

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NOV 01 1996

4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

AGREEMENT AND ORDER

Based upon the foregoing findings and pursuant to agreement of the parties, the department orders as follows:

1. That Gem Valley will endeavor to divert and use water in compliance with the water rights as recorded.

2. That Gem Valley will pay a civil penalty of \$100 per diversion for each day or part thereof that water is used in violation of the terms and conditions of the applicable water rights after service of the Notice of Violation and Cease and Desist Order. Civil penalties will be paid within 30 days of notice given by the department.

3. That Gem Valley will immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights Nos. 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer Nos. 4703, 4704, and 4705.

4. That Gem Valley will not operate pivot systems located in the NW quarter of Section 29 and the SW quarter of Section 20, Township 9S, Range 40E, B.M., at any time canal water is not being supplied at a rate adequate to supply these pivot systems.

5. The department will suspend imposition of the \$1000.00 civil penalty due under provision No. 2. of the Notice of Violation pending compliance with this Agreement and Consent Order. The department will require payment of the \$1000.00 civil penalty if Gem Valley fails to fully comply with the terms of this Agreement and Consent Order.

6. This Agreement and Consent Order shall be effective immediately for the 1996 irrigation season only upon signing by both parties. Compliance with the Agreement and Consent Order by Gem Valley shall preclude any civil enforcement action by the department for the violations alleged in the Notice of Violation.

7. By signing this Agreement and Consent Order, Gem Valley hereby waives any right that it otherwise has to contest the provisions of the Agreement and Consent Order.

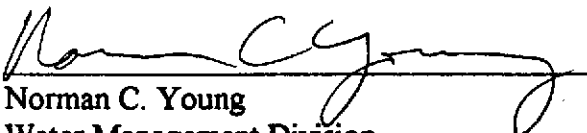
8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by law.

9. Upon a determination by the director of the department that unauthorized use of ground water by Gem Valley is injuring the use of another water right, the department may take action in accordance with applicable law to prevent continued unauthorized use.

10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this ¹⁰23 day of July, 1996.

KARL J. DREHER
Director


Norman C. Young
Water Management Division

CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this ____ day of July, 1996.

CHAD NEIBAUR
Gem Valley Farms

MEMORANDUM

TO: CHAD NEIBAUR by FAX #
FROM: NORM YOUNG *NY*
SUBJECT: DRAFT CONSENT AGREEMENT
DATE: July 12, 1996
=====

This memo accompanies a draft of a consent agreement discussed at the compliance conference on Wednesday. Please review the draft and provide any comments you have to Tim Luke at 208-327-7864 on Monday or as soon thereafter as possible. I will be out of town next week, but will check in with Tim so that the agreement can be finalized as soon as you have reviewed it.

I have added one substantive condition to the order (see #9) that was not specifically discussed, but I believe to be necessary and in tune with our general discussions.

I would like to have a copy of the map and other information that you presented at the conference. It can be faxed to my attention at 208-327-7866.

I appreciated the opportunity to meet and discuss this matter with you and Mitch, and I trust that the consent agreement will satisfactorily resolve the matter.

c. Tim Luke
Wayne Waddoups (by FAX)

MICROFILMED
NOV 01 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF DIVERSION OF	)	
WATER BY GEM VALLEY FARMS	)	AGREEMENT AND
AND/OR CHAD NEIBAUR WITHOUT	)	CONSENT ORDER
A VALID WATER RIGHT OR NOT IN	)	
CONFORMANCE WITH A VALID	)	
WATER RIGHT	)	
	)	

The Director of the Idaho Department of Water Resources (department), being charged with the duty of enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations of the provisions of law relating to appropriation and distribution of water, hereby enter into this Agreement and Consent Order with Chad Neibaur, acting on his own behalf and for Gem Valley Farms, Inc. (herein collectively termed "Gem Valley").

NOW, THEREFORE, following a compliance conference and before the taking of any testimony herein, and without hearing or contested administrative adjudication of any issue of fact or law, and upon the consent of the parties, it is HEREBY STIPULATED AS FOLLOWS:

FINDINGS

1. That on June 28, 1996, the department issued a Notice of Violation and Cease and Desist Order, pursuant to the provisions of Section 42-351, Idaho Code, ordering Gem Valley immediately to cease diverting water and applying it to lands not in accordance with the water rights for those lands.

2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.

3. That a compliance conference, pursuant to Section 42-351, Idaho Code, was held on June 10, 1996, at Grace, Idaho. Gem Valley provided information demonstrating that ground water is being used for the 1996 irrigation season at lower diversion rates and on fewer acres than authorized under the applicable water rights. However, some ground water has been applied to lands from wells other than those authorized under the water rights.

4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance

AGREEMENT AND CONSENT ORDER, page 1

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NOV 01 1996

DRAFT

with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

AGREEMENT AND ORDER

Based upon the foregoing findings and pursuant to agreement of the parties, the department orders as follows:

1. That Gem Valley will endeavor to divert and use water in compliance with the water rights as recorded.

2. That Gem Valley will pay a civil penalty of \$100 per diversion for each day or part thereof that water is used in violation of the terms and conditions of the applicable water rights after service of the Notice of Violation and Cease and Desist Order. Civil penalties will be paid within 30 days of notice given by the department.

3. That Gem Valley will immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights Nos. 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer Nos. 4703, 4704, and 4705.

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5. The department will suspend imposition of the \$1000.00 civil penalty due under provision No. 2. of the Notice of Violation pending compliance with this Agreement and Consent Order. The department will require payment of the \$1000.00 civil penalty if Gem Valley fails to fully comply with the terms of this Agreement and Consent Order.

6. This Agreement and Consent Order shall be effective immediately for the 1996 irrigation season only upon signing by both parties. Compliance with the Agreement and Consent Order by Gem Valley shall preclude any civil enforcement action by the department for the violations alleged in the Notice of Violation.

7. By signing this Agreement and Consent Order, Gem Valley hereby waives any right that it otherwise has to contest the provisions of the Agreement and Consent Order.

8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the

Agreement and Consent Order and such other relief as authorized by law.

9. Upon a determination by the director of the department that unauthorized use of ground water by Gem Valley is injuring the use of another water right, the department may take action in accordance with applicable law to prevent continued unauthorized use.

10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this ____ day of July, 1996.

KARL J. DREHER
Director

Norman C. Young
Water Management Division

CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this ____ day of July, 1996.

CHAD NEIBAUR
Gem Valley Farms

To: Norman Young
From: Chad Neibaur

RE: Maps & Figures

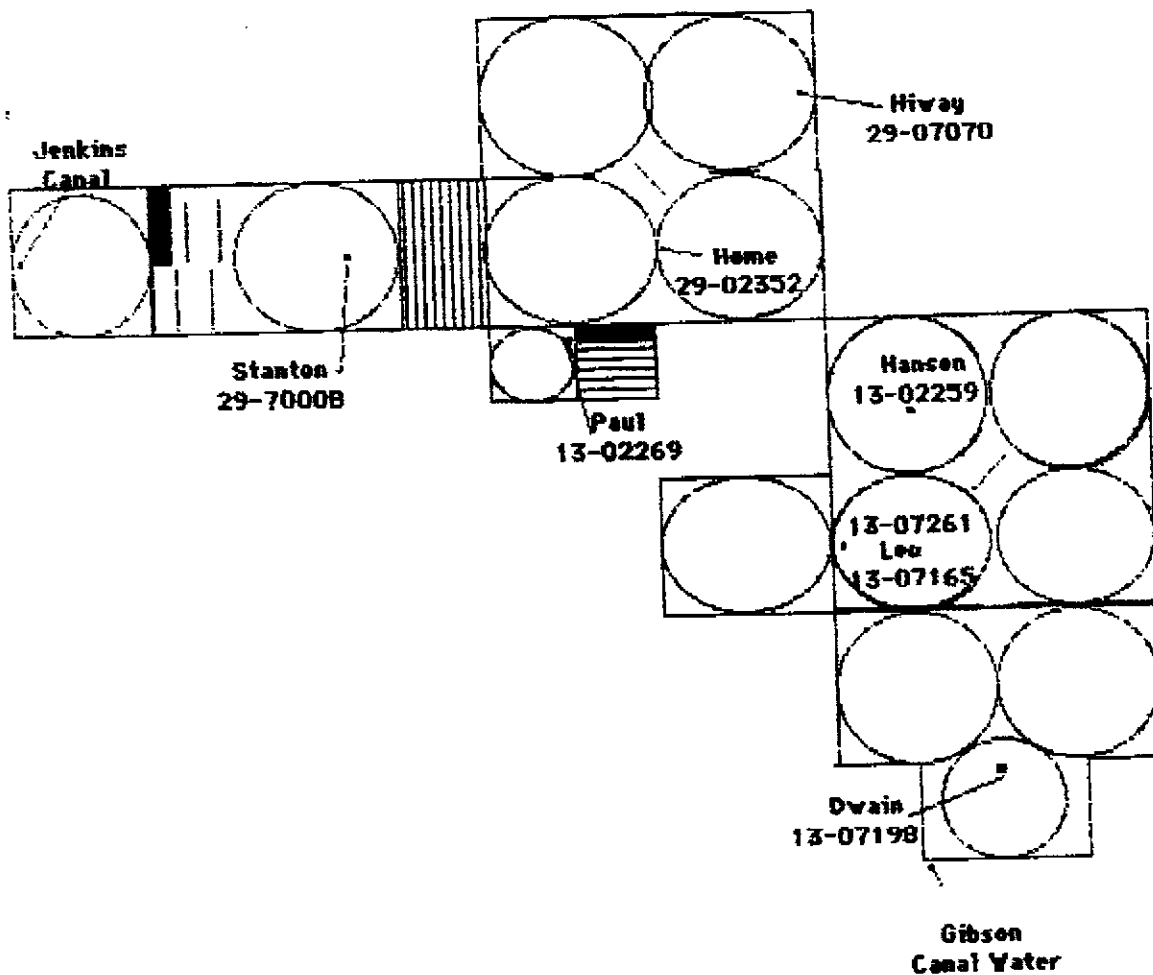
I appreciated your meeting with us this past week. I also appreciated your understanding of our situation and what we are trying to do here. We will make every effort to follow your directions.

Thanks
Chad N.

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NOV 01 1996

Germ Valley Farms
1550 Central Road
Bancroft, Idaho 83217



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NOV 01 1996

1996 irrigation

1996-1997
1996 irrigation season

	licensed			actual 1996		
	Acres	CFS	GPIM	Acres	CFS	GPIM
Barrow	299	4.41	1265	259	3.11	1400
Barrow	153	3.14	1413	322	1.78	300
Barrow	229	2.5	1125		1.61	125
Barrow	308	4.60	2106	300	4.56	1080
Barrow	264	3.76	1692	264	1.67	750
Barrow	351	5.76	2592	245	3.78	1700
Barrow	193	2.93	1319	105	2.00	900
Totals	1297	27.18	12271	1255	18.5	8325
Actuals	1455	18.3	8325			
Differences	-242	-8.69	-3906			
	0.81	0.68	0.68			

	licensed			actual 1996		
	Acres	CFS	GPIM	Acres	CFS	GPIM
Barrow	264	3.76	1692	264	1.67	750
Barrow	351	5.76	2592	245	3.78	1700
Barrow	193	2.93	1319	105	2.00	900
Totals	808	12.45	5603	614	7.44	3350
Actuals	614	7.44	3350			
Differences	-194	-5.01	-2253			
	3.78	0.60	0.60			

Water sources: Acres
 Young water 1797
 Barrow 210
 Gibson 550
 2557
 1996 average 1969
 588

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To: Norman Young
State Of Idaho
Department of Water Resources

From: Chad Neibaur
Gem Valley Farms

RE: Notice of Violation/ Compliance Conference

Dear Mr. young:

I am hereby requesting a conference with you to discuss our use of water rights 13-02259, 13-07165, 13-07261, and 13-07198. You have made a condition of this request that I describe "how Gem Valley will comply with the law." I would ask that we be allowed the opportunity to discuss with you and possibly Mr. Harold Jones (who has helped draft our transfers) possible remedies for compliance, prior to coming to a formal Compliance Conference. Likewise, I believe an informal meeting may help clarify the situation before having to bring so many people into it.

Also, if at all possible, I would like to meet at the Water Resource offices in Idaho Falls so as to accommodate Mr. Jones and my brother Mitchel Neibaur (whose office is in Rexburg). We would like to meet with you at the earliest convenience.

Please advise.

Sincerely,


Chad B. Neibaur
Gem Valley Farms

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

June 28, 1996

KARL J. DREHER
DIRECTOR

Dear Interested Parties:

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

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(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,


Norman C. Young

Encl.

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NOV 01 1986

MEMORANDUM

TO: FILE 13-07261
FROM: PAM SKAGGS
RE: TRANSFER # 4704
DATE: 9-8-95

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Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
File # 13-07165.

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