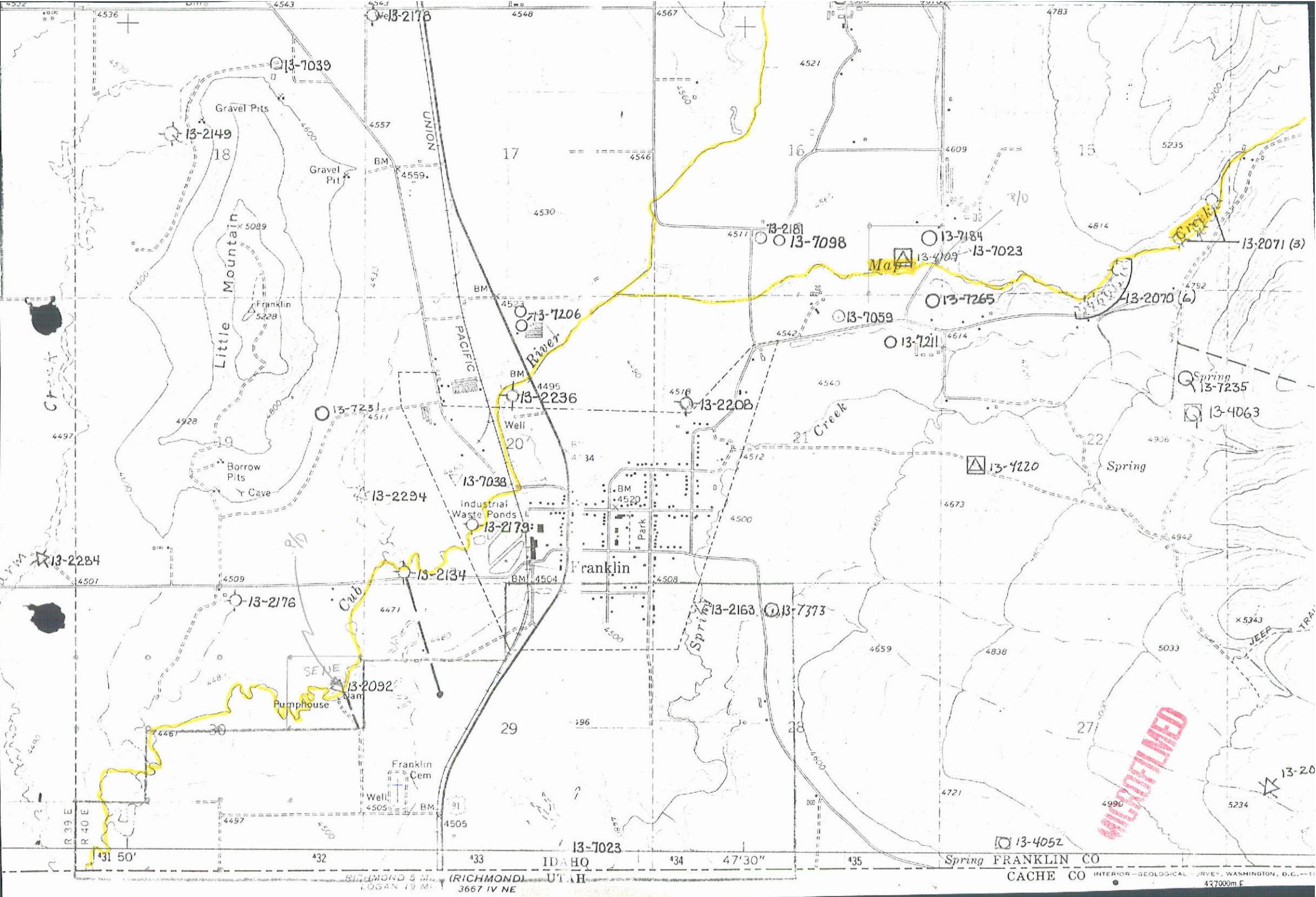




#875  
NOV 15 1983

No 1979

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }  
County of Franklin } ss.

J. Warren Ross

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

Oct 27, 1983, and ending

with the issue of Nov. 11, 1983

Fee \$ 16.25

Subscribed and sworn to before me this 30th day of Nov., 1983.

Kenn O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

MICROFILMED

## NOTICIE OF PROPOSED AMENDING OF TRANSFER

No. 13-0044

Notice is hereby given that Franklin Maple Creek Pioneer Irrigation Co., Preston, Idaho filed transfer No. 13-0044/0045 for the diversion of 2.00 cfs of water from Maple Creek tributary to Cub River with the point of diversion within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T 16S, R. 40E, B.M., Franklin County for irrigation purposes.

The right holder now proposes to amend Transfer No. 13-0044 amending the point of diversion to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 30, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E, B.M., Franklin County.

Any protest to the proposed amending of this right must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho, 83402, on or before November 14, 1983.

A. KENNETH DUNN  
Director

Published Preston Citizen, 10/27 & 11/03/83.

Legal No. 1979 -26L- Published Oct. 27, Nov. 11, 1983.

RECEIVED  
DEC 6 1983

Department of Water Resources  
Eastern District Office

#875

MAY 27 1983

No 1840

## AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }  
 County of Franklin } ss.

J. Warren Ross

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

May 12, 1983, and ending  
 with the issue of May 19, 1983.

Fee \$ 24.37

Subscribed and sworn to before me this 31st day  
 of May, 1983.

Ken O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

MICROFILMED

RECEIVED

JUN 6 1983

Department of Water Resources  
 Eastern District Office

NOTICE OF PROPOSED CHANGE  
OF WATER RIGHT

No. 13-044/0045

Notice is hereby given that Franklin Maple Creek Pioneer Irrigation Co., Preston, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Maple Creek tributary to Cub River. The right sought to be changed is evidenced by Decree No. 6538 to Franklin Maple Creek Pioneer Irrigation Co., a Corp., in case of Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Co., dated in October 16, 1905 in Fifth Judicial District Court, Franklin County and is recorded as follows:

AMOUNT: 2.0 cfs

PRIORITY: 1877

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
 Sec. 16, T. 16S, R. 40E, B.M. Franklin  
 County.

The water is used for flood  
 irrigation.

## TO BE CHANGED AS FOLLOWS

The water will be diverted within the  
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 30, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16,  
 T. 16S, R. 40E, B.M. Franklin County.

Any protests against the approval of  
 the above proposed change of water  
 right must be filed with the Depart-  
 ment of Water Resources, 150 Shoup  
 Ave., Suite 15, Idaho Falls, Idaho,  
 83401, on or before May 30, 1983.

A. KENNETH DUNN

Director

Published in the Preston Citizen on  
 5/12 or 5/19/83.

Legal No. 1840 —39L— Published  
 May 12, 19, 1983.

RECEIVED  
MAY 8 1934

Department of Water Resources

IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 6539

THE VILLAGE OF FAIRVIEW,  
a municipal corporation,

Appellant

-vs-

FRANKLIN MAPLE CREEK PIONEER  
IRRIGATION COMPANY, a corpora-  
tion, et al.

Postville, April Term, 1933

Filed May 13, 1934

Clay Koelsch, Clerk.

Defendants.

Appeal from the District Court of the Fifth Judicial Dis-  
trict for Franklin County. Hon. Jay L. Downing, Judge.

Action to quiet title to certain waters and to change the  
point of diversion thereof. Judgment for defendants. Affirmed.

Arthur W. Hart and Merrill A. Merrill for appellant.

P. J. Evans for respondents.

GIVENS, J.

The Village of Fairview, situated in Franklin County, with  
a population of about four hundred fifty people, owns its own  
water system, which, as to the amount of water, is inadequate,  
and to remedy this situation in 1932 purchased a tract of land  
about nine miles north-east with all appurtenant water rights  
from Levi Ollerson, who through mesne conveyances derelined  
title from John C. Whitehead. Upon this land there arises a  
small spring of water referred to as the "Whitehead Spring." A  
short distance to the north of this spring, and upon the lands  
owned by the defendant, Charles Baker, arises another small  
spring referred to as the "Baker Spring."

On October 18, 1905, a decree adjusting the rights to  
the waters of Maple Creek was entered in the District Court of

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Onside County, (which then included the territory now embraced in Franklin County) wherein J. C. Fleck was plaintiff and Franklin Maple Creek Pioneer Irrigation Company was defendant and there were various intervenors, including John C. Whitehead, who was awarded 2.5 cubic feet per second of time, with a priority of 1905. There is no specific reference in said Decree, pleadings or proof as to the waters of the two springs above mentioned.

In the case of her respondents contend said Decree was res judicata of the use of the waters of these particular springs, while appellants contend the use of said springs was not involved in the Fleck litigation, and even though impliedly therein adjudicated, that appellants and their predecessors in interest during all said period, both before and after the entry of said Decree, have consistently and lawfully and openly claimed and used the waters of said springs for domestic and irrigation purposes adversely to appellants and without claim therefor on the part of respondents or any of them.

So far as the litigation herein is concerned the above mentioned J. C. Fleck Decree is the predecessor in interest of appellant and the only past decreed rights it claims it is entitled to are by reason of the said Decree to him. The decreed priorities of respondents are superior in point of time to appellant's. By the aforesaid Decree appellant asks to quiet title to the flow of the springs involved in addition to the 2.5 cubic feet awarded its predecessor in interest, John C. Whitehead in the 1905 Decree, and to change the point of diversion and use thereof.

Respondents' assertion of res judicata is correct because at the 1905 Decree was exclusive and conclusive as to the waters of Maple Creek and its tributaries, it reciting:

and is further ordered, adjudged and decreed that the said plaintiff, the said defendant, and each and every of the intervenors, their agents, servants, or employees and successors in interest, be and they and each of them are hereby

POOR QUALITY ORIGINAL

MICROFILMED

perpetually enjoined and restrained from in any manner interfering with the free flow of said waters of Maple Creek, and its several tributaries, except as herein adjudged and decreed to the said respective parties, and in the order of their several priorities."

True, these springs were not mentioned in the 1905 suit, but the subject matter of that litigation was the waters of Maple Creek and these springs then were and now are, clearly, unless interfered with, tributary to and augment the flow of Maple Creek; hence, appellant's predecessor in interest should have claimed all the water in the creek he was entitled to, and the 1905 Decree declares 2.5 cubic feet is all Whitehead was entitled to, which concededly does not cover the flow of these springs which is now claimed in addition to the 2.5 cubic feet awarded in said previous decree.

Whether water in Maple Creek or its tributaries was claimed by appellant or its predecessors in interest, in the previous case could and should have been litigated, therefore they will now be held to have been litigated, hence the 2.5 cubic feet awarded as of 1885 is all the decreed water appellant has as derived from Whitehead. Joyce V. Murphy Land etc. Co., 35 Idaho 349, 208 P. 241; South Boise Water Co., v. McDonald, 50 Idaho 409, 295 P. 591; Marshall v. Underwood, 38 Idaho 464, 281 P. 1105.

The trial court herein found with regards to the claim of prescription:

"That plaintiff and its predecessors in interest have used the said 2.5 cubic feet per second of the waters of said Maple Creek above described, continuously, uninterruptedly, openly notoriously and in hostility to defendants and all the world, and with claim of right thereto, under the said previous decree of this court, dated October, 1905, and with claim of right thereto, as of the year, 1885; but has not peaceably or without interference or adverse claim used the waters of any of said springs whether arising on the lands of said plaintiff or upon the lands of defendant Charles Baker, nor has the plaintiff or its predecessors in interest operated or maintained a ditch or pipe line for a distance of approximately 75 feet or at all, or used the stream aforesaid or at all, peaceably or uninterruptedly and with claim of title aforesaid, to the amount of one-third of one cubic foot of water per second of flow, for any beneficial purpose, or for agricultural purposes, or for any other purpose, or for the irrigation of crops and



the fact that the general principle of action in the case is to require the use of evidence which is not in itself sufficient to establish the fact that the defendant knew the facts of the case at the time of the act. The court held that the evidence in this case was sufficient to establish that the defendant knew the facts of the case at the time of the act.

The fact of this case was established in *People v. ...* 102 Cal. 2d 1025.

When the use is not secret or clandestine, and the defendant is not in a position to keep the secret, the presumption of knowledge is not rebutted by the fact that the defendant was not in a position to keep the secret. The court held that the evidence in this case was sufficient to establish that the defendant knew the facts of the case at the time of the act.

*People v. ...* 102 Cal. 2d 1025, 1026.

When the use is secret, however, the court says the open and notorious use of a presumption of knowledge. If merely a presumption of knowledge it may be rebutted or overcome by positive evidence. The court clearly held the presumption of knowledge was not to be rebutted. *Hodgkins v. People's Water Co.*

*People v. ...* 102 Cal. 2d 1025, 1026. *People v. ...* 102 Cal. 2d 1025, 1026. *People v. ...* 102 Cal. 2d 1025, 1026.

If the issue be one of fact, that the positive evidence of knowledge may overcome the presumption, and a finding of fact there was no knowledge will, therefore, under the law be sustained. See also, *Smith v. Duff*, (Mont.) 102 Cal. 2d 1025, 1026.

The court has been forced upon conclusively that it was not a claim of right in the parties. The court held that the defendant was not in a position to keep the secret. The court held that the evidence in this case was sufficient to establish that the defendant knew the facts of the case at the time of the act.

The defendant usually and occasionally used other means to keep the secret, and that plaintiff, the court held that the evidence in this case was sufficient to establish that the defendant knew the facts of the case at the time of the act.

...and where use for the period when the ...  
... (understanding ...)  
... Southern Pac. Co., (Cal.) 194 P. 2d 119.

...the court could not find the contrary ... would  
...that it could not legitimately be ... if the  
...be such that reasonable minds might differ as to whether  
...was not adverse, under claim of hostile right, or when  
...the finding either way, of knowledge, the extent of  
...or lack of knowledge, in what the state of mind was,  
...be controlling. That is the chief purpose of the trial  
...of fact.

If the court, on conflicting evidence, may find the use was  
...with knowledge of adverse claim, by the same  
...be any, if there be evidence, as there was here, that that  
...with permission, or without knowledge, Wilkins v. ...  
... (Cal.) 173 P. 2d 697; Kelley v. Smith, 67 Idaho 260,  
... 322. The negative or reversal of the expenditure in  
... in Turner v. Bush, (Cal.) 183 P. 2d 191 must be

...that this is especially for the guidance of the  
...court. The principle which controls is that, if  
...there is any substantial evidence in the record from which  
...inference may be drawn that said elements of  
...right exist, then this court as an appellate  
...be bound by the finding of the trial court."

...the other hand, when plaintiff claiming the ownership  
...has made a prima facie showing of a pres-  
...title to the monument, then it is incumbent upon  
...of sufficient affirmative proof, to show that  
...has been by virtue of a license or permission, or  
...other defense which would destroy the prima facie show-  
...of title made by plaintiff. (cases) And upon a prima  
...of title by the plaintiff, it is solely the  
...of the trial court to determine whether the same  
...has or has not been overcome or dispelled by evidence pres-  
...by the defendant."

...Castello v. Sharp, (Cal.) 283 P. 2d 667, 669.

The burden is on the claimant to prove all the elements of  
...claim.

POOR QUALITY ORIGINAL

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...plaintiff acquired a right to some water after defendant's entry by adverse use for a period of five years. The burden was upon plaintiff to show that fact. ... 194 F. 2d, 80 (Ct. Cl., 1947).

Moreover, when the plaintiff had proved a continuous use, acquiescence and use of the water for a period of 10 years, it is not to be said the owner, he established a prima facie case. It then devolved upon the defendant to show that plaintiff's use was permissive or without the knowledge of the defendant.

*Wheeler v. Wilkey*, (Cal.) 196 F. 2d, 925, 926.

Similarly one who asserts a prescriptive right to take water from a stream or other source must assume the burden of establishing it, proof of the continuous, acquiescent and use of the water as though he were the owner. For more than 100 years, established a prima facie case. It then devolved upon the defendant to show that the use of the water was permissive only or without his knowledge. ... *Wheeler v. Wilkey*, (Cal.) 80 F. 2d 920, 923-4.

As to the law, it is vigorously argued that, since a water right is a mere right to the use of water... possession of it in any manner capable of giving notice is impossible. If this be correct, there can be no such thing as a water right by prescription, since even title must be founded upon a possession no less open and conspicuous than the possession here pleaded; yet such title to a water right can be acquired.... Difficulties in this way of proof there may be, but it seems to us perfectly clear that such use as respondent pleads ought to be enough to put a purchaser upon notice.

The burden to establish it was, however, upon the respondent.... and the serious question is whether the respondent has successfully carried that burden.

*City of Helena v. City of Helena*, (Mont.) 136 F. 2d 1098, 1099.

Even actual knowledge of the user is insufficient for prescription, however, if the use made may properly be regarded as some established right of claimant had there is no knowledge or notice that he is exercising it in excess of, or adversely to, such right.

27 C.T. 530, § 402.

*Zemel v. Rensselaer*, (Mont.) 234 F. 1089, which, on a situation somewhat similar, supports the above pronouncement in especially applicable; in that therein the claimant attempted to assert a prescriptive right after and in addition to a deeded right on herein (2.5 cubic feet per second to Whitehead against the prior deeded rights).

Courted for plenary of its authorities to the effect that, in an action to establish title to real estate by adverse possession, such declarations made by the claimant are sufficient to show that the possession was hostile and the quality

...of the interest claimed... (omitted) ...  
...there is no difference in the character of proof re-  
quired to establish adverse use of the water and that of proof  
... Controverted statement is not equally material. While  
in fact, instance the right is established by proof of hostile  
possession of another's property, with proof of other attack-  
ing circumstances, the hostile possession of lands may be  
shown by proof of "such acts of ownership and occupancy as  
are sufficient to 'put his flag over the land' so that  
all may observe it" (Collins v. Cole, 24 Mont. 405, 190 P.  
940). And such exclusive possession of property over the  
two other from the land; two parties may at the same time  
be in possession of water from a creek and neither hold ad-  
verse to the other; each may justly claim the right to use  
the water to its using, without affecting the rights of the  
other, and therefore, in order to establish adverse posses-  
sion of water, the parties is upon the plaintiff to show that his  
use of the water displayed the same character of hostility  
as that which upon prior appropriation action is required. The  
plaintiff, who does not become adverse until it is established  
with the use thereof by the prior appropriator and there-  
fore, must actually show that his claimant was in hostile  
possession to use it is no proof that he was in hostile  
possession. While the elements of adverse possession of the  
two classes of property are the same, owing to the difference  
in the nature, the proof of hostile possession thereof  
necessarily differs. No error was committed in excluding the  
offer of proof. (underscoring ours.)  
O'Leary v. Stahely, (Mont.) 254 P. 532, 536.

Use must be accompanied with claim adverse to and incon-

sistent with the adverse's rights and use of the property. Howard  
v. Kollmeier, 21 Idaho 712, 717, 175 P. 964; Koon v. Bapey, 40  
Idaho 6, 12, 231 P. 1097; Kelley v. Smith, 47 Idaho 369, 370, 276  
P. 502; Brown v. Morgan, 7 Idaho 215, 61 P. 1031.

The pertinent part of St. John Irrigating Co. v. Danforth,  
50 Idaho 215, 222 P. 366, as applied herein would authorize the  
holding that if the two springs involved herein are part of  
single creek waters they were adjudicated adversely to appellant,  
because his water rights as adjudicated is subsequent to respon-  
dents'. Of course, as indicated therein and in Kelley v. O'Leary  
Northern West Sugar Co., 21 Idaho 363, 122 P. 50, though no adju-  
dicated, the waters of the springs could be later acquired by pres-  
cription, but the trial court found they were not. All of res-  
pondents testified positively and directly they had no notice of  
knowledge of appellant's claim or use of the water as being adverse

to their rights, the court therefore, under the above authorities, was justified in finding and concluding as aforesaid. Rights had been established.

The holding in the Mellen case, supra, justifies us in holding that the trial judge having found lack of knowledge on the record before us, we should affirm his. *People v. Silver,* 40 Idaho 161, 185, 233 P. 543.

Having no right to the use of the water on which, the at ~~quartermaster~~ the springs involved herein, the question of change of place of use thereof need not be considered. This disposal of the substance of all the errors assigned.

Judgment affirmed. Costs to respondents.

MORGAN and ALLSHUTZ, JJ., concur.

HUBBS, J., being disqualified, did not participate.

POOR QUALITY ORIGINAL

IMC BROTH MED

Transfer No. 2840

Water Right No. 13-0044

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT

AMENDED

To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant Franklin Maple Creek Pioneer Irr. Co. Phone 208-852-2680

Post Office address P.O. Box 191, Preston, Idaho 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 6538 Decreed to Franklin Maple Creek Pioneer Irr. Co. a Corp.  
(Name)  
in case of Village of Fairview vs Franklin Maple Creek Pioneer Irr.  
dated in Oct. 16, 1905 in 5th Judicial Dist. county of Franklin  
(Name of court)

b. License No. issued by the Idaho Department of Water Resources

c. Claim No. on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant

3. Source of water Maple Creek tributary to Cub River

4. Date of priority 1877 (13-0044)

5. Water is used for the following purposes:

amount 2.0 cfs for flood irrigat. purposes from to  
amount for purposes from to  
amount for purposes from to (month/day — both dates inclusive)

6. Total amount of water under right: a. 2.00 cubic feet per second  
&/or  
b. acre feet per annum

7. Location of original point of diversion is SE ¼ of SE ¼ of Section 16  
Township 16S Range 40E, B.M., in Franklin County  
Additional points of diversion, if any

8. Lands irrigated or place of use:

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated

9. Describe any other water rights used for the same purpose as described above N/A

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

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B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. \_\_\_\_\_ cubic feet per second  
&/or  
b. \_\_\_\_\_ acre feet per annum
2. Point of diversion \_\_\_\_\_ ¼ \_\_\_\_\_ ¼, Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_, B.M., \_\_\_\_\_ County  
Additional points \_\_\_\_\_
3. Place of use:

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated \_\_\_\_\_

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information

a. Amount of water to be diverted 2.00 c.f.s. &/or \_\_\_\_\_ acre feet

b. Description of diverting works \_\_\_\_\_  
\_\_\_\_\_

c. Describe the reasons for the proposed changes See attached explanation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Change in point of diversion

Point of diversion SE ¼ NE ¼, Section 30 Township 16S  
Range 40E, B.M., Franklin County  
Additional points SE¼SE¼ Sec. 16, T. 16S, R. 40E, B.M.  
\_\_\_\_\_  
\_\_\_\_\_
3. Change in place of use

a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes N/A See explanation No \_\_\_\_\_. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.

b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer  
See explanation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. Describe the land or place of use to which the right will be transferred:

[illegible]

Total number of acres to be irrigated \_\_\_\_\_

4. Describe any other water rights used for the same purpose as described above. \_\_\_\_\_
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

|             |  |  |  |  |  |  |  |
|-------------|--|--|--|--|--|--|--|
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|             |  |  |  |  |  |  |  |
|             |  |  |  |  |  |  |  |
| MICROFILMED |  |  |  |  |  |  |  |

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

D. REMARKS

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

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

Ramon H Wright  
(Signature of Applicant)  
Pres., Franklin, Maple Creek, Pioneer Irr. Co.  
September, 19 83

Subscribed and sworn to before me this 29th day of

Lawrence J. Gaster  
(Notary Public)

My commission expires Lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 13-0044 and said application is hereby APPROVED, subject to the following limitations and conditions:

1. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 13A, Cub River and tributaries.
3. The rate of flow diverted from Cub River under this water right is limited to the rate of flow available for diversion under this right at the point of diversion from Maple Creek.

Witness my hand this 6<sup>th</sup> day of September, 19 84

A. Glen Saxton  
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

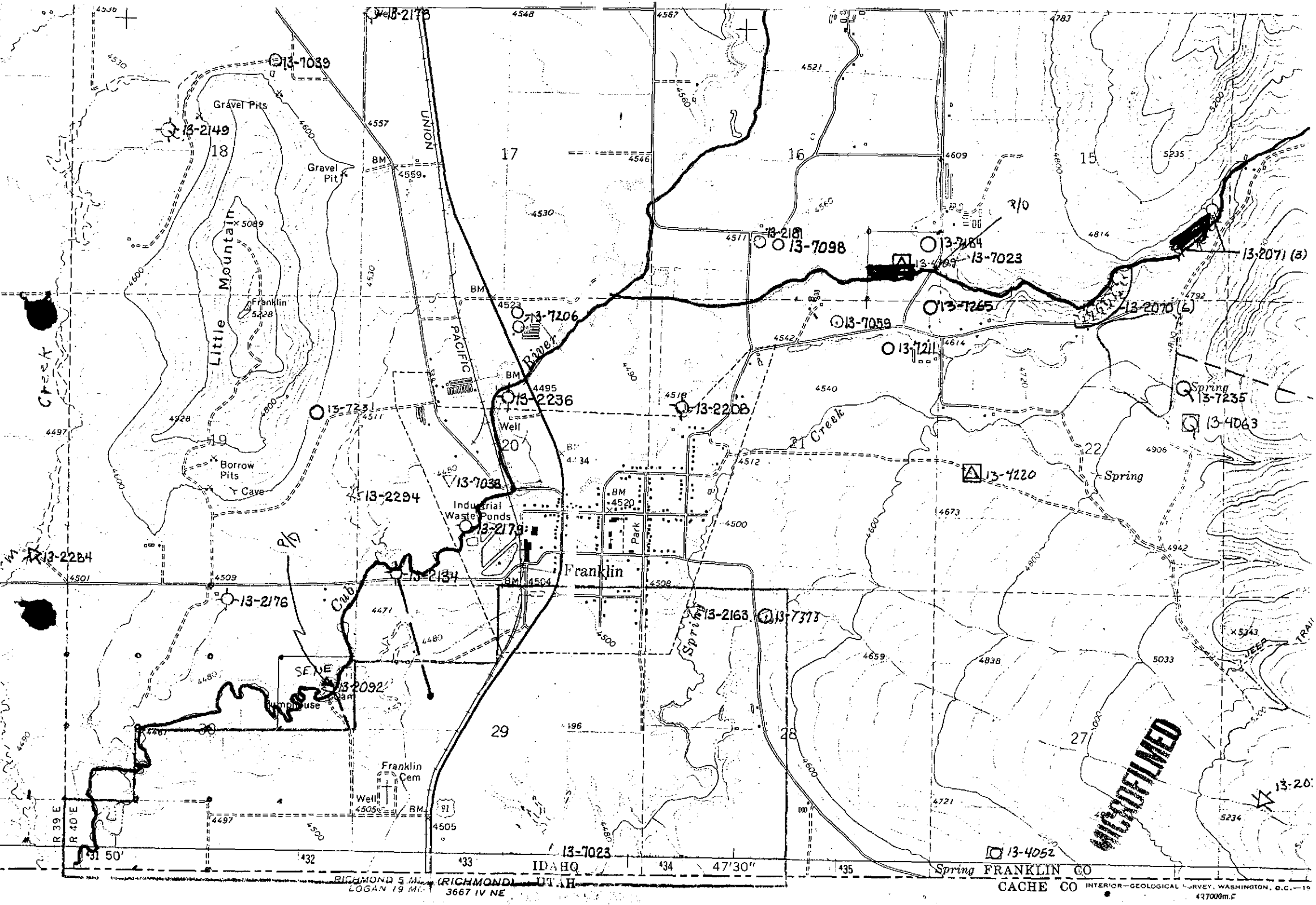
Received by CW Date 9-30-83 Protest filed by \_\_\_\_\_  
Prelim. check by \_\_\_\_\_ Fee \$20.00 \_\_\_\_\_  
Receipted by CW Date 10-11-83 #29705 \_\_\_\_\_  
Published in Preston Citizen Copies of protest forwarded by \_\_\_\_\_  
Pub. dates 10/27 & 11/3/83 Hearing held by \_\_\_\_\_ Date \_\_\_\_\_  
Watermaster recommendation requested on 10-20-83 Recommended for approval denial \_\_\_\_\_  
WD 13-A rec'd. \_\_\_\_\_ by EMC Jim DRT

FRANKLIN MAPLE CREEK PIONEER IRRIGATION CO.  
(Explanation of Map)

Points

- A -- Present diversion of second class water rights
- B -- Second class water mingled with first class water from point B to point C
- C -- Point where second class water rights are all that is left in ditch. All first class rights are taken out prior to this point.
- D -- Pumping plan station. Desired point for the second class water diversion.
- E -- First class water rights which have now been put into a pipeline for gravity sprinkling.
- \*Red -- indicates the old ditch line for second class water flow (from point A through B and C)
- \*Dark Blue -- indicates old creek channels or proposed route for second class water rights (from point A to point D)
- \*Green -- indicates water after it passes through proposed diversion point.
- \*Black -- indicates first class water rights or newly constructed pipeline.
- \*Yellow -- first class water district -- approximately 800 acres
- \*Light Blue -- second class water district -- approximately 500 acres

RECEIVED  
MAY 19 1960



AGREEMENT (EXPLANATION)

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1982, by and between the Franklin Maple Creek Pioneer Irrigation Company, hereinafter referred to as "Grantor" and Franklin Cub River Pumping Company, hereinafter referred to as "Grantee".

Whereas Grantor in the case of Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Company et al 59 Idaho 7, 79 2nd 531, (1938), was decreed several water rights one of which was for two (2) cubic feet per second with a priority date of 1877, and a second of which was for four (4) cubic feet per second with a priority date of 1887, said water rights hereinafter referred to as "Water Right", and

Whereas said water right has historically been a high water right representing the water which has been used over the years by and appertains to properties of the second class stockholders of Grantor, and

Whereas, over the past several years said water right has been diverted and pumped to said second class stockholders of Grantor by Grantee as a kindly gesture by Grantee to enable said second class stockholders to have use of said water, and

Whereas a transfer of said water right from Grantor to Grantee would facilitate the future administration of said water right for the benefits of said stockholders;

Now therefore in consideration of the mutual promises contained herein, the parties agree as follows:

1. Grantor shall at the time of closing hereof as hereinafter specified convey to Grantee by Deed and Grantee shall receive conveyance from Grantor of the following:

a. Water rights consisting of:

Those certain water rights decreed in Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Company et al., 59 Idaho 7, 79 P. 2nd 531, (1938), consisting of and not to exceed: (a) two (2) cubic feet per second with a priority date of 1877; and  
(b) Four (4) cubic feet per second with a priority date of 1887.

excepting therefrom .198 cubic feet per second with a priority date of \_\_\_\_\_ which are the water rights represented by the second class shares of stock held by the following shareholders in the following amounts:

| <u>Shareholder</u> | <u>No. of<br/>Shares</u> | <u>Cubic feet/<br/>Seconds</u> | <u>Priority<br/>Date</u> |
|--------------------|--------------------------|--------------------------------|--------------------------|
| DILWORTH MORRISON  | 123                      | .186                           |                          |
| HAROLD LOWE        | 25                       | .006                           |                          |
| ROBERT LOWE        | 25                       | .006                           |                          |
| TOTAL              | 173                      | .198                           |                          |

b. Grantor shall grant to Grantee a fifteen (15) year easement along Grantor's easement where Grantor has put its gravity flow pipeline and continuing therefrom along the easements historically used by said second class shareholders to carry their water to the various points of use. Said easement shall be for the express and limited purpose of placing a second pipeline by Grantee for the benefit of said second class stockholders through which said water right can thereafter be diverted and carried for the benefit of said second class stockholders. If and when said easement is used as prescribed herein, then said easement shall become and thereafter be an easement in perpetuity. Grantor shall notify in writing all land owners to whose property said easements appertain of Grantors intent not to abandon said easements.

2. Said closing shall occur no later than ten (10) days following the satisfaction of the following conditions:

a. Ratification of this Agreement by the stockholders of both parties:

b. Receipt of approval of Grantors Application For Transfer of Water Right from the State of Idaho authorizing said transfer. Disapproval by the Department of Water Resources shall cause this Agreement to become null and void.

3. Upon satisfaction of the conditions herein contained, a duly authorized officer of each party shall inform the Law Firm of Williams & Castleton that the conditions have been met whereupon said parties shall mutually set the date of closing in compliance with the terms hereof. Closing shall be at the office of Williams & Castleton, 24 North State, Preston, Idaho 83263.

4. Immediately following the closing hereof, Grantor will recall and cancel all of the second class shares of stock issued to and outstanding among the second class stockholders of Grantor, exceptions excluded under Paragraph 1(a) hereof, a list of said stockholders and shares of stock is attached hereto as Exhibit "A". Thereafter Grantee shall issue a new class of stock

which shall be titled Second Class Stock of Grantee, which shall represent said water right which new class of stock shall be issued to the same stockholders listed on Exhibit "A" and in exactly the same amounts and/or in exactly the same ratios or percentages as indicated on said Exhibit "A" excepting the Stockholders noted in paragraph 1.a. above.

5. It is the understanding of the parties that said water right shall remain appurtenant to the exact same acreage of said second class stockholders after said transfer as before. It is further understood between the parties that there will be no change in the place of use of said water right nor will the number of acres being irrigated by said water right be increased or enlarged.

6. Grantor agrees to pay legal costs and fees incurred by both parties necessitated in the completion of the terms of this Agreement.

7. Except as to the express agreements contained herein, the parties hereto make no additional promises, agreements or covenants express or implied to the other party or any of its stockholders.

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first above written.

GRANTOR

GRANTEE

FRANKLIN MAPLE CREEK  
PIONEER IRRIGATION COMPANY

FRANKLIN CUB RIVER  
PUMPING COMPANY

\_\_\_\_\_  
President

\_\_\_\_\_  
President

Attest:

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary

## EXHIBIT "A"

Shares and percent of water rights being transferred.

|                               | <u>Number of<br/>Shares</u> | <u>Percent of<br/>Total</u> |
|-------------------------------|-----------------------------|-----------------------------|
| Erma Woodward . . . . .       | 70                          | .0176                       |
| Schablands . . . . .          | 135                         | .0340                       |
| Woodrow Butterworth . . . . . | 432 1/2                     | .1089                       |
| Ann Olsen . . . . .           | 233 1/2                     | .0588                       |
| Adrain Geddes . . . . .       | 200                         | .0503                       |
| Ray Morrison . . . . .        | 502 1/2                     | .1265                       |
| Dave Beckstead . . . . .      | 60                          | .0151                       |
| Roy Geddes . . . . .          | 860                         | .2165                       |
| Larry Hobbs . . . . .         | 824                         | .2074                       |
| Clayton Larsen . . . . .      | 10                          | .0025                       |
| Alton Larsen . . . . .        | 42                          | .0106                       |
| Glen Larson . . . . .         | 20                          | .0050                       |
| Frank Priestley . . . . .     | 400                         | .1007                       |
| Herbert Rallison . . . . .    | <u>10</u>                   | <u>.0025</u>                |
| TOTAL                         | 3,799-1/2                   | .9564                       |

Shares and percent of water right not being transferred.

|                             |                  |               |
|-----------------------------|------------------|---------------|
| Dilworth Morrison . . . . . | 123              | .0310         |
| Harold Lowe . . . . .       | 25               | .0063         |
| Robert G. Lowe . . . . .    | <u>25</u>        | <u>.0063</u>  |
| TOTAL                       | 173              | .0436         |
| GRAND TOTAL                 | <u>3,972-1/2</u> | <u>100.00</u> |

Transfer No. 2840

Water Right No. 13-0044  
13-0045

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**To Change the Point of Diversion and/or the Place of Use**

*VOID*

Name of applicant Franklin Maple Creek Pioneer Irrigation Co. Phone 208-852-2680  
Post Office address P. O. Box 191, Preston, Idaho 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 6538 Decreed to Franklin Maple Creek Pioneer Irrigation Co., a Corp.  
in case of Village of Fairview vs Franklin Maple Creek Pioneer Irrigation  
dated in October 16, 1905 in Fifth Judicial District county of Franklin  
(Name)  
(Name of court)
- b. License No. \_\_\_\_\_ issued by the Idaho Department of Water Resources
- c. Claim No. \_\_\_\_\_ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant \_\_\_\_\_

3. Source of water Maple Creek tributary to Cub River

4. Date of priority 1877 (13-0044) and 1887 (13-0045)

5. Water is used for the following purposes:

13-0044 amount 2.0 c.f.s. for flood irrigation purposes from \_\_\_\_\_ to \_\_\_\_\_  
~~13-0045~~ amount ~~4.0 c.f.s.~~ for flood irrigation purposes from \_\_\_\_\_ to \_\_\_\_\_  
amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
(month/day — both dates inclusive)

6. Total amount of water under right: a. ~~six (6)~~ 2.00 cubic feet per second  
&/or  
b. \_\_\_\_\_ acre feet per annum

7. Location of original point of diversion is SE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 16  
Township 16 S. Range 40 E., B.M., in Franklin County  
Additional points of diversion, if any \_\_\_\_\_

8. Lands irrigated or place of use:

| TWP. | RANGE | SEC. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | TOTALS |
|------|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|      |       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

Total number of acres to be irrigated \_\_\_\_\_

9. Describe any other water rights used for the same purpose as described above N/A

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

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B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. \_\_\_\_\_ cubic feet per second  
&/or  
b. \_\_\_\_\_ acre feet per annum
2. Point of diversion \_\_\_\_\_ ¼ \_\_\_\_\_ ¼, Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_, B.M., \_\_\_\_\_ County  
Additional points \_\_\_\_\_
3. Place of use:

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
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|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated \_\_\_\_\_

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information
- a. Amount of water to be diverted 2.00 c.f.s. &/or \_\_\_\_\_ acre feet
- b. Description of diverting works \_\_\_\_\_
- c. Describe the reasons for the proposed changes See attached explanation

2. Change in point of diversion <sup>SE</sup> <sup>NE</sup>  
Point of diversion SW ¼ NW ¼, Section 30 Township 16S  
Range 40E, B.M., Franklin County  
Additional points SE¼SE¼, Sec. 16, T. 16S, R. 40E

3. Change in place of use
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes N/A See explanation No \_\_\_\_\_. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer  
See explanation

c. Describe the lands and place of use to which the right will be transferred:

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated \_\_\_\_\_

4. Describe any other water rights used for the same purpose as described above. \_\_\_\_\_
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

|  |  |  |  |  |  |  |  |  |  |
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D. REMARKS

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

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

x. Ramon Wright  
(Signature of Applicant) President

Subscribed and sworn to before me this 18<sup>th</sup> day of January, 19 83

Beverly W. Mortensen  
(Notary Public)

My commission expires Lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

FOR DEPARTMENT USE ONLY

|                                               |                                                   |                        |
|-----------------------------------------------|---------------------------------------------------|------------------------|
| Received by <u>aw</u>                         | Date <u>1-19-83</u>                               | Protest filed by _____ |
| Prelim. check by <u>sm</u>                    | Fee <u>50.00</u>                                  | _____                  |
| Receipted by <u>BP</u>                        | Date <u>3/9/83 #25479</u>                         | _____                  |
| Published in <u>Preston Citizen</u>           | Copies of protest forwarded by _____              | _____                  |
| Pub. dates <u>5/12, 5/19/83</u>               | Hearing held by _____ Date _____                  | _____                  |
| Watermaster recommendation requested on _____ | Recommended for _____ approval _____ denial _____ | _____                  |
| <u>WD #13-A 5-6-83</u> rec'd. <u>7-28-83</u>  | by _____                                          | _____                  |

#875  
NOV 15 1983

No 1979

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }  
County of Franklin } ss.

J. WALTER ROSS

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

Oct 27, 1983, and ending

with the issue of Nov. 11, 1983

Fee \$ 16.25

Subscribed and sworn to before me this 30th day of Nov., 1983.

Kenn O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

MICROFILMED

## NOTICE OF PROPOSED AMENDING OF TRANSFER

No. 13-0044

Notice is hereby given that Franklin Maple Creek Pioneer Irrigation Co., Preston, Idaho filed transfer No. 13-0044/0045 for the diversion of 2 cfs of water from Maple Creek auxiliary to Cub River with the point of diversion within the SE 1/4 SE 1/4, Sec. 16, T. 16S, R. 40E, B.M. Franklin County for irrigation purposes.

The right holder now proposes to amend Transfer No. 13-0044 amending the point of diversion to the SE 1/4 NE 1/4, Sec. 30, SE 1/4, Sec. 16, T. 16S, R. 40E, B.M. Franklin County.

Any person who opposes amending of the right must file with the Idaho Department of Water Resources, 100 Shoup, State Capitol Building, Boise, Idaho, 83402, on or before November 15, 1983.

A. KENNEDY DUNN

Director  
Published in Preston Citizen on 10/27 & 11/03/83

Legal No. 1983-201-1 Published Oct. 27, Nov. 11, 1983

RECEIVED  
NOV 15 1983

Department of Water Resources  
Eastern District Office

#875

MAY 27 1983

No 1840

## AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,

County of Franklin

ss.

J. Warren Ross

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

May 12, 1983, and ending  
with the issue of May 19, 1983.

Fee \$ 24.37

Subscribed and sworn to before me this 31st day  
of May, 1983.

Ken O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

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RECEIVED

JUN 6 1983

Department of Water Resources  
Eastern District OfficeNOTICE OF PROPOSED CHANGE  
OF WATER RIGHT

No. 13-044/0045

Notice is hereby given that Franklin Maple Creek Pioneer Irrigation Co., Preston, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Maple Creek tributary to Cub River. The right sought to be changed is evidenced by Decree No. 6538 to Franklin Maple Creek Pioneer Irrigation Co., a Corp., in case of Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Co., dated in October 16, 1905 in Fifth Judicial District Court, Franklin County and is recorded as follows:

AMOUNT: 2.0 cfs

PRIORITY: 1877

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E, B.M. Franklin County.

The water is used for flood irrigation.

## TO BE CHANGED AS FOLLOWS

The water will be diverted within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 30, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E, B.M. Franklin County.

Any protests against the approval of the above proposed change of water right must be filed with the Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83401, on or before May 30, 1983.

A. KENNETH DUNN

Director

Published in the Preston-Citizen on  
5/12 or 5/19/83.

Legal No. 1840 -39L- Published  
May 12, 19, 1983.



September 10, 1984

RE: Transfer of Water Right No. 13-0044

Franklin Maple Creek Pioneer Irr. Co.  
Box 191  
Preston, ID 83263

Gentlemen:

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 2840). Be sure to note the conditions of approval as listed on the fourth page.

Sincerely,

DAVID R. TUTHILL, MR., P.E.  
Supervisor, Water Allocation Section

DRT:sc

Enclosure

UNRECORDED

CONVERSATION MEMORANDUM

DATE September 5, 1984

FILE 13-0044 T2840

NAME OF PARTY Lowell D. Castleton

EMPLOYEE David R. Tuthill *DMT*

RE: Response to letter dated August 3, 1984

On this day Mr. Castleton called to explain the reason that Water Right No. 13-0045 was deleted from Transfer No. 2840.

Mr. Castleton explained that he had several meetings with representatives of the Department in the Eastern Regional Office regarding this complex transfer of water rights. His original filing, which was received by the Department on January 19, 1983, identified two decreed water rights-Nos. 13-0044 and 13-0045. Both of these water rights were also identified in an unsigned agreement in the file between the Franklin Maple Creek Pioneer Irrigation Company and the Franklin Cub River Pumping Company. This agreement details the reason for the transfer of water rights.

Mr. Castleton has indicated that as a result of his discussions with the representatives from the Department, including Steve McCormick, a new application for transfer was prepared. This application, which was prepared by the Department staff, included only one of the decreed rights, No. 13-0044. The reason for the deletion of Water Right No. 13-0045 was the impetus for my letter dated August 3, 1984, because the matter was not clear in the documentation in the file. Mr. Castleton explained that both he and the Department representatives concluded, based on investigations during the summer of 1983, that Decreed Water Right No. 13-0045 had not, in fact, been diverted for many years. They concluded that to include that water right in the application for transfer would be unrepresentative of the diversion that had actually taken place since, in fact, only 2.0 cfs had been diverted rather than the 6.0 cfs shown on the original transfer application. Therefore, Mr. Castleton indicates that he concurred with the deletion of

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CONVERSATION MEMORANDUM

DATE September 5, 1984

FILE 13-0044 T2840

NAME OF PARTY Lowell D. Castleton *DRT*

EMPLOYEE David R. Tuthill

RE: Page 2

Water Right No. 13-0045 from the application for transfer.

I indicated to Mr. Castleton that based on his telephone call, we would  
continue to review the application for transfer, and that I would document  
the file with the information that he provided since he is currently occupied  
on other matters and has little time to prepare a letter.

**MICROFILMED**



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

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

August 3, 1984

Lowell D. Castleton, Attorney at Law  
P.O. Box 191  
Preston, ID 83263

RE: Application for Transfer No. 2840, Franklin Maple Creek Pioneer  
Irrigation Company

Dear Mr. Castleton:

This office is currently reviewing the above-referenced Application for Transfer. The information in the file associated with the application documents many of the activities that have transpired since the original application was filed on January 19, 1983. However, there is one item that needs to be clarified before we can take action on the transfer application.

The file contains a letter from you to Mr. Ernest Carlson of our Eastern Regional Office dated January 10, 1983, regarding "Transfer of Water Right for Franklin Maple Creek Pioneer Irrigation Company to Franklin Cub River Pumping Company". This letter provided some historical background to the Application for Transfer, and contained as an enclosure an exhibit B, which was an unsigned agreement between the Franklin Maple Creek Pioneer Irrigation Company and the Franklin Cub River Pumping Company. Both your letter and the agreement form specified two water rights. One of the water rights is identified by No. 13-0044, for 2.0 cubic feet per second, and the other is identified by No. 13-0045, for 4.0 cubic feet per second, both with priority date 1887.

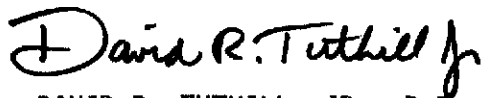
The question that I have after reviewing the file regards the reason for deleting Water Right No. 13-0045 from the transfer application. The deletion was made on the original application form, and no mention of the deleted water right is made on the Amended Application for Transfer form which was received by our office on September 30, 1983.

**MICROFILMED**

Lowell D. Castleton  
August 3, 1984  
Page 2

For purposes of documenting the file, would you please send a letter to this office no later than September 5, 1984 regarding the reason for deleting Water Right No. 13-0045, and the impact of that deletion on the predicted change in point of diversion described in your letter dated January 10, 1983. Based on your response we will be able to take further action on this matter.

Sincerely,



DAVID R. TUTHILL, JR., P.E.  
Supervisor Water Allocation Section

DRT:ls

cc: Eastern Region

MICROFILMED

FROM Dave Tufhill

DATE 7/2/84

TO Steve Mc Cormick

SUBJECT T2840 (13-0044)

Have you had a chance to find out why rt no. 13-0045 for 4.0 cfs was dropped from this transfer app? This is not documented in the file. If you are not sure, I can write a letter to Lowell Castleton.

Dave

SIGNATURE

MICROFILMED

MEMORANDUM

TO: File 13-0044  
FROM: Jim Johnson *ji*  
DATE: May 11, 1984  
RE: Transfer No. 2840 on Right 13-0044

On 5/8/84 I received a copy of the proceedings in the case of The Village of Fairview Vs. Franklin Maple Creek Pioneer Irrigation Company, Inc. per request to the Franklin County Clerk.

However, a review of these proceedings revealed that they were not a copy of the Findings of Fact of original court action which decreed the water right to Franklin Maple Creek Pioneer Irrigation Inc. but rather a copy of a Supreme Court ruling made in 1938.

This case had no relationship to the earlier decree.

A follow-up call was made to the Frankling County Clerk and I was informed that they could not locate the Findings of Fact and Conclusions of Law for the 1905 decree.

**MICROFILMED**

RECEIVED

MAY 8 1984

Department of Water Resources

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

THE VILLAGE OF FAIRVIEW,  
a municipal corporation,

Appellant

-vs-

FRANKLIN HAVIL, CREEK FLOWERS  
IRRIGATION COMPANY, a corpora-  
tion, et al.

Defendants.

Ann Arbor, April Term, 1983

Filed May 13, 1984

Clay K. Kuehn, Clerk

Appeal from the District Court of the Fifth Judicial Circuit for Franklin County. Hon. Jay L. Downing, Judge.

Action to quiet title to certain waters and to change the point of diversion thereof. Judgment for defendants. Attorneys:

Arthur W. Hart and Merrill A. Merrill for appellants.

P. J. Ayers for respondents.

GIVENS, J.

The Village of Fairview, situated in Franklin County, with a population of about four hundred fifty people, owns its own water system, which, as to the amount of water, is inadequate, and to remedy this situation in 1938 purchased a tract of land about nine miles north-east with all appurtenant water rights from Levi Ollerson, who through various conveyances decedent title from John G. Whitehead. Upon this land there arises a small spring of water referred to as the "Whitehead Spring." A short distance to the north of this spring, and upon the lands owned by the defendant, Charles Baker, arises another small spring referred to as the "Baker Spring."

On May 16, 1905, a decree adjudicating the rights to

CLAY K. KUEHN

MICROFILMED

POOR QUALITY ORIGINAL

Oneida County (hereinafter referred to as the territory now embraced  
 in Franklin County) wherein said flock was plaintiff and plaintiff  
 in Maple Creek Pioneer Irrigation Company was defendant and there  
 were various intervenors, including John C. Whitehead, who was  
 awarded a priority of time, with a priority of  
 1900. There is no specific evidence in said Decree, proceedings  
 or proof as to the location of the two springs above mentioned.  
 In the case of the intervenors contend said Decree was given  
 judgment of the court of the waters of these particular springs.  
 While it is true that said springs was not involved  
 in the flock litigation, and even though implicitly therein acknowl-  
 edged, the intervenors in interest during  
 all said period, both before and after the entry of said Decree,  
 have openly claimed and used the  
 waters of said springs for domestic and irrigation purposes at-  
 verely to the detriment of the flock without claim therefor on the part  
 of respondents or any of them.

So far as the litigation herein is concerned the above men-  
 tioned intervenors are in interest of appel-  
 lant and the only party decreed rights it claims it is entitled  
 to are of priority to him. The decreed priori-  
 ties of respondents are superior in point of time to appellant's.  
 By the above mentioned Decree it is decreed that the  
 flow of the springs involved in addition to the 2.5 cubic feet  
 awarded the intervenors in interest, John C. Whitehead in the  
 1900 Decree, and to change the point of diversion and use thereof.

Respondents' assertion of res judicata is correct because  
 at the 1900 Decree and the above and conclusive as to the waters  
 of Maple Creek and its tributaries, it resulting:

It is judged and decreed that the  
 intervenors, their agents, servants, or employees and succe-  
 ssors are hereby notified that they and each of them are hereby

POOR QUALITY ORIGINAL

MICROFILMED

completely enjoined and restricted from the use of their arms and legs, and from the use of their hands, and in the order of their several exercises."

True, Lewis Williams was not mentioned in the 1906 suit, but the subject matter of that litigation was the waters of Maple Creek and those entitled to its share and how are, clearly, unless otherwise shown, authority to and against the flow of Maple Creek's waters, especially in connection with interest should have claimed the water in the creek he was entitled to, and the 1906 Decision declared that the fact in all instances was entitled to, and especially was in respect to the flow of those springs which are now claimed in connection with the land which foot awarded in said previous hearing.

water is shown in 1865. Creek or its tributaries was shown  
of all lands on which water rights in interest, in the previous  
case of Idaho v. United States were been litigated, therefore they will  
now be held to have been litigated, hence the 2.5 cubic feet  
awarded as of 1865 is all the decreed water appellant has as  
derived from litigated. Torco v. Murphy Land etc. Co., 35 Idaho  
343, 208 P. 2d 1117, 1120, also West Co. v. McDonald, 50 Idaho  
433, 208 P. 2d 1121, 1122, Idaho v. Underwood, 35 Idaho 484, 221 P.1105.

100-443887-1

the defendant and its predecessors in interest have used the said 2.5 acre tract per second of the waters of said Eagle Creek above described, continuously, unlawfully, openly, notoriously and in hostility to defendant, against all the world, and with claim of right thereto, under the said decree of this court, dated October 16th, 1908, and in violation of right thereto, as of the year, 1905; but have not possibly or without interference or adverse claim used the waters of any of said springs whether arising on the lands of said plaintiff or upon the lands of defendant's ancestor Heret, nor has the plaintiff or its predecessors in interest operated or maintained a ditch or pipe line for a distance of approximately 75 feet or at all, or used the water of said ditch or pipe line, to the detriment of the claim of title aforesaid, to the use of the said water for any purpose, or for agricultural purposes, or for the irrigation of any land.



MICROFILMED

... was reflected in ...

... the ... of ...

... 100 ...

... of knowledge. At ...

... of ...

... v. ... Co. (Cal.) ...

... If there is such evidence ...

... the ...

... v. ... (Mont.) ...

... the ...

... the ...



...I plaintiff required a T.O.V. ...  
...plaintiff to show ...  
...plaintiff to show ...

Moreover, when the plaintiff had ...  
...and use of the water ...  
...the owner, he established ...  
...it then devolved upon the defendant ...  
...plaintiff's use was permissive of ...  
...defendant."

...who asserts a prescriptive ...  
...a stream or other source ...  
...establishing it, proof of the ...  
...though he were the ...  
...a prima facie ...  
...the original owner to ...  
...permissive only or without ...  
...V. Baker, (Cal.) 194 P. 2d 600,

...to the law, it is vigorously ...  
...right is a mere right to the use of ...  
...in any manner capable of ...  
...if this be correct, there can ...  
...ent by prescription ...  
...possession no ...  
...here pleaded? Yet ...  
...Difficulties ...  
...to us ...  
...ought to be ...

...to establish it was, ...  
...serious question ...  
...carried that burden ...  
...V. City of ...

...of the user is ...  
...if the use made ...  
...established right of ...  
...notice that he is exercising ...  
...such right."

...334 P. 1093, ...  
...the above ...  
...the claimant ...  
...in addition to ...  
...second to ...

...of the site ...  
...to ...  
...declarations made by the ...  
...that the possession was ...



rights, the court therefor  
was justified in finding an  
error had been established.

The holding in the Hollen case, supra, justified in an  
holding that the trial judge having found lack of knowledge

the record before us, we should  
cite 181, 185, 232 P. 563.

Having no right to the use of  
examining the springs involved herein,  
of place of use thereof need not be shown  
of the substance of all the errors assigned.

Judgment affirmed. Costs to respondents.

MURPHY and ALLEN, JJ., concur.  
BUTLER, J., being disqualified.

POOR QUALITY ORIGINAL

MICROFILMED

INTER-DEPARTMENT MEMO — 1

DATE 4-17-84

FROM Jim

TO File

SUBJECT Request per 3-8-84 memo

The clerk at Franklin County (Patty) found the findings and conclusions and will be sending us a copy when the paper for one of ~~the~~ the microfilm printers arrives.

**MICROFILMED** Call-up in two wks.

SIGNATURE \_\_\_\_\_

Seider County - Conn. 766-4116  
INTER-DEPARTMENT MEMO — 1

DATE 4-11-84

FROM Jim

TO File

SUBJECT Request See memo 3-8-84

Called Patty at Franklin County.  
She informed me that they do not  
have records prior to 1910

**MICROFILMED**

SIGNATURE

FROM Jim

DATE 3-8-84

TO File

SUBJECT Request of findings of facts and conclusions of law for the case of:

The Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Company et al. (13B)

Per request w/ Mike Kunz 852-1094  
the above was requested this day.

**MICROFILMED**\_\_\_\_\_  
SIGNATURE

Time T. •

- How do we put  
these in the computer  
w/o a hand list?

134

4-6-84

FROM: Jim

DATE: 3-8-84

TO: File

SUBJECT:

Per conversation w/ Glen he wanted to see if the piece of case of this night could be determined prior to approving the transfer. The findings of facts and conclusions of law should be requested.

**MICROFILMED**

SIGNATURE

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: Steve McCormick

1. Right number \_\_\_\_\_ Applicant Franklin Maple Ch
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use  
☐ Other \_\_\_\_\_

4. Check:

- a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
- b. ☒ Description of original point of diversion.
- c. ☐ Description of original place of use. See attached memo.

5. Amount of land &/or water transferred:

- OK ☒ All of right.
- b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
- OK ☒ Check description of point(s) of diversion.
- d. ☐ Check description of place of use. No change
- OK ☐ Check map (shows p.d. and p.u. after transfer).
- OK ☒ Check for correct signature, notarization, and fee.
- g. ☒ Check proof of ownership of right &/or land from which water is transferred. owner same as name on transfer app.
- OK ☒ Check for expansion in use of right. Comments None - P/S change only

- N/A ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) \_\_\_\_\_

- j. ☐ Is use within a Watermaster District? ☒ Yes ☐ No

If yes, what district? District # 13A Maple Creek

FINAL PROCESSING REVIEW BY: \_\_\_\_\_

1. Watermaster recommendation requested on 5-6-83 Received on 7-28-83
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☐ Yes ☒ No

RECOMMENDED ACTION

1. ☒ Approve

2. ☐ Deny

3. Conditions\* Code 01E, 05 (W.D. 13A Maple Creek)

RECEIVED  
AUG 01 1983

Department of Water Resources

4. By Ernest Carlson Date July 29, 1983

\* All uses within Watermaster Districts require special conditions.

dw

November 16, 1983

RE: Amended Application for Transfer No. 11-0044 FRANKLIN MAPLE CK.

Conan Foster, Watermaster  
Water District No.13-A  
Rt.#2  
Preston, ID 83263

Dear Mr. Foster:

Our files indicate we have not received your watermaster comments on the above captioned application for transfer, which was forwarded to you on October 20, 1983. Therefore, enclosed please find a copy of the application and another watermaster recommendation form.

Section 42-222 of the Idaho Code states that watermaster recommendations must be submitted to the Department before proceeding with final administrative action. Since advertising of the application is completed, I urge you to give this matter immediate attention.

Your cooperation is appreciated.

Respectfully submitted,

ERNEST CARLSEN  
Assistant Regional Supervisor

EC:cw

Enclosures

*Decided to use  
original comments  
submitted 7-28-83*

**RECORDED**



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

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

November 15, 1983

RE: Application for Transfer No. 11-0836A MINK CREEK IRRIGATION COMP.  
13-0044 FRANKLIN MAPLE CREEK PIONEER (Am.)

Preston Citizen  
Box 472  
Preston, ID 83263

Gentlemen :

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on October 27 and November 3, 1983.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY  
Adm. Secretary

RECEIVED

October 20, 1983

RE: Amended Application for Transfer No. 12-0044 FRANKLIN MAPLE CK.

Conan Foster, Watermaster  
Water District No. 13-A  
Rt. #3  
Preston, ID 83263

Dear Mr. Foster:

Please find enclosed a copy of the above referenced application(s) and water recommendation form(s). Please review the application(s) and complete the form(s), returning it to this office on or before November 14, 1983.

Thank you for your cooperation in this matter.

Very truly yours,

ERNEST CARLSEN  
Assistant Regional Supervisor

EC:CW

Enclosure

ENCLOSURE

NOTICE OF PROPOSED AMENDING OF TRANSFER

No. 13-0044

Notice is hereby given that Franklin Maple Creek Pioneer Irrigation Co., Preston, Idaho filed transfer No. 13-0044/0045 for the diversion of 2.00 cfs of water from Maple Creek tributary to Cub River with the point of diversion within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E, B.M., Franklin County for irrigation purposes.

The right holder now proposes to amend Transfer No. 13-0044 amending the point of diversion to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 30, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E, B.M., Franklin County.

Any protest to the proposed amending of this right must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho, 83402, on or before November 14, 1983.

A. KENNETH DUNN

Director

Published Preston Citizen, 10/27 & 11/03/83

*Proofed  
10/25/83  
BP*

**MICROFILMED**

October 12, 1983

Lowell D. Castleton  
Attorney at Law P.O. Box 191  
Preston, ID 83263

Dear Mr. Castleton:

Enclosed please find your check No. 92-171 in the amount of \$20.00 for the filing fee of amended transfer No. 13-0044/0045 in the name of Franklin Maple Creek Pioneer Irrigation Company. The check is being returned as no signature appeared on the check.

Very truly yours,

COLLEEN WRAY  
Adm. Secretary

Enclosure

RECEIVED

WILLIAMS & CASTLETON  
LAW OFFICES

24 NORTH STATE - P. O. BOX 191  
PRESTON, IDAHO 83263

RECEIVED

SEP 30 1983

J. DENNIS "J.D." WILLIAMS  
LOWELL D. CASTLETON

JOHN TAFT BENSON  
(MEMBER UTAH BAR ONLY)

September 29, 1983

Department of Water Resources  
Eastern District Office (P.O.) 852-2680

Mr. Ernest Carlsen  
Assistant Regional Supervisor  
State of Idaho  
Department of Water Resources  
150 Shoup  
Idaho Falls, ID 83401

Re: Application for Transfer No. 13-0044/0045  
Franklin Maple Creek Pioneer Irrigation Co.  
Our File No. 1069.6C

Dear Mr. Carlsen:

I have reviewed your letter of September 23, 1983, and concur with your findings. The Amended Application is enclosed with the required notarized signature. A check for the \$20.00 amendment fee is also enclosed.

Thank you for your assistance in this matter. If there is anything further that I can help with, please let me know.

Yours very truly,

WILLIAMS & CASTLETON

  
LOWELL D. CASTLETON  
Attorney at Law

LDC/mt

cc: Ramon Wright

Enclosures

SEP 30 1983

September 23, 1983

Lowell D. Castleton  
Atty. at Law  
P.O. Box 191  
Preston, ID 83263

RE: Application for Transfer No. 13-0044/0045  
Franklin Maple Creek Pioneer Irrigation Co.

Dear Mr. Castleton:

Recently I was notified by our State Office that an apparent error had been identified on the above captioned application and final administrative action would be postponed until an amended application had been submitted and regional processing completed. To expedite this procedure, we have prepared the enclosed amended application for signature by the company's president.

The modified portion is item 2 of Section C describing the points of diversion to be used. The original application listed the SW~~1~~/~~4~~ Section 30 and SE~~1~~/~~4~~ Sec. 16, T. 16S, R. 40E. While the SE~~1~~/~~4~~ Sec. 16 appears correct, comparison of the aerial photo included with the application and a USGS Quad Map of the area, indicates the other point of diversion is actually in the SE~~1~~/~~4~~ Section 30. For your reference a copy of the quad map is also enclosed.

If you do not concur, please contact me. Otherwise, return the amended application to this office after it has been signed and notarized.

There is a statutory fee of \$20.00 for amendments, so please include a check for that amount with the application.

Respectfully submitted,

ERNEST CARLSEN  
Assistant Regional Supervisor

EC:bp

Enclosure

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT JUL 28 1983

NO. 13-0044/0045

Department of Water Resources  
Eastern District Office

RECOMMENDATION OF WATERMASTER

I, Conan Foster, watermaster of Cub River,  
of Water District No. 13 A, County of Franklin, State of Idaho,  
whose address is Rt # 3 Preston, Idaho 83263  
have read the attached copy of the application for transfer of water right for Franklin Maple  
Creek Pioneer Irrigation Co., and to the best of my knowledge believe the  
(name)  
application to be true.

☒ A. I hereby endorse the above numbered Application for Transfer and recommend  
that the Director of the Department of Water Resources approve the transfer subject to  
the following conditions: none

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-  
quested for the following reasons: \_\_\_\_\_

Dated at Preston, Idaho, this 27th day of July 19 83.

Conan Foster  
(signature)

MICROFILMED

June 7, 1983

Re: Application for Transfer No. 13-0044/0045 FRANKLIN MAPLE CREEK

Conan Foster, Watermaster  
Water District No. 13-A  
Rt. #3  
Preston, ID 83263

Dear Mr. Foster:

Our files indicate we have not received your watermaster comments on the above captioned application for transfer, which was forwarded to you on May 6, 1983. Therefore, enclosed please find a copy of the application and another watermaster recommendation form.

Section 42-222 of the Idaho Code states that watermaster recommendations must be submitted to the Department before proceeding with final administrative action. Since advertising of the application is completed, I urge you to give this matter immediate attention.

Your cooperation is appreciated.

Respectfully submitted,

ERNEST CARLSEN  
Assistant Regional Supervisor

EC:cw

Enclosures

ADMINISTRATIVE  
DIVISION  
JUN 10 1983

June 3, 1983

RE: Application for Transfer No. 13-0044/0045 FRANKLIN MAPLE CK

Preston Citizen  
Box 472  
Preston, ID 83263

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on May 12 and 19, 1983.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY  
Adm. Secretary

13-0044/0045

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 13-0044/0045

Notice is hereby given that Franklin Maple Creek Pioneer Irrigation Co., Preston, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Maple Creek tributary to Cub River. The right sought to be changed is evidenced by Decree No. 6538 to Franklin Maple Creek Pioneer Irrigation Co., a Corp. in case of Villiage of Fairview vs. Franklin Maple Creek Pioneer Irrigation Co., dated in October 16, 1905 in Fifth Judicial District Court, Franklin County and is recorded as follows:

AMOUNT: 2.0 cfs

PRIORITY: 1877

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E,  
B.M. Franklin County.

The water is used for flood irrigation.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 30, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16, T. 16S, R. 40E, B.M. Franklin County.

Any protests against the approval of the above proposed change of water right must be filed with the Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83401, on or before May 30, 1983.

A. KENNETH DUNN

Director

Published in the Preston Citizen on 5/12 & 5/19/83.

MICROFILMED

May 3, 1983

RE: Application for Transfer No. 13-0044/0045

Lowell D. Castleton  
Attorney at Law  
P.O. Box 191  
Preston, ID 83263

Dear Mr. Castleton:

Enclosed for your records is a copy of the application for transfer filed by Franklin Maple Creek Pioneer Irrigation Company. This copy reflects those items we recently discussed by telephone.

Notification of this application is scheduled for publication in the Preston Citizen on May 12 and 19. If there is a need to have this publication delayed or if the application must be modified, please contact us immediately.

Respectfully submitted,

ERNEST CARLSEN  
Assistant Regional Supervisor

EC:cw

Enclosure

RECEIVED  
MAY 10 1983  
FBI - PRESTON

1069.6

RECEIVED FEB 7 1983



# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES EASTERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

150 Shoup  
Idaho Falls, Idaho 83401  
(208) 525-7161

February 3, 1983

Lowell D. Castleton *phone 852-2680.*  
Atty at Law  
P.O. Box 191  
Preston, ID 83263

RE: Franklin Maple Creek Pioneer Irr. Co., Transfer

Dear Mr. Castleton:

Enclosed is the Application for Transfer of a Water Right submitted in behalf of F.M.C.P. Irr. Co.

The Department cannot begin processing of the application at this time for the following reasons.

1. The statutory filing fee of \$50.00 must accompany the application.
2. The place of use must be indicated in part C.3.C of the form identifying the irrigated acres in each quarter-quarter section.
3. The information in your letter indicates the amount of water to be transferred should be cut down by the amount shown in part 5 of the letter. The point of diversion for this amount (0.2616 cfs) will not be moved and therefore the total amount of water for which a change in point of diversion will occur is 5.7384 cfs. This will eliminate the need to file claims to water rights for these individually.
4. Part C4 must show other water rights used for the lands identified in Part C 3.C.

If you have any questions please feel free to contact me.

Sincerely,

*Steve McCormick*

STEVE McCORMICK  
Sr. Resource Analyst

SM:bp

Enclosure

MEMORANDUM

FROM: Steve McCormick

TO: File

RE: Transfer for Franklin Maple Creek Pioneer Irr. Co.  
13-0044/0045

Lowell Castleton was in today to explain the purpose of the transfer.

The company has drawn up an agreement to split the stock of the company. The agreement takes the second class stock out of the company. The water represented by the first class stock was put into a pipeline a few years ago. The second class water was not put in the pipeline since it was cut early in the season. The ditch which previously conveyed all the water was used for the pipeline and consequently could not be used by the 2nd class stock holders. The second class stockholders water was left in Maple Creek and allowed to flow in the Cub River and be pumped out by Cub River Pumping Co. The 1st class stockholders have paid the pumping costs until now.

The agreement splits the company so that the 1st class stockholders do not pay the pumping costs and the second class stockholders can receive their water directly from Cub River.

The place of use is not included because only the point of diversion is being transferred and according to Lowell, the agreement would not be finalized if the 2nd class stockholders had to put a land list on the application.

TRANS #  
13-00441045

WILLIAMS & CASTLETON

LAW OFFICES

24 NORTH STATE - P. O. BOX 191

PRESTON, IDAHO 83268

J. DENNIS "J. D." WILLIAMS  
LOWELL D. CASTLETON

DALLIN J. PHILLIPS

January 10, 1983

TELEPHONE:  
(208) 652-2680

RECEIVED

JAN 15 1983

Mr. Ernest Carlsen  
Assistant Regional Supervisor  
Department of Water Resources  
150 Shoup Avenue  
Idaho Falls, ID 83401

Department of Water Resources  
Eastern District Office

Re: Transfer of Water Right for Franklin Maple Creek Pioneer  
Irrigation Company to Franklin Cub River Pumping Company

Dear Mr. Carlsen:

The enclosed application for transfer of water right and the attached supporting documentation is intended to present to the Water Resource Board the application of Franklin Maple Creek Irrigation Company to transfer to Franklin Cub River Pumping Company certain water rights as hereinafter set forth, and for the reasons hereinafter delineated. This letter is intended as a supplement to the application itself.

1. The Franklin Maple Creek Pioneer Irrigation Company (hereinafter Maple Creek Company) in the case of Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Company, et. al., 59 Idaho 7, 79 2nd 531, (1938) was decreed several water rights, one of which was for two cubic feet per second with a priority date of 1877 and a second right for four (4) cubic feet per second with a priority date of 1887 both of which are the subject water right of this application. Both rights shall be hereinafter referred to as "Water Right". This water right is basically a high water right and represents the water which has been used over the years by the "second class" stockholders of Maple Creek Company. Properties irrigated by this water of right is specified in blue on the attached map Exhibit "A".

2. Referring to the attached aerial photo map, Exhibit "A", historically the water in question was diverted at point A from Maple Creek (blue line) into the Company's canal (red line). In recent years, the Company installed a gravity sprinkling system between points E and C for the "first class" stockholders. Consequently, it became difficult for the second class stockholders to get their water from point A, which was the point of diversion, beyond point C where the water was to be used by them.

Mr. Ernest Carlsen  
January 10, 1983  
Page 2

3. As an alternative, for the past several years, Franklin Cub River Pumping Company, hereinafter Pumping Company, has allowed the second class stockholder's water to continue in Maple Creek and then course into Cub River (along blue line) from point A to point D where it has been pumped from the Cub River at point D to point F where it could then be utilized by the second class stockholders.

4. Because many of the second class stockholders of Maple Creek Company are also stock holders of Pumping Company, and to facilitate the continued availability of the water to the stockholders, and to eliminate administrative difficulties between the two companies, it has been agreed, between the two companies, subject to the approval of the Department of Water Resources, that all of the water right except the amounts specified in paragraph 5 hereof will be transferred from Maple Creek Company to Pumping Company for the benefit of the original second class stockholders of Maple Creek Company. Said stockholders will receive new stock in Pumping Company representing their original interest in the water right whereupon their second class stock in the Maple Creek Company will be cancelled.

5. The following three second class stockholders will not have their water rights transferred per this application. Instead, upon your recommendation, we are submitting under separate cover on their behalf, claims of water right on the water rights represented by their shares of stock as follows:

| <u>Shareholder</u> | <u>No. of Shares</u> | <u>Cubic Ft./Sec.</u> |
|--------------------|----------------------|-----------------------|
| Dilworth Morrison  | 123                  | .186                  |
| Harold Lowe        | 25                   | .0378                 |
| Robert Lowe        | 25                   | .0378                 |
| TOTAL              | 173                  | .2616                 |

6. With regard to the water rights proposed to be transferred, the water right will be utilized by the same users, to irrigate the same properties. The only change that results is that the water right will be transferred to Pumping Company from Maple Creek Company.

RECEIVED  
JAN 12 1983  
WATER RESOURCES  
DIVISION

Mr. Ernest Carlsen  
January 10, 1983  
Page 3

7. Because the users do not change and because the use will be on the same acreage after the transfer as before, no enlargement in use of the original right will result.

8. Because beneficial users and irrigated acres are the same after the transfer as before, the application contains this Supplemental Memo with the attached color-coded map in lieu of the specific data called for in Item A-8, B and C of the Application.

9. The stockholders of both companies, in duly called separate stockholder meetings have approved the transaction as set forth in the proposed agreement, which is attached hereto as Exhibit "B". Upon approval by the Water Resource Board, the officers of both companies will effectuate the transfer according to the terms thereof, subject to any additional requirements of the Water Resource Board.

Respectfully submitted,

WILLIAMS & CASTLETON



LOWELL D. CASTLETON  
Attorney at Law

LDC/cr

Enclosure

ENCLOSURE

FRANKLIN MAPLE CREEK PIONEER IRRIGATION CO.  
(Explanation of Map)

Points

- A -- Present diversion of second class water rights
- B -- Second class water mingled with first class water from point B to point C
- C -- Point where second class water rights are all that is left in ditch. All first class rights are taken out prior to this point.
- D -- Pumping plan station. Desired point for the second class water diversion.
- E -- First class water rights which have now been put into a pipeline for gravity sprinkling.
- \*Red -- indicates the old ditch line for second class water flow (from point A through B and C)
- \*Dark Blue -- indicates old creek channels or proposed route for second class water rights (from point A to point D)
- \*Green -- indicates water after it passes through proposed diversion point.
- \*Black -- indicates first class water rights or newly constructed pipeline.
- \*Yellow -- first class water district -- approximately 800 acres
- \*Light Blue -- second class water district -- approximately 500 acres

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Exhibit "B"

AGREEMENT

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1982, by and between the Franklin Maple Creek Pioneer Irrigation Company, hereinafter referred to as "Grantor" and Franklin Cub River Pumping Company, hereinafter referred to as "Grantee".

Whereas Grantor in the case of Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Company et al 59 Idaho 7, 79 2nd 531, (1938), was decreed several water rights one of which was for two (2) cubic feet per second with a priority date of 1877, and a second of which was for four (4) cubic feet per second with a priority date of 1887, said water rights hereinafter referred to as "Water Right", and

Whereas said water right has historically been a high water right representing the water which has been used over the years by and appertains to properties of the second class stockholders of Grantor, and

Whereas, over the past several years said water right has been diverted and pumped to said second class stockholders of Grantor by Grantee as a kindly gesture by Grantee to enable said second class stockholders to have use of said water, and

Whereas a transfer of said water right from Grantor to Grantee would facilitate the future administration of said water right for the benefits of said stockholders;

Now therefore in consideration of the mutual promises contained herein, the parties agree as follows:

1. Grantor shall at the time of closing hereof as hereinafter specified convey to Grantee by Deed and Grantee shall receive conveyance from Grantor of the following:

a. Water rights consisting of:

Those certain water rights decreed in Village of Fairview vs. Franklin Maple Creek Pioneer Irrigation Company et al., 59 Idaho 7, 79 P. 2nd 531, (1938), consisting of and not to exceed: (a) two (2) cubic feet per second with a priority date of 1877; and

(b) Four (4) cubic feet per second with a priority date of 1887.

excepting therefrom .198 cubic feet per second with a priority date of \_\_\_\_\_ which are the water rights represented by the second class shares of stock held by the following shareholders in the following amounts:

MICROFILMED

| <u>Shareholder</u> | <u>No. of<br/>Shares</u> | <u>Cubic feet/<br/>Seconds</u> | <u>Priority<br/>Date</u> |
|--------------------|--------------------------|--------------------------------|--------------------------|
| DILWORTH MORRISON  | 123                      | .186                           |                          |
| HAROLD LOWE        | 25                       | .006                           |                          |
| ROBERT LOWE        | 25                       | .006                           |                          |
| TOTAL              | 173                      | .198                           |                          |

b. Grantor shall grant to Grantee a fifteen (15) year easement along Grantor's easement where Grantor has put its gravity flow pipeline and continuing therefrom along the easements historically used by said second class shareholders to carry their water to the various points of use. Said easement shall be for the express and limited purpose of placing a second pipeline by Grantee for the benefit of said second class stockholders through which said water right can thereafter be diverted and carried for the benefit of said second class stockholders. If and when said easement is used as prescribed herein, then said easement shall become and thereafter be an easement in perpetuity. Grantor shall notify in writing all land owners to whose property said easements appertain of Grantors intent not to abandon said easements.

2. Said closing shall occur no later than ten (10) days following the satisfaction of the following conditions:

a. Ratification of this Agreement by the stockholders of both parties:

b. Receipt of approval of Grantors Application For Transfer of Water Right from the State of Idaho authorizing said transfer. Disapproval by the Department of Water Resources shall cause this Agreement to become null and void.

3. Upon satisfaction of the conditions herein contained, a duly authorized officer of each party shall inform the Law Firm of Williams & Castleton that the conditions have been met whereupon said parties shall mutually set the date of closing in compliance with the terms hereof. Closing shall be at the office of Williams & Castleton, 24 North State, Preston, Idaho 83263.

4. Immediately following the closing hereof, Grantor will recall and cancel all of the second class shares of stock issued to and outstanding among the second class stockholders of Grantor, exceptions excluded under Paragraph 1(a) hereof, a list of said stockholders and shares of stock is attached hereto as Exhibit "A". Thereafter Grantee shall issue a new class of stock

which shall be titled Second Class Stock of Grantee, which shall represent said water right which new class of stock shall be issued to the same stockholders listed on Exhibit "A" and in exactly the same amounts and/or in exactly the same ratios or percentages as indicated on said Exhibit "A" excepting the Stockholders noted in paragraph 1.a. above.

5. It is the understanding of the parties that said water right shall remain appurtenant to the exact same acreage of said second class stockholders after said transfer as before. It is further understood between the parties that there will be no change in the place of use of said water right nor will the number of acres being irrigated by said water right be increased or enlarged.

6. Grantor agrees to pay legal costs and fees incurred by both parties necessitated in the completion of the terms of this Agreement.

7. Except as to the express agreements contained herein, the parties hereto make no additional promises, agreements or covenants express or implied to the other party or any of its stockholders.

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first above written.

GRANTOR

GRANTEE

FRANKLIN MAPLE CREEK  
PIONEER IRRIGATION COMPANY

FRANKLIN CUB RIVER  
PUMPING COMPANY

\_\_\_\_\_  
President

\_\_\_\_\_  
President

Attest:

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary

# EXHIBIT "A"

Shares and percent of water rights being transferred.

|                               | Number of<br>Shares | Percent of<br>Total |
|-------------------------------|---------------------|---------------------|
| Erma Woodward . . . . .       | 70                  | .0176               |
| Schablands . . . . .          | 135                 | .0340               |
| Woodrow Butterworth . . . . . | 432 1/2             | .1089               |
| Ann Olsen . . . . .           | 233 1/2             | .0588               |
| Adrain Geddes . . . . .       | 200                 | .0503               |
| Ray Morrison . . . . .        | 502 1/2             | .1265               |
| Dave Beckstead . . . . .      | 60                  | .0151               |
| Roy Geddes . . . . .          | 860                 | .2165               |
| Larry Hobbs . . . . .         | 824                 | .2074               |
| Clayton Larsen . . . . .      | 10                  | .0025               |
| Alton Larsen . . . . .        | 42                  | .0106               |
| Glen Larson . . . . .         | 20                  | .0050               |
| Frank Priestley . . . . .     | 400                 | .1007               |
| Herbert Rallison . . . . .    | 10                  | .0025               |
| TOTAL                         | 3,799-1/2           | .9564               |

Shares and percent of water right not being transferred.

|                             |                  |               |
|-----------------------------|------------------|---------------|
| Dilworth Morrison . . . . . | 123              | .0310         |
| Harold Lowe . . . . .       | 25               | .0063         |
| Robert G. Lowe . . . . .    | 25               | .0063         |
| TOTAL                       | 173              | .0436         |
| GRAND TOTAL                 | <u>3,972-1/2</u> | <u>100.00</u> |

RECORDED  
INDEXED  
JAN 10 1964

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**APPLICATION FOR TRANSFER OF WATER RIGHT**  
To Change the Point of Diversion and/or the Place of Use

Name of applicant Franklin Maple Creek Pioneer Irrigation Co. Phone 208-852-2680  
Post Office address P. O. Box 191, Preston, Idaho 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 6538 Decreed to Franklin Maple Creek Pioneer Irrigation Co., a Corp.  
in case of Village of Fairview vs Franklin Maple Creek Pioneer Irrigation Co.  
dated in October 16, 1905 in Fifth Judicial District county of Franklin  
(Name)  
(Name of court)

b. License No. \_\_\_\_\_ issued by the Idaho Department of Water Resources

c. Claim No. \_\_\_\_\_ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant \_\_\_\_\_

3. Source of water Maple Creek tributary to Cub River

4. Date of priority 1877

5. Water is used for the following purposes:

amount 2.0 c.f.s. for flood irrigation purposes from \_\_\_\_\_ to \_\_\_\_\_  
amount 4.0 c.f.s. for flood irrigation purposes from \_\_\_\_\_ to \_\_\_\_\_  
amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
(month/day — both dates inclusive)

6. Total amount of water under right: a. six (6) cubic feet per second  
&/or  
b. \_\_\_\_\_ acre feet per annum

7. Location of original point of diversion is SE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 16  
Township 16 S. Range 40 E., B.M., in Franklin County  
Additional points of diversion, if any SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 30, Township 16 South, Range 40 East,  
Boise Meridian, Franklin County, Idaho

8. Lands irrigated or place of use:

| TWP. | RANGE | SEC. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | TOTALS |
|------|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|      |       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

Total number of acres to be irrigated \_\_\_\_\_

9. Describe any other water rights used for the same purpose as described above N/A

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? \_\_\_\_\_ If yes, describe in item D, REMARKS.

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B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. \_\_\_\_\_ cubic feet per second  
&/or  
b. \_\_\_\_\_ acre feet per annum
2. Point of diversion \_\_\_\_\_ ¼ \_\_\_\_\_ ¼, Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_, B.M., \_\_\_\_\_ County  
Additional points \_\_\_\_\_  
\_\_\_\_\_
3. Place of use:

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated \_\_\_\_\_

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information
- a. Amount of water to be diverted 5.74 c.f.s. &/or \_\_\_\_\_ acre feet
- b. Description of diverting works \_\_\_\_\_  
\_\_\_\_\_
- c. Describe the reasons for the proposed changes See attached explanation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Change in point of diversion No Change  
Point of diversion \_\_\_\_\_ ¼ \_\_\_\_\_ ¼, Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_, B.M., \_\_\_\_\_ County  
Additional points \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Change in place of use
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.  
N/A See explanation
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer  
See explanation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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[illegible]

Total number of acres to be irrigated \_\_\_\_\_

4. Describe any other water rights used for the same purpose as described above. \_\_\_\_\_
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

[illegible]

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

D. REMARKS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

x Ramon Wright  
(Signature of Applicant)

Subscribed and sworn to before me this 18<sup>th</sup> day of January, 19 83

Beverly W. Mortensen  
(Notary Public)

My commission expires Lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

FOR DEPARTMENT USE ONLY

|                                               |                                      |                             |
|-----------------------------------------------|--------------------------------------|-----------------------------|
| Received by <u>QW</u>                         | Date <u>1-19-83</u>                  | Protest filed by _____      |
| Prelim. check by _____                        | Fee <u>1.00</u>                      | _____                       |
| Received by _____                             | Date _____                           | _____                       |
| Published in _____                            | Copies of protest forwarded by _____ |                             |
| Pub. dates _____                              | Hearing held by _____                | Date _____                  |
| Watermaster recommendation requested on _____ | Recommended for _____                | approval _____ denial _____ |
| _____ rec'd. _____                            | by _____                             |                             |

**MICROFILMED**

October 7, 1981

Lowell D. Castleton  
Attorney at Law  
P.O. Box 191  
Preston, Idaho 83263

Dear Mr. Castleton:

In response to your letter concerning the transfer of 2.00 cfs of late priority water from Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company, a review of the decree was of little value since the points of diversion and place of use were not identified. Although, it is understood from your letter that both parties are in agreement regarding the transfer, the director of the department must also consider the possibility of injury to other water rights, whether the change is in the local public interest as defined in Section 42-203, Idaho Code, and whether the change will constitute an enlargement in use of the original right. In this case, the later condition would be of greatest concern. Expansion of the right would not occur if there were no change in the place of use, or if as a result of the change, the number of acres being irrigated were not increased. This normally requires drying up those lands the water is being removed from. If those lands irrigated by the second class right also have an earlier priority right appurtenant to them, then the second class water must be transferred to a like number of acres which also is covered by an earlier priority right(s).

To implement the desired change, please complete the enclosed application for transfer and return it to this office along with a check for \$50.00 as payment of the statutory filing fee.

Should you have any questions or wish assistance in completing the application, feel free to contact this office.

Respectfully submitted,

ERNEST CARLSEN  
Assistant Regional Supervisor

EC:cw

Enclosure

MICROFILMED

WILLIAMS & CASTLETON

LAW OFFICES

24 NORTH STATE - P. O. BOX 191

PRESTON, IDAHO 83263

J. DENNIS "J. D." WILLIAMS  
LOWELL D. CASTLETON  
DALLIN J. PHILLIPS

August 25, 1981

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AUG 26 1981

Department of Water Resources

Eastern District Office  
PHONE:  
(208) 652-2680

Department of Water Resources  
150 Shoup  
Idaho Falls, Idaho 83401

Re: Franklin, Maple Creek Pioneer Irrigation Company  
and  
Franklin, Cub River Pumping Company  
Our File No. 1069.6C

Attention: Ernest Carlson

Dear Mr. Carlson:

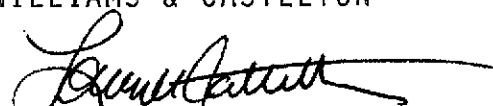
On July 2, 1981 our office forwarded to you correspondence outlining a proposal for a stock transfer/retirement plan between the two companies listed above which would also affect the respective water rights of the companies. For your reference, I am enclosing a photocopy of our July 2 letter. In reviewing our file I note that there was some discrepancy in the address to which that letter was sent and therefore I realize it is possible that the letter was not properly delivered.

Nevertheless, I would renew our request on behalf of the companies to the Department of Water Resources to review this matter and advise our office as to how we should proceed further. While this summer's irrigation activities will not be affected by such a transfer, it is the desire of both companies that the matter be resolved prior to the commencement of irrigating next spring in 1982. Thus, we desire to proceed as quickly as possible but feel unable to do so without the advice of the department.

We look forward to your response.

Yours very truly,

WILLIAMS & CASTLETON

  
LOWELL D. CASTLETON  
Attorney at Law

LDC/kw

Enclosure

cc: Ramon Wright

Microfilm

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AUG 26 1981

July 2, 1981

Department of Water Resources  
Eastern District Office

Department of Water Resources  
State Office  
373 West Franklin 150 Shoup  
Idaho Falls, Idaho 83401

Re: Franklin, Maple Creek Pioneer Irrigation Company  
and  
Franklin, Cub River Pumping Company  
Our File No. 1069.6C

Attention: Ernest Carlson

Dear Mr. Carlson:

Our law firm represents the Franklin, Maple Creek Pioneer Irrigation Company with offices in Franklin, Idaho. The Franklin, Maple Creek Pioneer Irrigation Company presently has two classes of stock. Recent changes in their by-laws and also a conversion from ditch water flooding to a gravity sprinkler system has made the value of the second-class stock relatively nil to the Franklin, Maple Creek Pioneer Irrigation Company.

However, a neighboring company, namely the Franklin, Cub River Pumping Company has as some of its share holders essentially the same people who held the second-class stock in the Franklin, Maple Creek Pioneer Irrigation Company.

In the case of Village of Fairview vs. Franklin, Maple Creek Pioneer Irrigation Company et. al., 59 Idaho 7, 797.2d 531, (1938), the Franklin, Maple Creek Pioneer Irrigation Company acquired several water rights. One of those was for two cubic feet per second with a priority date of 1877. This right for two cubic feet per second is basically a high-water right and represents the water which has been used over the years by the second-class stockholders.

MICROFILMED

Mr. Ernest Carlson  
Page 2  
July 2, 1981

In order to more fully utilize the water resources of both companies and of their respective shareholders, both companies have been negotiating a possible transfer of the two cubic feet per second right from the Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company in order that the Pumping Company have complete authority for the manner in which said two c.f.s. of water is distributed. I have in my possession a letter signed by the officers of the Pumping Company authorizing me to pursue through the Department of Water Resources a transfer of the second-class water rights from the Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company.

Could you have someone look into these respective rights and advise us as to the appropriate procedure for the transfer of said rights. We recognize that we are essentially talking about retirement of all second-class stock in the Franklin, Maple Creek Pioneer Irrigation Company and the transfer of a decreed water right from the Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company. I believe that both companies and all shareholders will be in agreement on this transaction. I will look forward to hearing from you and thank you in advance for your cooperation.

Yours very truly,

WILLIAMS & CASTLETON

LOWELL D. CASTLETON  
Attorney at Law

LDC/kw

MICROFILMED

WILLIAMS & CASTLETON

LAW OFFICES

24 NORTH STATE - P. O. BOX 191

PRESTON, IDAHO 83268

J. DENNIS "J. D." WILLIAMS  
LOWELL D. CASTLETON

DALLIN J. PHILLIPS

July 2, 1981

TELEPHONE:  
(208) 852-2680

RECEIVED

JUL 6 1981

Department of Water Resources  
Eastern District Office

Department of Water Resources  
State Office  
373 West Franklin 150 Shoup  
Idaho Falls, Idaho 83401

Re: Franklin, Maple Creek Pioneer Irrigation Company  
and  
Franklin, Cub River Pumping Company  
Our File No. 1069.6C

Attention: Ernest Carlson

Dear Mr. Carlson:

Our law firm represents the Franklin, Maple Creek Pioneer Irrigation Company with offices in Franklin, Idaho. The Franklin, Maple Creek Pioneer Irrigation Company presently has two classes of stock. Recent changes in their by-laws and also a conversion from ditch water flooding to a gravity sprinkler system has made the value of the second-class stock relatively nil to the Franklin, Maple Creek Pioneer Irrigation Company.

However, a neighboring company, namely the Franklin, Cub River Pumping Company has as some of its share holders essentially the same people who held the second-class stock in the Franklin, Maple Creek Pioneer Irrigation Company.

In the case of Village of Fairview vs. Franklin, Maple Creek Pioneer Irrigation Company et. al., 59 Idaho 7, 79P.2d 531, (1938), the Franklin, Maple Creek Pioneer Irrigation Company acquired several water rights. One of those was for two cubic feet per second with a priority date of 1877. This right for two cubic feet per second is basically a high-water right and represents the water which has been used over the years by the second-class stockholders.

Mr. Ernest Carlson

Page 2

July 2, 1981

In order to more fully utilize the water resources of both companies and of their respective shareholders, both companies have been negotiating a possible transfer of the two cubic feet per second right from the Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company in order that the Pumping Company have complete authority for the manner in which said two c.f.s. of water is distributed. I have in my possession a letter signed by the officers of the Pumping Company authorizing me to pursue through the Department of Water Resources a transfer of the second-class water rights from the Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company.

Could you have someone look into these respective rights and advise us as to the appropriate procedure for the transfer of said rights. We recognize that we are essentially talking about retirement of all second-class stock in the Franklin, Maple Creek Pioneer Irrigation Company and the transfer of a decreed water right from the Franklin, Maple Creek Pioneer Irrigation Company to the Franklin, Cub River Pumping Company. I believe that both companies and all shareholders will be in agreement on this transaction. I will look forward to hearing from you and thank you in advance for your cooperation.

Yours very truly,

WILLIAMS & CASTLETON



LOWELL D. CASTLETON  
Attorney at Law

LDC/kw