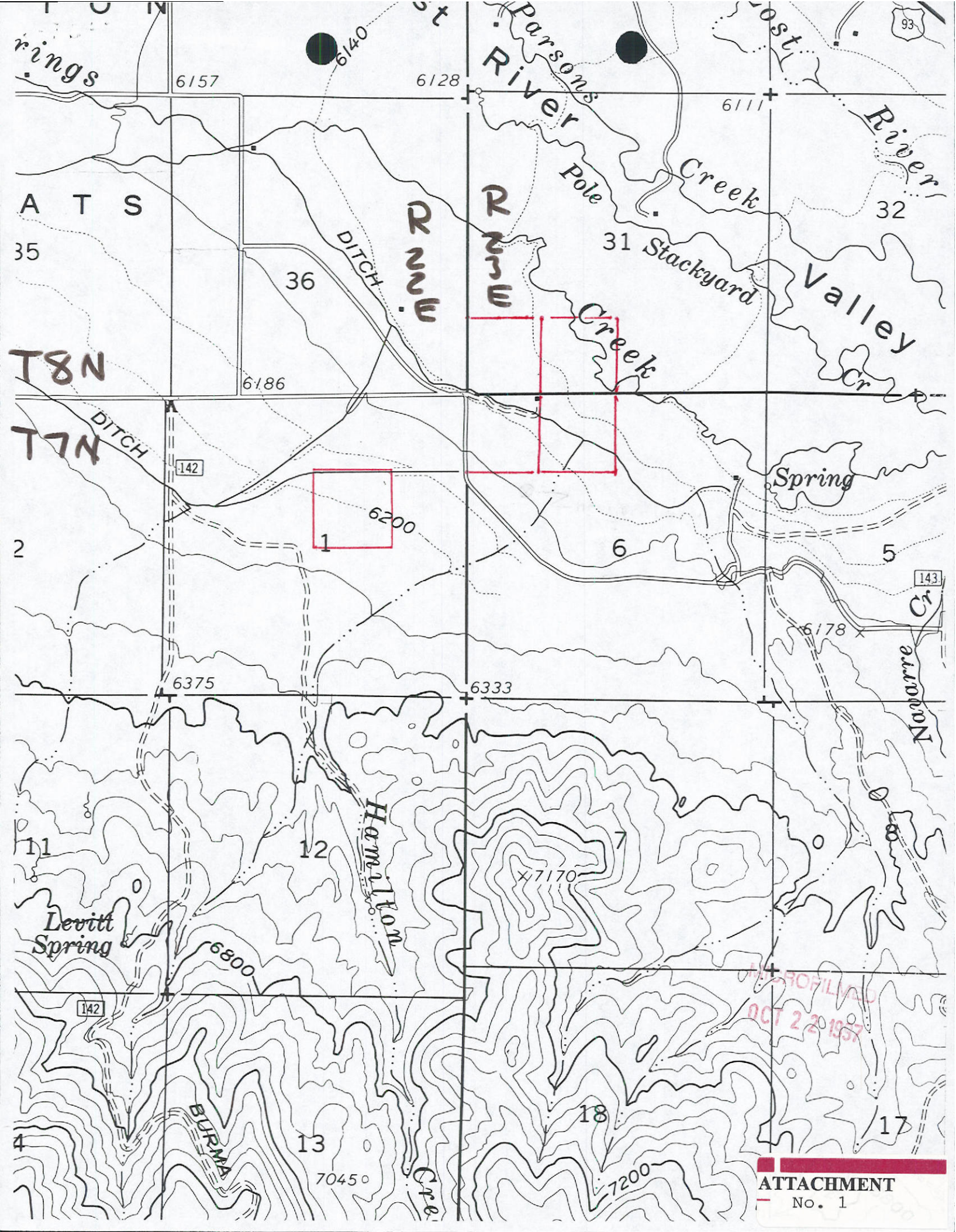


MICROFILMED
OCT 2 2 1997

ATTACHMENT
No. 1

ROSHOLT ROBERTSON & TUCKER
ATTORNEYS AT LAW

142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
FAX (208) 736-0041

FACSIMILE TRANSMISSION

DATE: 2/24/97

FAX TO:	Harold Jones - IDWR	FAX NO. (208) 525-7177
	Scott Campbell	(208) 384-5844
	Jim Speck	(208) 726-0752

RE: Aslett Ranches - Gates

FROM: Norman Semanko

NUMBER OF PAGES INCLUDING THIS ONE: 2

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY-CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL US AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

MICROFILMED
OCT 2 2 1997

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

February 21, 1997

Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, ID 83402-1718

VIA FAX

Re: Aslett Ranches Application for Transfer No. 4906
and Gates Application for Transfer No. 4985

Dear Harold:

After checking with Mark Gates, and in response to your telephone inquiry, we prefer to meet on the afternoon of March 24, but could also facilitate a March 25 or 26 afternoon conference. We also suggest that the conference be held in Twin Falls as a central location for the department, applicant, and protestants.

Once the parties to Transfer No. 4906 (Aslett Ranches transfer) are able to arrive at a date for the prehearing conference, we request that you attempt to schedule the prehearing conference for Transfer No. 4985 (Gates transfer) on the same day and in the same location. As we discussed previously, there is some overlap in issues and parties and the two transfers (and potential settlement of the protests) will undoubtedly be discussed together. This would also save some time and expense.

We look forward to hearing from you.

Sincerely,

NORMAN M. SEMANKO

02199701.NMS
cc: Scott Campbell
Jim Speck

MICROFILMED
OCT 22 1997

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS
120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 15, 1996

VIA FACSIMILE – (208) 525-7177
ORIGINAL TO FOLLOW BY MAIL

RECEIVED
OCT 15 1996
Department of Water Resources
Eastern Region

Mr. Ernie Carlson
Idaho Department of Water Resources
Eastern Region
900 N. Skyline, Ste. A
Idaho Falls, ID 83402

Re: Aslett Ranches -- Application for Transfer of Water Right No. 4906

Dear Mr. Carlson:

I represent Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle and Livestock Co. My clients own land along and have the right to divert water from Warm Springs Creek which is the source of water for the water rights that are the subject of the above-referenced Application for Transfer. This letter is a protest by my clients against the water right changes proposed by Transfer No. 4906 on the following grounds:

1. The proposed change will injure other water rights;

2. The proposed change constitutes an enlargement in use of the subject water rights;

3. The proposed change is not consistent with the conservation of water resources within the state of Idaho;

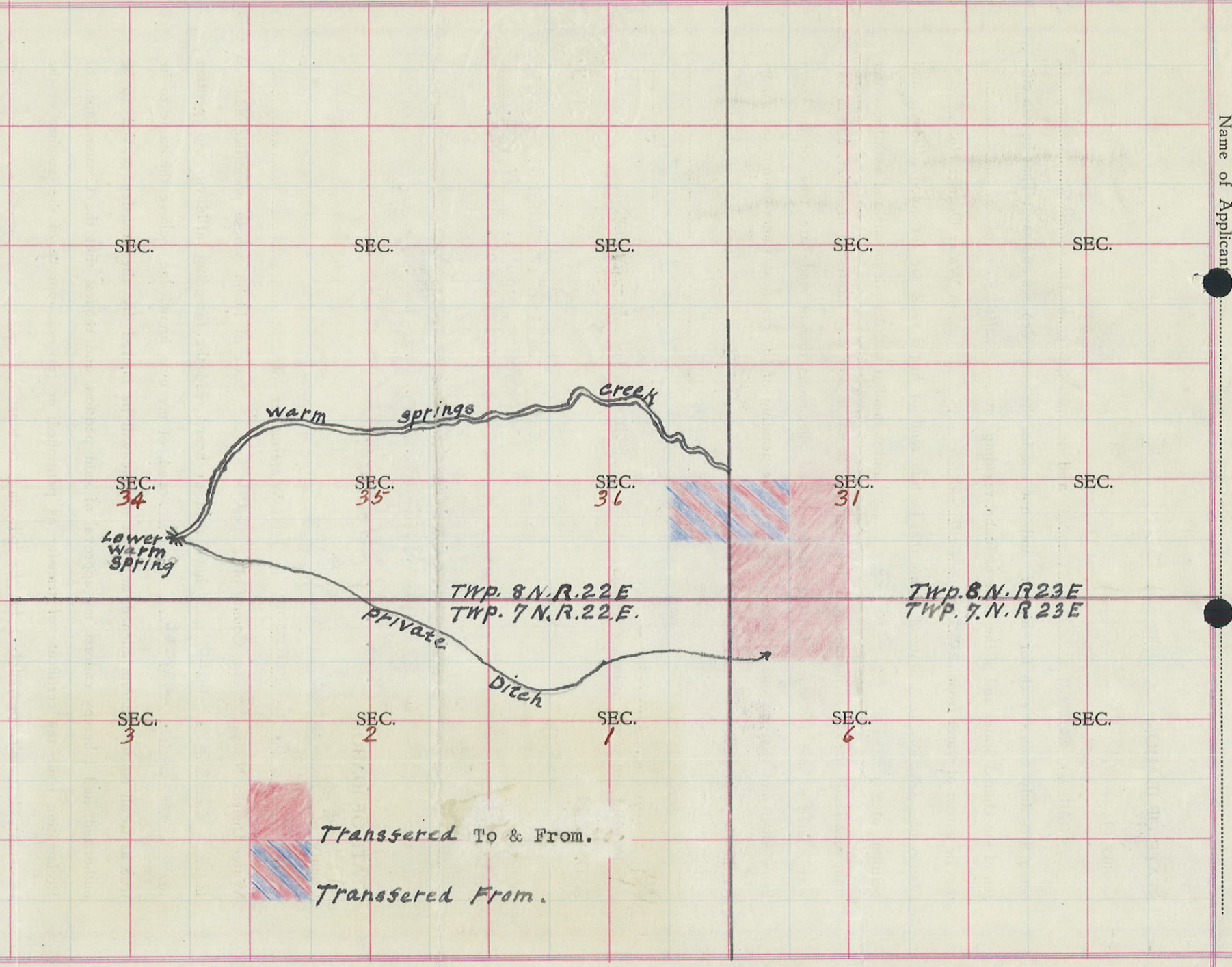
4. The proposed change is not in the local public interest.

Receipt # E022673

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OCT 22 1997

Name of Applicant

Scale: 2 Inches—1 Mile. Draw Map in Ink.



Transfer No. 5456

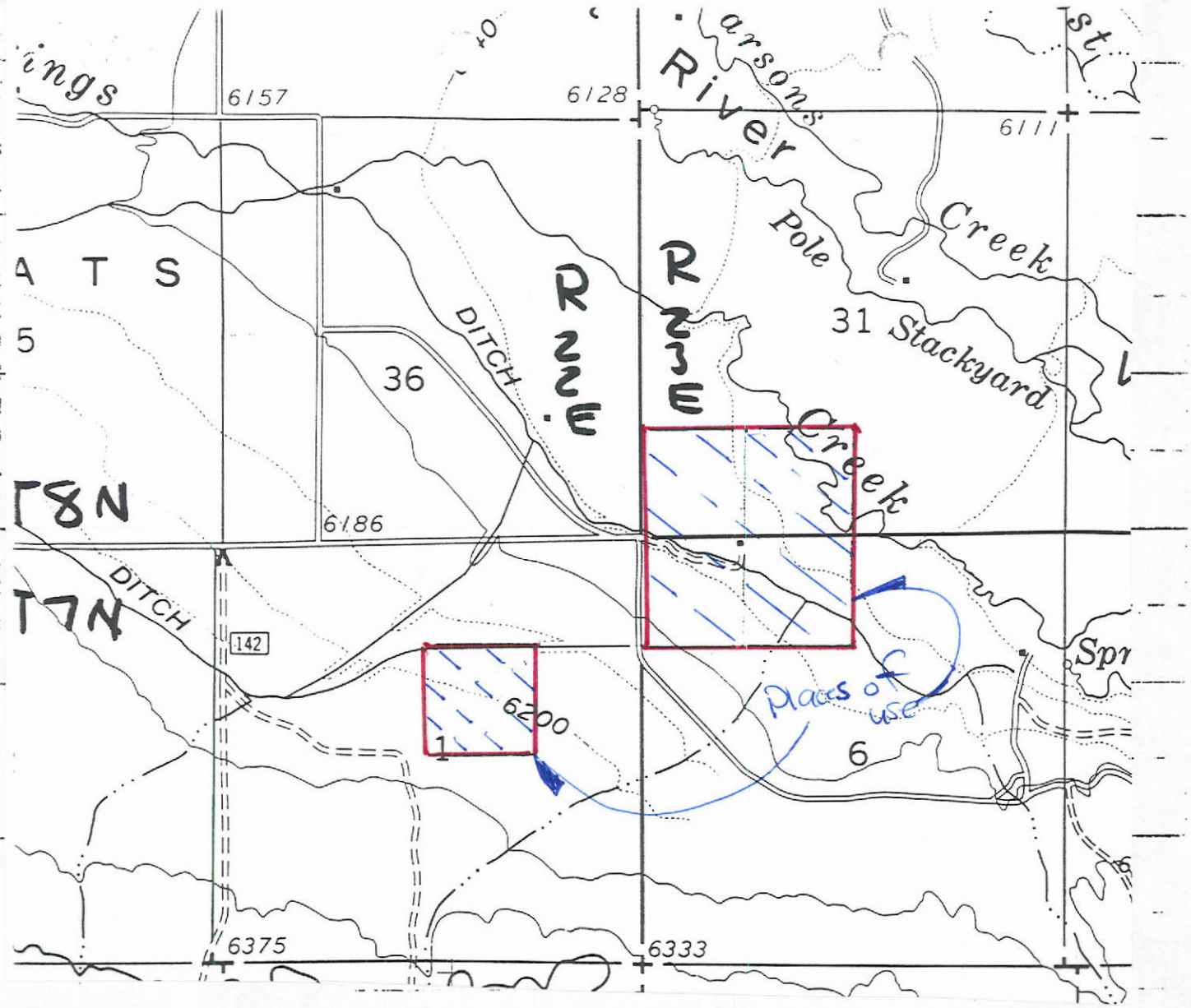
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

See Attachment B



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JUL 13 2000

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

ATTACHMENT A

Form 1866.9
(January 1988)

209387

Custer County Rec. of
Curtis Cowan, Title

3:41 P.M.
8-22 1995
Wanda Murphy
Deputy

The United States of America

To all to whom these presents shall come, Greeting:

IDI-31137

WHEREAS

L & S Partnership, an Idaho Partnership

is entitled to a land patent pursuant to Section 206, Act of October 21, 1976, as amended (43 U.S.C. 1716) for the following described land:

Boise Meridian, Idaho

T.7 N., R. 22 E.,
sec. 1: S½NE¼.

T.7 N., R. 23 E.,
sec. 6, lot 8.

Containing 121.71 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto L & S Partnership, the land described above; **TO HAVE AND TO HOLD** the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto L & S Partnership, and its successors and assigns, forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

SUBJECT TO:

1. Those rights for a buried telephone line granted to Mountain States T & T, its successors or assigns, by right-of-way No. IDI 21021, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE¼NE¼ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T. 7 N., R. 23 E.

2. Those rights for an electric line granted to Lost River Electric Cooperative, its successors or assigns, by right-of-way No. IDI 20934, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE¼NE¼ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T.7 N., R. 23 E.

3. Those rights held by Lost River Highway District, its successors or assigns, for an existing road exercised under RS 2477 and noted under Serial No. IDI 23188.

4. The patentee agrees that it takes the real estate subject to the existing grazing use of Lost River Ranch, holder of grazing authorization No. 114360. The rights of Lost River Ranch to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114360 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Lost River Ranch in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

Patent No. 13-95-0034

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JUL 13 2000

7N, 22E, 01

2 40.16	1 40.19	4 40.14	3 Custer Springs LLC ~~Hills~~ 49 ~~NWD Road~~ 49.04 0.09 T40424 149689 29-162/82 35-70 Custer Springs	2 3954 L+S Partnership 209387	1 39.83
2					

39	2 40.43	1 40.44	4 40.40	3 40.34	2 40.47	1 40.46
	11			12		

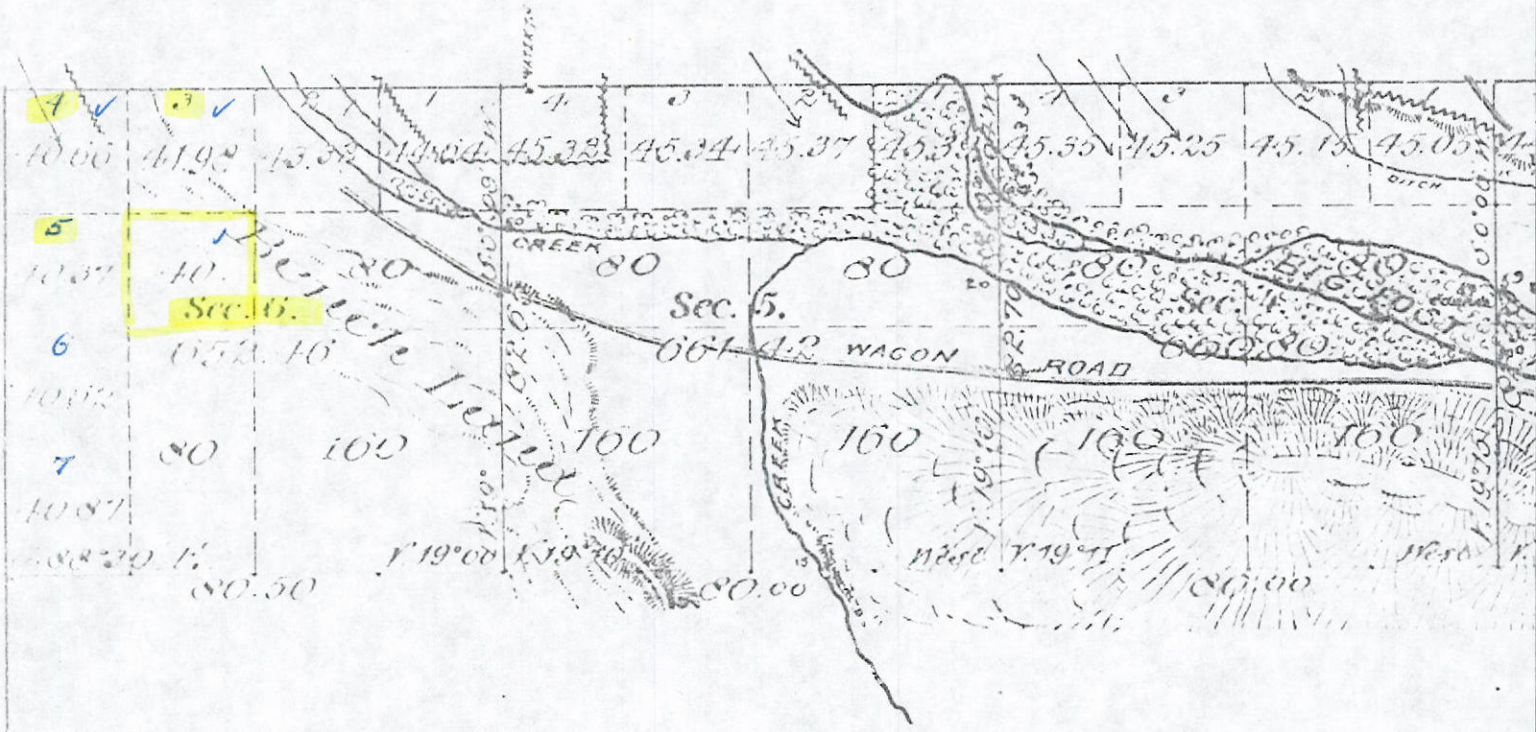
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JUL 13 2000

7N, 23E, 06

Gov't Lots per plat map.

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JUL 13 2000

Township No. 7 North Range No. 23 East



Sec. 7. Sec. 8. Sec. 9.

T07N R23E

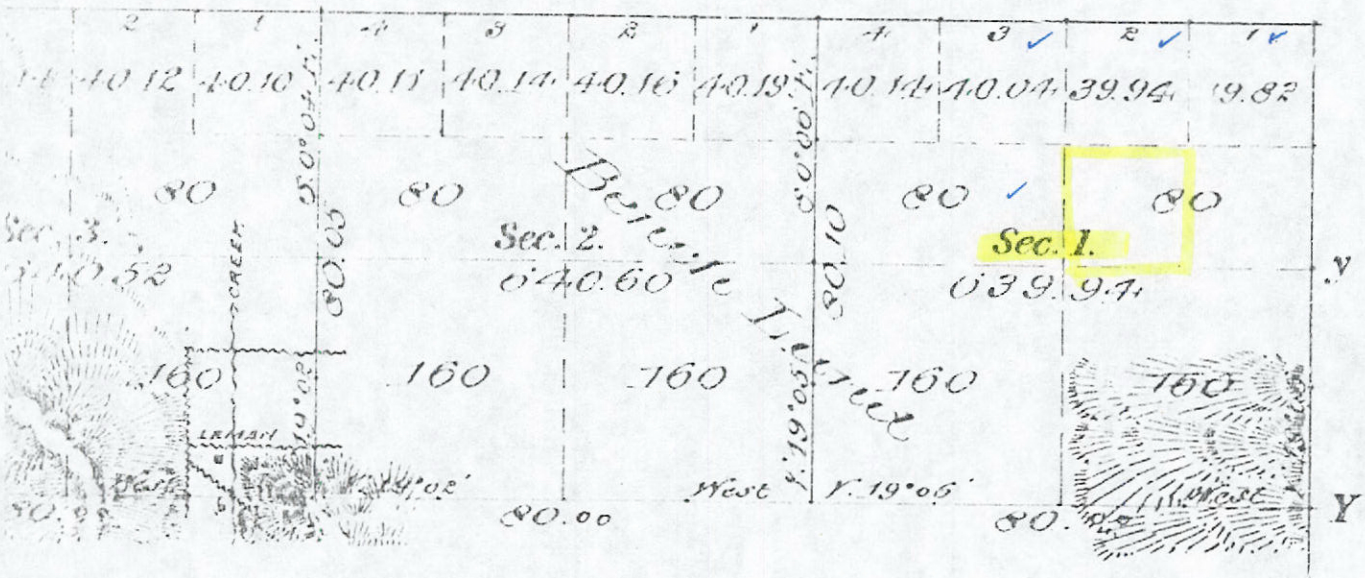
Sec. 18. Sec. 17. Sec. 16.

Lemon

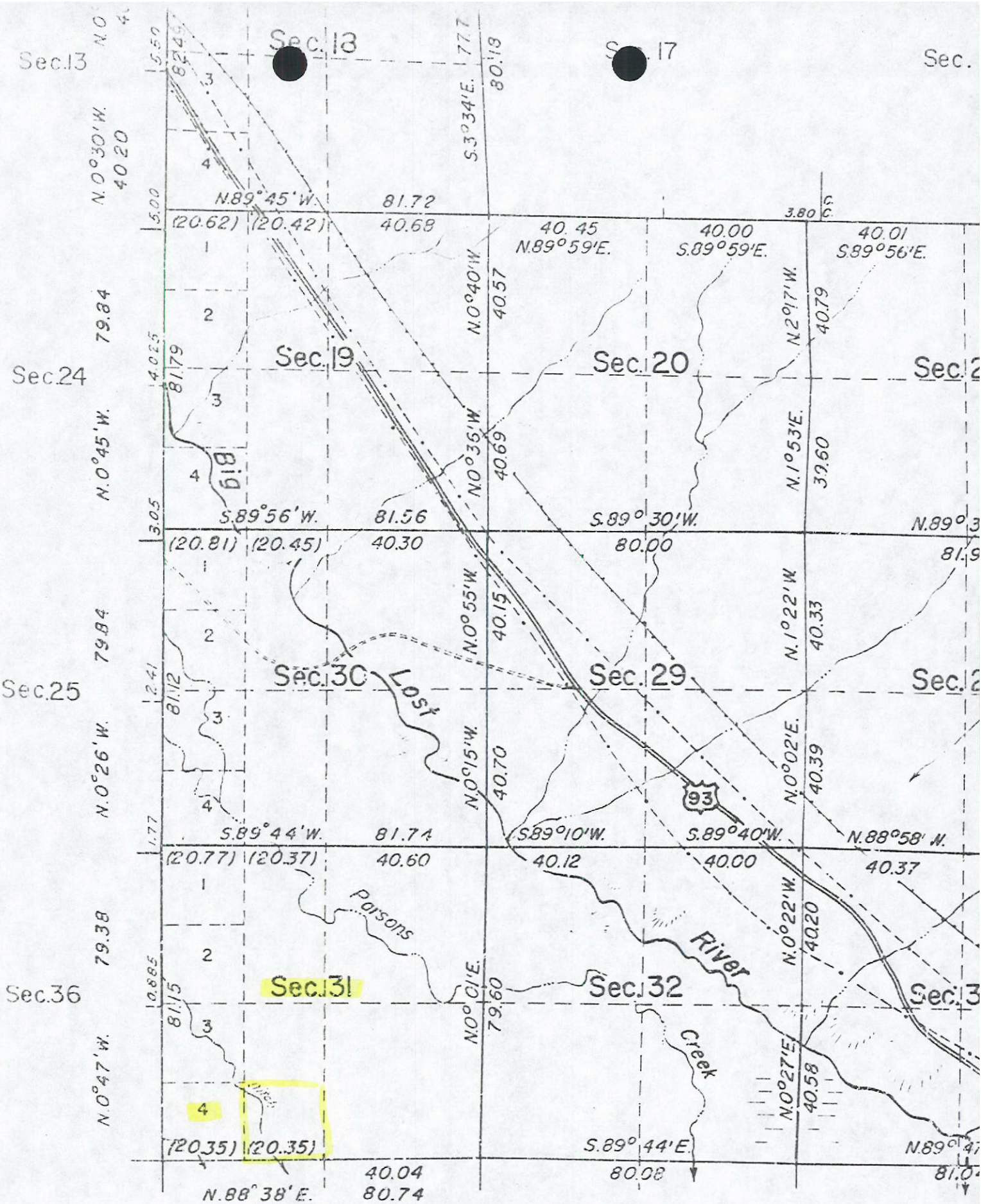
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JUL 13 2000

T5456

The Boise Meridian

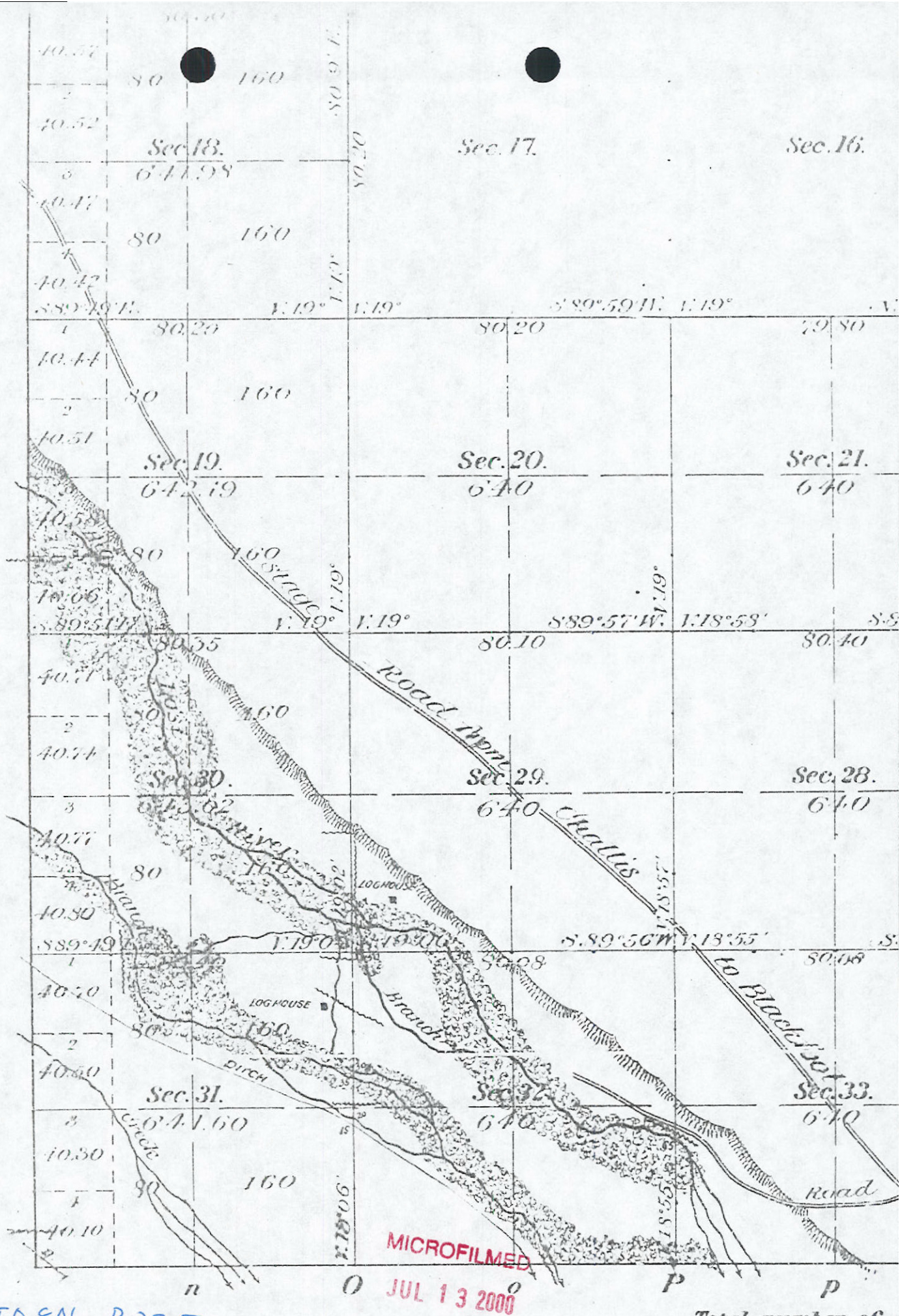


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JUL 13 2000

T08N R23E



T08N R23E

Total number of

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 34-07591 AND APPLICATION FOR TRANSFER NO. 5400 (L&S PARTNERS), APPLICATION FOR TRANSFER NO. 5456 (ASLETT RANCHES) AND APPLICATIONS FOR TRANSFER NOS. 5001 AND 5004 (DAVID AND MARY STOECKLEIN)	)	**PRELIMINARY ORDER**

On October 12, 1999, the Idaho Department of Water Resources (Department) received a document entitled Stipulation, Settlement, and Joint Motion for Order ("Stipulation") in the above referenced matter. A conference call between representatives of the parties and the department was held on November 15, 1999. Based upon the Stipulation and the understandings reached in the conference call, the Department enters the following Preliminary Order:

1. The protests of Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5400 in the name of L&S Partners, are hereby deemed withdrawn with prejudice.

2. The protests of Mark T. Gates, Trustee; Blake Quinn; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5456 (formerly application for Transfer No. 4906) in the name of Aslett Ranches, are hereby deemed withdrawn with prejudice.

3. Application for Permit No. 34-07591, in the name of L&S Partners, is hereby deemed withdrawn with prejudice.

4. The protests of Aslett Ranches to Applications for Transfer Nos. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

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JUL 13 2000

6. Doug Rosenkrance, when providing the services described in the Stipulation, is acting in a personal capacity and not as the Water District No. 34 Watermaster. The selection of Doug Rosenkrance is a mutual decision of the parties. The parties agree that the services performed are separate from the normal duties and responsibilities of the watermaster. Additionally, all costs associated with the study provided for in the Stipulation, including compensation to Mr. Rosenkrance, shall be borne by the parties to the Stipulation and shall be kept separate from the Water District No. 34 budget.

7. The parties consent to IDWR proceeding with administrative processing of water rights transfers and permits before completion of the study provided that any approvals include the following condition:

> Condition No. __ This approval is specifically conditioned upon the terms and limitations contained in the Stipulation, Settlement, and Joint Motion for Order filed with the Department on October 12, 1999, In the Matter of Application for Permit No. 34-07591, In the Name of L&S Partners, numerous other captioned matters, and the Preliminary Order of the Department issued on November 18, 1999. This approval is subject to any future modifications resulting from or required by the terms of that Stipulation, the Preliminary Order of the Department, and the actions taken pursuant thereto.

8. Issuance of this Preliminary Order does not commit IDWR to approval of the applications now pending. IDWR will evaluate each application in accordance with applicable law and act accordingly.

9. The Stipulation and this Preliminary Order do not prevent including procedures in the plan of study needed to determine canal losses based upon conditions as they existed prior to the changes that will occur if the pending applications are approved.

10. Nothing in the Stipulation or this Preliminary Order prevents the Department from fulfilling its statutory duties and obligations in the administration and regulation of water rights.

Dated this 18TH day of November, 1999.

Norman C. Young
Administrator

MICROFILMED
JUL 13 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 4906 IN THE)
NAME OF ASLETT RANCHES)
)

ORDER DENYING MOTION TO DENY WITHDRAWAL OF APPLICATION

On September 16, 1997 the department scheduled a hearing in the above captioned protested matter. Prior to the start of the hearing, the applicant represented by Scott L. Campbell verbally withdrew the application for transfer and followed up the withdrawal in writing the same day. The applicant served a copy of the written notice upon all parties to the proceeding.

On September 16, 1997, protestant Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co. (protestants) represented by James P. Speck filed with the department a motion to deny withdrawal of the application.

IDAPA Rule 37.01.01305 (Rule of Procedure 305) provides in pertinent part as follows:

> A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing.

The presiding officer did not order that the application could not be withdrawn within fourteen (14) days of the notice of withdrawal of the application.

ORDER

IT IS THEREFORE, hereby ORDERED that the Motion to Deny Withdrawal of Application filed by the protestants is **DENIED.**

Signed this 10th day of October, 1997.

L. GLEN SAXTON
Presiding Officer

MICROFILMED

OCT 2 2 1997

TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Lehman, Rudolph	3.2		34-0469
662	Leavitt, George R.	3.2	0	34-0469A

TRANSFERRED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Water Right No. 662

THIS IS TO CERTIFY THAT GEORGE R. LEAVITT, of Mackay, Idaho, is the owner of and using a certain right, bearing dates of priority as follows: 3.2 cubic feet per second of the waters of Warm Springs Creek, priority November 1, 1892, and 0.8 cubic foot per second of the waters of Warm Springs Creek, priority July 12, 1907, County of Custer, State of Idaho, decreed to RUDOLPH LEHMAN, by decree of Judge E. S. Farrington, of the United States District Court in and for the District of Idaho, Eastern Division, bearing date of March 13, 1923, in the case of

UTAH CONSTRUCTION COMPANY, A CORPORATION,

Plaintiff,

Vs.

JOHN F. ABBOTT, ET AL.,

Defendants,

being appurtenant to the following described lands, to-wit:

Lots 3 & 4, Section 6, Township
7 North, Range 23 East, B.M.

Lot 4, E½ SW¼, and NW¼ SW¼ Section 31,
Township 8 North, Range 23 East, B. M.

NE¼ SE¼ Section 36, Township 8 North,
Range 22 East, B. M.

That the said decree has been entered in the records of the Department of Reclamation of the State of Idaho, in Volume 5 of Decrees, at Page 104.

That the said George R. Leavitt has become the owner thereof by purchase.

That now, upon the application of George R. Leavitt, of Mackay, Idaho, for a Certificate of Transfer of Water Right, made before the State Reclamation Engineer of the State of Idaho, and the said application having been granted, the right to the use of 3.2 cubic feet per second, with priority of November 1, 1892, and 0.8 cubic foot per second, with priority of July 12, 1907, of the waters of Warm Springs Creek upon the lands above described is hereby abandoned, and the lands to be irrigated under such right and to which the water right HEREBY CONFIRMED shall be made appurtenant, by this certificate, for irrigation and domestic purposes, is described as follows, to-wit:

Lots 3 & 4, Section 6, Township
7 North, Range 23 East, B.M.

E½ SW¼ and SW¼ SW¼ (Lot 4), Section 31,
Township 8 North, Range 23 East, B.M.

Said water to be limited at any time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amounts, to-wit:

3.2 cubic feet per second of the waters of Warm Springs Creek, with priority of November 1, 1892

0.8 cubic foot per second of the waters of Warm Springs Creek, with priority of July 12, 1907

That the water right hereby transferred has been conducted to the first above described lands through a private ditch, with point of diversion in the Southeast Quarter (SE¼) of Section 34, Township 8 North, Range 22 East, B.M.

That the water right hereby transferred will hereafter be conducted to the last above described lands through the same ditch, and with the same point of diversion,

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Reclamation of the State of Idaho, at Boise, Idaho, this 18th day of April, A. D. 1944.

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

COPY

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)
)
GEORGE R. LEAVITT,)
Mackay, Idaho) ORDER GRANTING TRANSFER
)
For a Transfer of Water Right, in Water) No. 662
District No. 27, County of Custer)

WHEREAS, On the 18th day of April, 1944, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of GEORGE R. LEAVITT, of Mackay, Idaho, for a Transfer if Water Right, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the transfer is made for the purpose of apportioning the water right in accordance with the present ownership, and that no one will be injured thereby:

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 18th day of April, A. D. 1944.

MARK R. KULP
State Reclamation Engineer
By

Roy A. Thompson
Supervisor of Water Distribution

CONFIDENTIAL

IN EQUITY NO. 222

DECREE

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE DISTRICT OF IDAHO, EASTERN DIVISION

THE UTAH CONSTRUCTION COMPANY, a corporation, Plaintiff,

vs.

John F. Abbott, William Adams, A. P. Adair, Esther L. Adair (successor in interest of A. P. Adair, Eugene A. Ahern, Andreas Aikele (or A. Aiken), Calvin S. Allen, Frank A. Allen, Gladys Allen, L. C. Allen, Richard Roe Alson, George L. Ambrose, Charles B. Anderson, Francis G. Anderson (or Francis C. Anderson, F. Gus Anderson (or F. G. Anderson or Gus Anderson,) H. W. Anderson, Hyrum Anderson, James E. Anderson, Jas. Earl Anderson, J. L. Anderson, James P. Anderson, Josephine Anderson, J. Wesley Anderson, Jos. W. Anderson (or J. W. Anderson), N. A. Anderson, Niels R. Anderson, Peter C. Anderson (or P. C. Anderson), S. W. Anderson, W. W. Anderson, Louis Andreason (or Lewis Andreson), H. W. Angelo (or Wallace Angelo), Frank Anthony, Marie L. Anthony, Arco Townsite Company, an unincorporated Association; Eleazer Asay, Ernest W. Asay, Emma M. Ashton, Margaretta S. Askew, Anna Atha (or Annie Atha), Ivan J. Atwood, J. H. Augustine.

Mrs. Hannah Babcock (or Mrs. Albern Babcock, A. Rowley Babcock (or R. Babcock), William Babcock (now deceased), Jaacob F. Baird, Bank of Nyssa, an Oregon Banking corporation; John L. Bardsley, Josie Bardsley, Jerome K. Bartlett (or J. K. Bartlett), A. H. Bascom, E. W. Bascom, Pete Basick, Harlow Bassett (Or H. Bassett), Clara M. Bate, J. M. Bate (or Joseph M. Bate), Ralph Bate, E. J. Bates, Leslie Bates, Erin Beal (or Aron Beal)or C. Beal, Eldon E. Beck; J. W. Beck and John Doe (Or John Pingree) and Richard Roe (or F. S. Lack,) as statutory trustees of Beck Land/Livestock Company, a defunct Idaho Corporation; William Beck, Beck Land and Livestock Company, an Idaho corporation; A. W. Bell, Lee Bell, John C. Bell, J. L. Bell, George Bennett (or George Bennetts), James Bennetts, F. S. Bernard, John Bernard (successor in part to New World Life Insurance Company); Gus Bertsch, Agnes T. Best (or Agnes Best), Harold C. Best (or Harold Best), Alexander Beverland, Francis Beverland (successor in interest of James Beverland), George Beverland, Effie Beverland (or Mrs. George Beverland), James Beverland, as executor of the estate of Charles Beverland, deceased; James Beverland, Joana Beverland, Henry Bews (or Harry Bews), Peter Bidegain, Lota C. Billings, Elizabeth Bills, John L. Bills, Norman Bills, Ole Bills, Albert F. Bischoff (or A. F. Bischoff), Lewis A. Bitton (or John Doe Britton), Zina Bitton (or Zina Britton), B. Bjornson (or B. Bjornsen), Blackfoot City National Bank, an Idaho Banking corporation (successor in interest to Heber G. Johnson); Charles H. Black, Mary E. Black, Nils S. Bladh (successor in interest of Ole Bills), John L. Blosser (or John L. Blasser), Henry Blattner, Lulu E. Bliss, Phillip R. Bliss, Arthur L. Bodine, John J. Bodine, Oscar Bodine, William T. Bodine, Joseph A. Boillin, Rhoda Boling, Rachael Boone, Wm. A. Boone, David S. Boyack (or D. Boycock or David D. Boycock, Jr.), Sylvanus Boyack (or S. Boycock), Mary E. Boyd, Robert G. Boyd (successor in interest of Charles H. Rampton), I. W. Boyer, Elizabeth Bradshaw (now deceased), George Bradshaw, John Bradshaw, Pearl Bradshaw, William Bradshaw, William Bradshaw, as administrator of the estate of Elizabeth Bradshaw, deceased (substituted for Elizabeth Bradshaw deceased); Francis Braithwaite, R. F. Braithwaite (or Robert Braithwaite), William F. Braithwaite, H. C. Brake, William H. Brashear, H. T. Brengman, Charles Brown, Edna Brown, Edna E. Brown, as executrix of the estate of Martin W. Brown, deceased (substituted for

Ovid Lawson

1904-May 1 34 0464 1.0 c.f.s.

1914-May 1 34 0465 1.4 c.f.s.

To be diverted from Big Lost River through the Lawson Ditch having its point of diversion in the Northwest quarter of the Southwest quarter of Section 34, Township 7 North, Range 24 East, B. M., for the irrigation of the following described land, to-wit:

Northwest quarter of the Southwest quarter, Southwest quarter of the Southwest quarter, Southwest quarter of the Northwest quarter and Southeast quarter of the Northwest quarter of Section 34, Township 7 North, Range 24 East, B. M.

See 409(c)

No. 291

Joseph P. Leaden and
Revella Leaden

1899-June 1 34 0466 0.021 c.f.s.

To be diverted from Big Lost River through the Harger-Sullivan ditch having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

Lot 5 and 6 of Block 26 of the town of Moore, Lot 2 of Block 6, Johnsten's addition to the townsite of Moore being a part of the Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section 28, Township 5 North, Range 26 East, B. M.

No. 292

Carl Lehman

1905-May 1 34 0467 2.4 c.f.s.

1912-March 18 34 0468 0.8 c.f.s.

To be diverted from Warm Springs Creek through private ditches having their points of diversion in the Southeast quarter of Section 34, Township 8 North, Range 22 East, B. M., for the irrigation of the following described land, to-wit:

Lots 1, 2 and 3 and the Southeast quarter of the Northwest quarter of Section 1, Township 7 North, Range 22 East, B. M.

No. 293

Rudolph Lehman

1892-November 34 0469 3.2 c.f.s.

1903-April 1 34 0470 1.6 c.f.s.

1907-July 12 34 0471 0.8 c.f.s.

Trans. 661 - 4-1-03 - 1.6 cfs
" 662 - 11-1-92 - 3.2 cfs
" " - 7-12-07 - 0.8 cfs

To be diverted from Warm Springs Creek through a private ditch having its point of diversion in the Southeast quarter of Section 34, Township 8 North, Range 22 East, B. M., for the irrigation of the following described land, to-wit:

Lots 3 and 4 of Section 6, Township 7 North, Range 23 East, B. M., Lot 4, East half of the Southwest quarter and Northwest quarter of the Southwest quarter of Section 31, Township 8 North, Range 23 East, B. M., and the Northeast quarter of the Southeast quarter of Section 36, Township 8 North, Range 22 East, B. M.

No. 294

John E. Lehman

1880-June 1 34 0472 4.0 c.f.s.

To be diverted from Lehman Creek through a private ditch having its point of diversion on the land constituting the place of use of said water, for the irrigation of the following described land to-wit:

The East half of the Southwest quarter and the Southwest quarter of the Southwest quarter of Section 2, and the South half of the Southeast quarter of Section 3, all in Township 7 North, Range 22 East, B. M.

No. 295

Superceeded See Utah Const Co 34-B
vs. Abbott decree file 34B ?

S T A T E O F I D A H O

---OFFICE OF STATE ENGINEER.---

CERTIFICATE NO.30, AUTHORIZING TRANSFER OF POINT OF DIVERSION.

Permission is hereby granted FERDINAND ROSENKRANCE of Mackay, County of Custer and State of Idaho, to change the point of diversion of one hundred and thirty (130) inches of the waters of Warm Spring Creek, County of Custer, for the irrigation of East half of Southwest quarter(E2 SW4) Southwest quarter of Southwest quarter (SW4 SW4) Section one (1), Township eight (8) North, Range twenty-three (23) East of Boise Meridian; Northeast quarter of Northwest (NE4 NW4) Section six (6), Township 7 North, Range 23 East of Boise Meridian, from the place now located at northwest corner of Southwest quarter of Northeast quarter (SW4 NE4) Section 35, Township 8 North, Range 22 East of Boise Meridian, to a point a little higher up so as to take in all the aforementioned land.

The water right appurtenant to the above described land was adjudged to Ferdinand Rosenkrance by decree dated January 2nd,1903, of Kirtland I. Perky, Judge of the District Court of the Fourth Judicial District of Idaho, in and for the county of Custer, in the matter of S. T. Moe, et al, plaintiffs, vs. Henry Harger, et al. defendants, in the following words:

> "WHEREUPON it is ordered, adjudged and decreed as follows: That each and every of the tracts of land described in the complaint, answers and cross complaints in this action as belonging to the said several parties plaintiff and defendant herein are arid in character and will not successfully raise an agricultural crop without the use of water thereon.
>
> **********
>
> The following named persons are entitled to the use of the waters of LOST RIVER and its tributaries upon the lands mentioned and described in the complaint and cross complaints and answers herein in the following amounts and from the following dates, to-wit:
>
> Ferdinand Rosenkrance, 130 inches, from November 1st,1892."

****

WITNESS My hand and the seal of my office at Boise, Idaho, this fifteenth day of April , 1908.

Jas. Stephenson, Jr.

(SEAL) State Engineer.

Recorded April 15, 1908.

34-BZ-1

IN THE DISTRICT COURT

OF THE FOURTH JUDICIAL DISTRICT OF IDAHO, IN AND FOR CUSTER COUNTY.

S.T.MOE et al.,
Vs.
HENRY HARGER et al.,

In the above entitled cause, the default of the non-answering defendants having been duly entered, and said cause having been regularly tried and submitted to the Court for its decision, and the Court having considered the evidence and being fully advised in the premises, makes and files its findings of fact, and directs judgment to be entered in accordance therewith:--

Whereupon it is ordered, adjudged and decreed as follows:--

1. That each and every of the tracts of land described in the complaint, answers and cross-complaints in this action as belonging to the said several parties plaintiff and defendant herein are arid in character and will not successfully raise any agricultural crop without the use of water thereon.

2. That the quantity of water required for the successful irrigation and cultivation of said land is one inch per acre measured under a four inch pressure, or its equivalent in cubic feet per second of time, to be measured at the point or place of diversion.

3. That each of the parties plaintiff and defendant hereinafter named at the times of the several appropriations of water made as hereinafter set forth, the owners respectively of the several tracts of land set forth and desfribed in the complaints, answers and cross-complaints, and that for the irrigation of the same the said parties or their predecessors in interest did respectively appropriate the quantities of water hereinafter stated and on the dates respectively as hereinafter stated and not opposite the names of each of said parties, such water being estimated and measured under a four inch pressure or its equivalent in cubic feet per second of time; and ever since said date of the said sever-

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This transfer was superseded by 34-0469. (See Utah Construction Company vs. Abbott decree dated October 21, 1925.)

John Davidson, Lost River,	160	inches	from June	1st,1882.
John Davidson,	80	"	" June	1st,1884.
John Davidson,	80	"	" June	1st,1887.
Benjamin Swenson,	150	"	" May	31st,1891.
David McCulloch,	100	"	" May	15th,1897.
S.C.Neilson,	160	"	" June	1st,1899.
Ferdinand Rosenkranz,	130	"	" Nov.	1st,1892.
Stephen Navarre,	160	"	" Aug.	1st,1890.
Minnie Gill Howell,	160	"	" June	30th,1897.
Minnie Nowacki,	160	"	" May	1st,1893.
Geo.Nowacki,	80	"	" June	1st,1885.
Geo.Nowacki, Warm Spring Creek,	173	"	" June	1st,1893.
Thomas L.Pence,Lost River,	160	"	" June	1st,1888.
Thomas L.Pence,	175	"	" June	30th,1881.
Jas.M.Pence,	160	"	" Apr.	7th,1886.
John Gardner,	160	"	" Mar.	10th,1894.
Geo.M.McGowan,	160	"	" June	1st,1887.
Geo.M.McGowan,	160	"	" Sept.	14th,1886.
Geo.M.McGowan,	480	"	" June	1st,1889.
Jas.D.Martin,	80	"	" June	1st,1895.
Jas.McCrumb,	100	"	" Mar.	23rd,1900.
J.V.Carlson,	130	"	" June	1st,1898.
Peter Bursted	160	"	" June	1st,1896.
R.J.Walworth and Emma Walworth,	320	"	" June	10th,1895.
Heber M.Pearson,	120	"	" June	1st,1899.
Chas.O.Beery,	160	"	" June	10th,1895.
Archie Beverland,	80	"	" Mar.	1st,1901.
Geo.B.Watts,	145	"	" June	1st,1900.
Erick Burstedt,	160	"	" June	1st,1894.
Peter Jensen,	80	"	" June	1st,1896.
J.C.Murray,	160	"	" June	1st,1896.
J.H.Beery,	160	"	" June	30th,1891.
W.H.Murray,	160	"	" Jan.	1st,1899.

UNIVERSITY MICROFILMS

Boise, April 18, 1908.

Re transfer of pt.diversion.

Ferdinand Rosenkrance,
Mackay, Idaho.

Sir:

I enclose you herewith certificate of transfer of water right issued in your favor.

Very truly yours,

State Engineer.

B/C30

By.....

Authority Transfer of Part of Diversion

Permission is hereby given Ferdinand Rosenkranz of Mackay, County of Custer and State of Idaho to change the point of diversion of 130 inches of the waters of Warm Spring Creek, County of Custer, State of Idaho for the irrigation of E½ SW¼, SW¼ SW¼ Sec 1 Tp 8 N R 23 E B M W½ NW¼ Sec 6 Tp 7 N R 23 E B M from the place now located at NW cor of SW¼ NE¼ Sec 35 T 8 N R 22 E B M to a point a little higher up so as to take in all the aforementioned land

The water right appurtenant to the above described land was adjudged to Ferdinand Rosenkranz by decree dated January 2nd 1903 of Kirtland J Perky Judge of the District court of the Fourth Judicial District in and for the County of Custer in the matter of S T Moe et al Plaintiffs vs Henry Barger et al Defendants in the following words

State of Idaho)
)ss
County of Custer)

I,Geo.E.Keyes,an abstracter,duly bonded,qualified and acting under the laws of the State of Idaho,within the county of Custer,do hereby c ertify that in a certain action wherein S.T.Moe and others were plaintiffs and Henry Harger and others were defendants,which action determined the right to the use of the waters of LOST RIVER and its tributaries,a decree was made and entered of record in the JUdgment Book of said Court at pages 410 to 421 inclusive,which decree recites ,among other things,the following:-

// WHEREUPON it is ordered,adjudged and decreed as follows:That each and every of the tracts of land described in the complaint,answers and cross complaints in this action as belonging to the said several p arties plaintiff and defendant herein are arid in character and will not successfully raise an agricultural crop without the use of water thereon.

THAT each of the parties plaintiff and defendant were at the times of the several appropriations of water made as hereinafter set forth,the owners respectively of the several t racts of of land set forth and described in the complaints,answers and crosss-complaints.

The following named persons are entitled to the use of the waters of LOST RIVER and its tributaries upon the lands mentioned and described in the complaint,and cross-complaints and answers herein in the following amounts and from the following dates,to-wit;-

Ferdinand Rosenkranz,130 inches,from November 1st,1892.

(signed) Kirtland I.Perky,
District Judge. """"

And I do further certify that since the date of said decree awarding to said Ferdinand Rosenkranz the said 130 inches of water,there has been no instrument placed of record which in any way affects the title to said water.

IN WITNESS WHEREOF,I have hereunto set my hand this 10 day of August,1907

Geo E Keyes
Abstracter

UNCONFIRMED

Ferdinand Rosenkrance — 3/3 00

Affidavit of Publication:—The Mackay Miner.

STATE OF IDAHO,)
COUNTY OF CUSTER) ss.

I, Leslie E. Dillingham do solemnly swear that I am one of the publishers of the Mackay Miner, a weekly newspaper of general circulation, published once each week at Mackay, Custer County, State of Idaho, that the notice attached hereto, and which is a part of this affidavit, and a part of the proof of publication, was published in the said newspaper for five consecutive weeks, first publication having been made on the 6th day of Sept. 190 7, that said notice was published in the regular and entire issue of every number of the said paper during the said period and time of publication, and that the said notice was published in the said newspaper and not in a supplement, and that said Mackay Miner has been published for over one year and is of legal age.

Leslie E. Dillingham

Subscribed and Sworn to before me this 3rd day of October 190 7

E. T. Emmons

Notice of Proposed Transfer of Water Right

Notice is hereby given that Ferdinand Rosenkrance of Mackay, Idaho, has applied to the State Engineer of the State of Idaho for a certificate authorizing him to transfer the use of 130 inches of the water of Warm Spring Creek from the land on which it is now used, i. e. E½ SW1-4, SW1-4 of SW1-4. Sec. 1, Tp 8 N, R 23 EBM and NE1-4 of NW1-4 Sec 6, Tp 7 N, R 23 EBM. to the following described tract: Same tract, only change is point of diversion.

And that, on the 5th day of October, A. D. 1907, at the office of Chase A. Clark, at Mackay, Idaho, at 10 a. m. before the Water Commissioner of this Division, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

Full details of the proposed transfer may be obtained from Fred L. Willis, Moore, Idaho, Watermaster of said stream. S 6-13 20-27-4 34 oup

OFFICE OF
W. VAN IORNS
WATER COMMISSIONER
DIVISION NO. 2.

STATE BOARD OF IRRIGATION.
JAMES STEPHENSON, Jr., State Engineer, President.
E. J. TURNER, Commissioner Division No. 1.
W. VAN IORNS, Commissioner Division No. 2.
J. H. LOWELL, Secretary. Commissioner Division No. 3.

HAGERMAN, IDAHO Jan. 12th. 1908. 190

Jas. Stephenson, Jr.,

State Engineer,

Boise, Idaho.

Dear Sir:-

I herewith enclose you P.O. Order for two dollars for the transfers of Alice L. Melton and Ferdinand Rosencrance/to gether with their papers also the papers which I recieved from you some time ago and the attached letter of Pikes will explain it so that I I guess there wase a mistake in sending it to me.

Yours very truly,

W. Van Iorns

Water Commissioner 2nd Div.

P.S. Those fellows on Goose Creek in Cassia county talk of electing their water master and the stream is over 50 miles long and taht man Tanner is a good one should I appoint him or let them settle it if they wish, I would prefer Tanner.

No.....

APPLICATION FOR TRANSFER OF WATER RIGHT.

From .....

.....

.....

To .....

.....

.....

Stream .....

County .....

.....*Applicant.*

Received .....

Approved .....

Certificate No..... *issued*.....

.....*and recorded in*

Book.....*of Transfers, at page*.....

State of Idaho, }
County of ..... } ss.

I, _____, Watermaster of _____,
County of _____, State of Idaho, whose postoffice address is _____
_____, have read or heard read the foregoing affidavit and petition of
_____, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Engineer issue the certificate of transfer as petitioned; or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons: _____
_____
_____
_____

_____
Watermaster.

_____
_____

Notice having been duly published for thirty days of the intention of the above named _____
_____ to apply to the State Engineer of the State of Idaho for a certificate authorizing the transfer of water as set forth in his affidavit and petition herein, and an opportunity having been given to any and all persons opposing said transfer to present their objections in a public hearing before me at _____, on _____, according to the terms of said notice;

And it not appearing at said hearing that any one would be materially injured by such transfer:

I hereby recommend that the said State Engineer of the State of Idaho issue his certificate to said applicant, authorizing the transfer as prayed for in his petition; or (and it appearing at said hearing that the following injuries would be sustained by others if such transfer is permitted _____
_____
_____
_____
_____

I hereby recommend that the State Engineer do not issue the certificate authorizing the transfer sought hereinabove.

_____
Commissioner of Water Division No. _____

By _____

No.....

APPLICATION FOR TRANSFER OF WATER RIGHT.

From .....

.....

.....

To .....

.....

.....

Stream .....

County .....

.....*Applicant.*

Received.....

Approved .....

Certificate No...... *issued*.....

.....*and recorded in*

Book.....*of Transfers, at page*.....

State of Idaho,
County of Custer } ss.

I, Fred L. Willis, Watermaster of Big Lost River, County of Custer, State of Idaho, whose postoffice address is Moore Idaho, have read or heard read the foregoing affidavit and petition of Ferdinand Rountrauce, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Engineer issue the certificate of transfer as petitioned; or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons: That he may irrigate more of his land. I approve the transfer.

Fred L. Willis
Watermaster.

Hagerman Idaho
Jan 17th 1908

Notice having been duly published for thirty days of the intention of the above named Ferdinand Rountrauce to apply to the State Engineer of the State of Idaho for a certificate authorizing the transfer of water as set forth in his affidavit and petition herein, and an opportunity having been given to any and all persons opposing said transfer to present their objections in a public hearing before me at Hagerman Ida., on Feb 5th, 1907, according to the terms of said notice;

And it not appearing at said hearing that any one would be materially injured by such transfer:

I hereby recommend that the said State Engineer of the State of Idaho issue his certificate to said applicant, authorizing the transfer as prayed for in his petition; ~~or (and it appearing at said hearing that the following injuries would be sustained by others if such transfer is permitted~~

No objections at all.

I hereby recommend that the State Engineer do ~~not~~ issue the certificate authorizing the transfer sought hereinabove.

W. Van Sons
Commissioner of Water Division No. 2

By _____

That he intends to divert and convey said 130 inches of water to the tract of land last above described in the following manner, to wit: through ditch heading from Warm Springs Creek at the N W corner of the SW ¼ of the NW ¼ of Sec. 35, T. 8 N, Range 22 E, B. M.

as set forth upon the map hereto attached; and

That no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the State Engineer of the State of Idaho issue to him the proper certificate authorizing such transfer, and give proper notice of the same to the Water Commissioner of this Division, in accordance with the provisions of Section 11, House Bill No. 146, of the Laws of the Seventh Session of the Legislature of the State of Idaho.

his X mark
Ferdinand Rossbrauer

Witness his mark
Chas A Clark.

Subscribed and sworn to before me this 15th day of July

A. D. 1907.

Chas A Clark
Notary Public

State of Idaho,
County of Custer } ss.

Geo L Morgan and C V Hanson

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at Bayhorse that he is a user of water from Big Lost River, County of Custer, State of Idaho; that he has read or heard read the foregoing affidavit and petition of Ferdinand Rossbrauer, and is familiar with its allegations, and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

Geo L Morgan

C V Hanson

Subscribed and sworn to before me this 15th day of July

A. D. 1907.

Chas A Clark
Notary Public

Form 201.

Application for Transfer of Water Right.

State of Idaho, } ss.
County of Custer

Ferdinand Rosenkrance, being first duly sworn, deposes and says:

That his name is Ferdinand Rosenkrance; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is Mackay, Idaho.

That he is the owner and using a certain water right of 130 inches of the waters of Warm Springs Creek, County of Custer, State of Idaho, decreed to Ferdinand Rosenkrance by decree of Judge Kirtland I. Perky, of the Fourth Judicial District of the State of Idaho, in and for the County of Custer, in the case of S. T. Moe et al vs. Henry Harger, said decree bearing date of January 2nd, 1903 (or obtained by virtue of License No. ____, issued by the State Engineer of the State of Idaho, dated ____), for the purpose of irrigating the following described lands situate, lying and being in the County of Custer and State of Idaho, to wit: E ½ of SW ¼ and SW ¼ of SW ¼, Sect. 1, T. 8 N, R. 23 E, B. M; and NE ¼ of NW ¼, Sect. 6, T. 7 N, R. 23 E, B. M.

and is the person (or the representative of the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i. e. by decree of said Court as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters are now diverted from said stream at NW corner of SW ¼ of NE ¼, SEC. 35, T. 8 N, R. 22 E, B. M. and conducted to the above described lands through a ditch as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of Said ditch and convey the water to ~~of said water upon~~ the above described land, ~~and to convey said water upon the following tract, situate, lying and being in the County of and State of Idaho, to wit:~~ through another ditch a littlet higher up so as to take in all his land.

That his reasons for desiring to make such transfer are as follows: That he can not water all his land and in the ditch changed as above it can be watered as the ditch to which it is asked to change water strikes his land at the highest place.

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T 8 N.

T 7 N.

Range 23 E B.M.

Range 22 E B.M.

MICROFILMED

SEC. 6

SEC. 5

SEC. 7

SEC. 8

SEC. 17

SEC. 18

SEC. 16

SEC. 15

SEC. 20

SEC. 21

SEC. 29

SEC. 28

SEC. 32

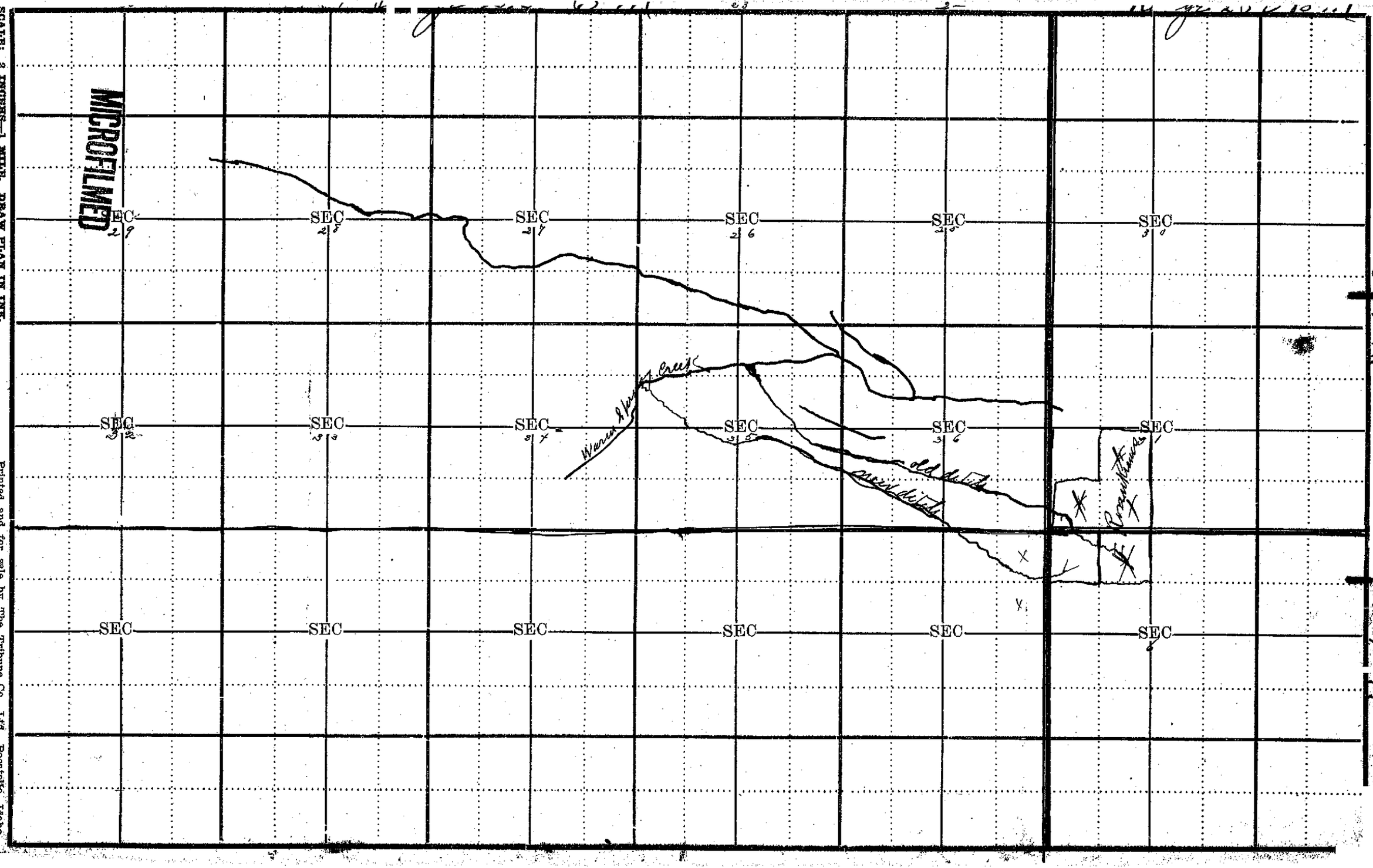
SEC. 33

Ranch House

Creek

Scale: 2 Inches—1 Mile. Draw Plan in Ink.

Printed and for sale by The Tribune Co., Ltd., Pocatello, Idaho.


MICROFILMED
SEC
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Warm Springs Creek
Old ditch
Power ditch
Power line
SCALE: 2 INCHES—1 MILE. DRAW PLAN IN INK.
Printed and for sale by The Tribune Co., Ltd., Pocatello, Idaho.

That he intends to divert and convey said 130 of water to the tract of land last above described in the following manner, to wit: thence ditch heading from warm spring Creek at the NW corner of SW¼ of NW¼ Sec. 35 T. 8 N. Range 22 E B M.

as set forth upon the map hereto attached; and

That no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the State Engineer of the State of Idaho issue to him the proper certificate authorizing such transfer, and give proper notice of the same to the Water Commissioner of this Division, in accordance with the provisions of Section 11, House Bill No. 146, of the Laws of the Seventh Session of the Legislature of the State of Idaho.

his x mark
Ferdinand Rosenkranz

Subscribed and sworn to before me this 15th day of July A. D. 1907

Chase A Clark
Notary Public

State of Idaho,
County of Custer } ss.

Geo L Morgan and C V Hamon

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at Mackay that he is a user of water from Big Lost River, County of Custer, State of Idaho; that he has read or heard read the foregoing affidavit and petition of Ferdinand Rosenkranz, and is familiar with its allegations, and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

Geo. L. Morgan
C V Hamon

Subscribed and sworn to before me this 15th day of July A. D. 1907

Chase A Clark
Notary Public

Form 201.

Application for Transfer of Water Right.

State of Idaho, } ss.
County of Custer }

Ferdinand Rosenkrance, being first duly sworn, deposes and says:

That his name is Ferdinand Rosenkrance; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is Mackay, Idaho

That he is the owner and using a certain water right of 60 inches of the waters of Warm Spring Creek

County of Custer, State of Idaho, decreed to Ferdinand Rosenkrance by decree of Judge Kirtland C. Perky, of the Four Judicial District of the State of Idaho, in and for the County of Custer, in the case of S. T. Noe et al. vs. Henry Harger, said decree bearing date of January 2nd 1903 (or obtained by virtue of License No. ____, issued by the State Engineer of the State of Idaho, dated ____), for the purpose of irrigating the following described lands situate, lying and being in the County of Custer and State of Idaho, to wit: E½ of SW¼ SW¼ of SW¼ Sec 1 T 8 N. R. 23 E. B M. & NE¼ of NW¼ Sec 6 T 7 N. R 23 E. B. M.

and is the person (or the representative of the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i. e. by decree of said Court

as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters are now diverted from said stream at N.W corner of SW¼ of NE¼ Sec 35 T 8 N R 22 E. B. M.

and conducted to the above described lands through a ditch

as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of said ditch and convey the water to of said water upon the above described land, ~~and to convey and use same upon the following tract, situate, lying and being in the County of ____ and State of Idaho, to wit:~~ through another ditch a little higher up so as to take in all his land

That his reasons for desiring to make such transfer are as follows: That he can not water all his land and with the ditch changed above it can all be watered as the ditch is which is asked to change water stroke his land at the highest place.

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 18, 1999

Mr. Scott L. Campbell
Elam & Burke
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise, ID 83701

James P. Speck
Speck & Aanestad
P. O. Box 987
Ketchum, ID 83340

Michael C. Creamer
Givens Pursley
P. O. Box 2720
Boise, ID 83701

Norman M. Semanko
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906

Re: In the Matter of Application for Permit No. 34-07591 and Application for Transfer No. 5400 (L&S Partners), Applications for Transfer No. 5456 (Aslett Ranches) and Application for Transfer Nos. 5001 and 5004 (David and Mary Stoecklein)

Enclosed is the Preliminary Order issued on the above-referenced matter. Also enclosed is a colored sheet that describes the responses that can be taken to this Preliminary Order should you so choose. Note the Preliminary Order will become a Final Order if no further action is taken.

If you have any questions concerning this procedure, please contact L. Glen Saxton at 327-7955.

Sincerely,

Norman C. Young
Administrator
Water Administration Division

Enclosures

bcc: Doug Rosenkrance

MICROFILMED

JUL 13 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 1999, I served a true and correct copy of the within and foregoing document upon the persons named below by U. S. mail, postage prepaid:

Mr. Scott L. Campbell
Elam & Burke
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise, ID 83701

James P. Speck
Speck & Aanestad
P. O. Box 987
Ketchum, ID 83340

Michael C. Creamer
Givens Pursley
P. O. Box 2720
Boise, ID 83701

Norman M. Semanko
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906

Rita I. Fleck
Administrative Assistant

MICROFILMED
JUL 13 2000

COPY

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho Street
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

Attorneys for L&S PARTNERS
and ASLETT RANCHES

RECEIVED
OCT 12 1999
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 34-07591, IN THE NAME OF L&S PARTNERS, LLC, Protestants, DAVID STOECKLEIN AND MARY STOECKLEIN, Intervenors. IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 34-00703B and 34-00704B	**STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER**

MICROFILMED
JUL 13 2000

IN THE MATTER OF APPLICATION FOR TRANSFER NO. T5456; WATER RIGHT NOS. 34-00469 AND 34-00471

APPLICANT: ASLETT RANCHES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5400; WATER RIGHT NO. 34-04035C

IN THE NAME OF L&S PARTNERS

IN THE MATTER OF APPLICATION FOR PERMIT NO. 34-08591

L AND S PARTNERS,

Applicant

DAVID AND MARY STOECKLEIN,

Protestants

AND

APPLICATIONS FOR TRANSFER NOS. 5001 AND 5004

DAVE STOECKLEIN,

Applicant

ASLETT RANCHES

Protestant

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 4985; WATER RIGHT NO. 34-00870, IN THE NAME OF MARK T. GATES, TRUSTEE

MICROFILMED
JUL 13 2000

In order to resolve the various water right disputes among them, the undersigned parties hereby stipulate and agree as follows:

1. Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, hereby stipulate and agree to withdraw with prejudice their respective protests and/or motions to intervene to Application for Transfer No. 5400, in the name of L & S Partners. Transfer No. 5400 seeks the transfer of Water Right Number 34-04035C.

2. Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, hereby stipulate and agree to withdraw with prejudice their respective protests and/or motions to intervene to Application for Transfer No. 5456 (formerly Application for Transfer No. 4906), in the name of Aslett Ranches. Application for Transfer No. 5456 seeks the transfer of Water Rights Number 34-00469 and 34-00471.

3. L & S Partners, by and through Steve Aslett, Sr., hereby stipulate and agree to withdraw with prejudice their Application for Permit No. 34-07591.

4. Aslett Ranches hereby stipulates and agrees to withdraw with prejudice its protest to Application for Transfer No. 5004, in the name of David and Mary Stoecklein. Application for Transfer No. 5004 seeks the transfer of Water Rights Nos. 34-00703E, 34-00704E, 34-00699E, 34-00700E, 34-00701E, and 34-00702E.

5. Aslett Ranches hereby stipulates and agrees to withdraw with prejudice its protest to Application for Transfer No. 5001, in the name of David and Mary Stoecklein. Application

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JUL 13 2000

for Transfer No. 5001 seeks the transfer of Water Rights Nos. 34-00123B, 34-00124B, 34-00125B, 34-00230B, and 34-00483B.

6. The undersigned parties hereby stipulate and agree that they shall not protest the Application for Transfer of Water Rights Number 34-00703B and 34-00704B, filed in the name of Idaho Cowboy, Inc., an entity of David Stoecklein. The parties also understand that 6X Ranch intends to file a transfer application to transfer its Water Right No. 34-00963 out of the Upper Fish Hatchery Canal, which transfer will be subject to the same ditch loss requirements as other rights so transferred, as provided herein. The parties hereby stipulate and agree that they shall not protest such Application for Transfer by 6X Ranch.

7. The undersigned parties further stipulate and agree that a study shall be conducted, and measurements of the Upper Fish Hatchery Canal taken, by Watermaster Doug Rosenkrance, who shall consult with the Eastern Region Office of the Idaho Department of Water Resources to assure that his methodology and procedures for the conduct of the study are appropriate. The study must begin at the beginning of the irrigation season in the year 2000. The study shall take place over a minimum two-year, but not to exceed three-year, time period after the date of execution of this Stipulation. The purpose of the study is to determine ditch loss in Upper Fish Hatchery Canal.

Each of the undersigned parties, or their representative, shall have the right to be present when readings and/or measurements are taken by Watermaster Rosenkrance, and each party, or their representative, shall have the right to take their own reading at the same time and location as the reading taken by Watermaster Rosenkrance. Watermaster Rosenkrance shall provide at least 48 hours' notice to the undersigned parties prior to taking any measurements.

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JUL 13 2000

The undersigned parties further stipulate and agree that they shall fully cooperate with the measurements and study, share equally in Watermaster Rosenkrance's costs and expenses, and shall not hinder the study and measurements in any way.

The term "ditch loss" shall mean the amount of each water right lost due to seepage and/or evapotransporation between the Upper Fish Hatchery Canal diversion headgate and the end of the Upper Fish Hatchery Canal, located on the Aslett Ranch properties.

The undersigned parties further stipulate and agree that they will be bound by the results of the measurements, readings and/or studies conducted by Watermaster Rosenkrance.

8. The undersigned parties stipulate and agree that until the measurement and/or studies referenced in Paragraph 7, *supra*, have been completed, any party to this Stipulation, and their heirs and assigns, who have filed an Application for Transfer with the Idaho Department of Water Resources, the effect of which shall be to transfer the point of diversion and/or place of use from lands currently served by the Upper Fish Hatchery Canal or the groundwater system hydrologically connected thereto, shall leave 21 percent of the water associated with the water right(s) being transferred in the Upper Fish Hatchery Canal.

Upon completion of the measurements and/or studies referenced in Paragraph 7, *supra*, the parties will be bound by the results of the measurements, readings, and/or studies conducted by Watermaster Rosenkrance without need for further agreement, even if the result is that more or less than 21 percent of the water should be left in the Upper Fish Hatchery Canal.

The study results shall specifically apply to applications before the Idaho Department of Water Resources, including but not limited to past, pending or future transfer applications which

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JUL 13 2009

seek or sought to change the point of diversion from the Upper Fish Hatchery Canal to another location.

9. The undersigned parties further stipulate and agree that during the study described in Paragraph 7, *supra*, the Upper Fish Hatchery Canal shall be maintained in the condition as exists of the date of execution of this Stipulation. However, the parties may perform such work as may be needed in the case of an emergency, or if the all the parties to this Stipulation agree thereto in writing.

10. The undersigned parties further stipulate and agree that they shall properly install and maintain headgates and accurate measuring devices at their respective turnouts from the Upper Fish Hatchery Canal, prior to the beginning of the year 2000 irrigation season, and that such headgates and measuring devices are of a type approved by the Idaho Department of Water Resources.

11. The undersigned parties further stipulate and agree that each party shall not pursue allegations of partial or complete forfeiture of the water rights of another party to this agreement, if such allegation is based upon non-use of water up to and including the date of execution of this Stipulation. This limitation shall apply to the Snake River Basin Adjudication and any administration proceedings of the Idaho Department of Water Resources.

However, the undersigned parties are specifically not precluded from raising any water right forfeiture issues for those rights for which statutory forfeiture time period begins to run as of the date of execution of this Stipulation.

12. Except as otherwise stated herein, and specifically with the exception of Paragraphs 7, 8, and 11, *supra*, the undersigned parties stipulate and agree that this Stipulation

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JUL 13 2000

shall apply only to the water right matters specifically listed herein, and shall not apply to any future applications for transfer, applications for permit, applications for amendment of permit, or any other applications or other documents pertaining to water rights, filed by the undersigned, their heirs, or assigns, before the Idaho Department of Water Resources or any court.

13. The undersigned parties stipulate and agree that the terms of this Stipulation are mutually dependent upon each other, and that should any party fail to perform its duties under this Stipulation, the Stipulation in its entirety shall be null and void, unless otherwise agreed to in writing by the parties. Any party which breaches this Stipulation shall be responsible for any resulting damages to the other parties to this Stipulation, including but not limited to legal costs and attorney fees.

14. The undersigned parties further stipulate and agree that the terms of this Stipulation are expressly subject to the acceptance by the Idaho Department of Water Resources of the withdrawals referenced in Paragraphs 1 to 6 of this Stipulation and the signing of the Order requested by the Joint Motion included herein. Further proceedings in the matters encaptioned above are suspended pending acceptance by the Idaho Department of Water Resources of the withdrawals referenced in Paragraphs 1 to 6 of this Stipulation and the signing of the Order requested by the Joint Motion included herein.

15. The undersigned parties further agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving this legal dispute by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of the above-referenced

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JUL 13 2000

Applications or Protests or Motions to Intervene thereto, in any other manner by any party to this Stipulation in future proceedings before the Idaho Department of Water Resources, or by any party in the SRBA in any future proceedings in the SRBA, other than those for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408 and IDWR Rule of Practice and Procedure 610, IDAPA 37.01.01.610.

16. The undersigned parties further agree that this Stipulation shall be binding on them and their successors and assigns.

JOINT MOTION FOR ORDER ACCEPTING STIPULATION AND SETTLEMENT

The undersigned parties, in accordance with Idaho Department of Water Resources Rules of Practice and Procedure 610-614, hereby move that the Department order as follows:

1. The protests of Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5400 in the name of L&S partners, are hereby deemed withdrawn with prejudice.

2. The protests of Mark T. Gates, Trustee; Blake Quinn; and David and Mary Stoecklein, or any partnership or entity in which David and or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5456 (formerly application for Transfer No. 4906) in the name of Aslett Ranches, are hereby deemed withdrawn with prejudice.

3. Application for Permit No. 34-07591, in the name of L&S Partners, is hereby deemed withdrawn with prejudice.

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

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JUL 13 2000

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This 20 day of Sept, 1999.

Steve Aslett, Sr., on behalf of Aslett Ranches, Inc. & L & S Partners

DATED This ___ day of _____, 1999.

Mark T. Gates, Trustee

DATED This ___ day of _____, 1999.

Blake Quinn, on behalf of 6X Ranch LLC

DATED This ___ day of _____, 1999.

David Stoecklein

DATED This ___ day of _____, 1999.

Mary Stoecklein

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JUL 13 2000

4. The protests of Aslett Ranches to Applications for Transfer No. 5000, and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This ___ day of _____, 1999.

Steve Aslett, Sr. on behalf of Aslett Ranches, Inc. & L & S Partners

DATED This ___ day of _____, 1999.

Mark T. Gates, Trustee

DATED This 20 day of September, 1999.

Blake Quinn, on behalf of 6X Ranch LLC

DATED This ___ day of _____, 1999.

David Stoecklein

DATED This ___ day of _____, 1999.

Mary Stoecklein

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JUL 13 2000

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This ___ day of _____, 1999.

_____
Steve Aslett, Sr., on behalf of Aslett Ranches, Inc. & L & S Partners

DATED This ___ day of _____, 1999.

_____
Mark T. Gates, Trustee

DATED This 7 day of Sept, 1999.

_____
Blake Quinn, on behalf of 6X Ranch LLC

DATED This ___ day of _____, 1999.

_____
David Stoecklein

DATED This ___ day of _____, 1999.

_____
Mary Stoecklein

MICROFILMED
JUL 1 3 2000

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This ___ day of _____, 1999.

Steve Aslett, Sr., on behalf of Aslett Ranches, Inc. & L & S Partners

DATED This ___ day of _____, 1999.

Mark T. Gates, Trustee

DATED This ___ day of _____, 1999.

Blake Quinn, on behalf of 6X Ranch LLC

DATED This 27th day of Sept, 1999.

David Stoecklein

DATED This 27th day of Sept, 1999.

Mary Stoecklein

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JUL 13 2000

DATED This ___ day of _____, 1999.

_____
Vic Johnson

DATED This ___ day of _____, 1999.

_____
Scott Johnson

DATED This 22 day of September, 1999.

Lynn Reno
Lynn Reno

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JUL 13 2000

DATED This ___ day of _____, 1999.

Vic Johnson

DATED This 29 day of September, 1999.

Scott Johnson

DATED This ___ day of _____, 1999.

Lynn Reno

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JUL 13 2000

JUL 13 2000
MICROFILMED

DATED This ___ day of _____, 1999.

Vic Johnson

DATED This 29 day of September, 1999.

Scott Johnson

DATED This ___ day of _____, 1999.

Lynn Reno

DEC-27-99 MON 11:06 AM ELAM & BURKE FAX NO. 2083845844 P. 16/16

RECEIVED
JUL 30 1999
Department of Water Resources

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

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702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

July 29, 1999

Mr. Ronald D. Carlson
Regional Director
Eastern Region
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402-1718

Re: Application for Transfer No. 5400 (McCaleb Estates Water Rights Purchase)
Application for Transfer No. 5456 (Bumps Property)

Dear Ron:

The purpose of this letter is to ask for your assistance regarding the above-referenced transfer applications. Specifically, my clients have encountered no small amount of difficulty in obtaining prehearing and hearing dates regarding those applications, and have come to the conclusion that definite action by the Idaho Department of Water Resources ("Department") is in order.

A brief factual background is appropriate. On or about April 23, 1999, Aslett Ranches resubmitted its transfer application, which has been designated Application for Transfer No. 5456 to transfer water rights number 34-00469 and 34-00471. That Application has been protested by 6X Ranch, LLC; Mark T. Gates, Trustee; and David Stoecklein.

On or about June 11, 1999, L & S Partners (another Aslett entity) submitted an Amended Application for Transfer of Water Right, for Water Right No. 34-04035C. That Application has been designated No. 5400, and has been protested by the same parties who protested Application for Transfer No. 5456.

There has been repeated correspondence in this matter in an attempt to schedule a prehearing conference. Rather than listing the various letters and responses, I have attached copies of that correspondence for your reference. As is readily apparent, the Asletts have attempted to move forward with their Applications for Transfer, by at the least scheduling a prehearing conference. However, they have been unsuccessful due to the inability or unwillingness of the other parties to make themselves available for such a conference (even though a range of three months was offered).

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On Tuesday, July 27, 1999, Angela Schaer who is an attorney assisting me in this matter, spoke with Harold Jones regarding the difficulty in scheduling a prehearing conference in this matter. Mr. Jones seemed to have some reservations about scheduling a prehearing conference absent the agreement of all the parties. While the Asletts certainly understand the difficulty in doing so, they further believe that the Department has the authority and the duty to order the parties and/or their representatives to be present at a prehearing conference.

Notably, if this were an Application for Permit, rather than an Application for Transfer, a potential delay such as that encountered in this matter would be impermissible. Idaho Code section 42-203A(4) requires that hearing (much less prehearing conference) upon any protest filed to an application for permit must be held within sixty (60) days from the day such protest is received. Idaho Code section 42-222(1), unfortunately, does not bear the same requirement, but from a logical and due process perspective, there is no reason why a transfer hearing should not be held in a similarly timely fashion.

The Department's Rules of Procedure further contemplate that matters should be heard in a timely fashion. Rule 52 states that "[t]he rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency . . . ." IDAPA 37.01.01.052 (emphasis added). Rule 413 provides that hearing officers have the authority to issue notices of prehearing conference and hearing. IDAPA 37.01.01.413. In addition, Rule 5210 provides that:

> The presiding officer may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

IDAPA 37.01.01.510. Those rules, when combined, provide more than ample authority for the hearing officer in this matter to order the parties and/or their representatives to appear at a prehearing conference.

Frankly, the Asletts are committed to being present, or to at least having their counsel present with the authority to act on their behalf, at a prehearing conference whenever so ordered by the hearing officer. Further, the Asletts have taken steps to attempt to schedule a prehearing conference at a date and time mutually agreeable to everyone. While three of the parties have been able to agree to August 19, 1999, for such a conference, the fourth party would not agree,

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and further indicated his unavailability until the end of September. The Asletts should not be forced to endure additional substantial delays for a prehearing conference to be conducted.

Therefore, the Asletts respectfully request that the Department issue a notice of prehearing conference in this matter, and order the parties and/or their representative attend. The Asletts would further request that in order that the prehearing conference be meaningful, the order further state that if the parties themselves are not present at the prehearing conference, their representatives are given full authority to bind the parties as to additional scheduling in this matter.

If you have any questions or concerns, please do not hesitate to contact me. In the meantime, I look forward to your response.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:pw G:\Thm\WPDATA\3524\carlson 7-28 ltr.wpd
Enclosures
cc: Steve Aslett (w/ enclosures)
Steve Aslett, Jr. (w/ enclosures)
Karl Dreher (w/ enclosures)
Harold Jones (w/ enclosures)
Allen Merritt (w/ enclosures)
Norman Semanko (w/ enclosures)
Michael Creamer (w/ enclosures)
James Speck (w/ enclosures)

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JUL 13 2000

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Established in 1928

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POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

June 29, 1999

SENT VIA FACSIMILE

James P. Speck
Speck & Aanestad
PO Box 987
Ketchum, ID 83340

Michael C. Creamer
Givens Pursley
277 North 6th Street, Suite 200
Post Office Box 2720
Boise ID 83701

Norman M. Semanko
Rosholt Robertson & Tucker
142 3rd Avenue North
Post Office Box 1906
Twin Falls ID 83303-1906

Re: L&S Partners' Application for Transfer No. 5400 and
Aslett Ranches' Application for Transfer No. 5456

Dear Counsel:

I am in the process of obtaining a date for a pre-hearing conference in the above-referenced matters. I have secured with Allen Merritt, Idaho Department of Water Resources, Southern Region, the date and time of July 23, 1999, at 10:00 AM, for the pre-hearing conference. If this date and time is not acceptable to you, please advise me by the close of business on June 30, 1999.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:thm G:\Thm\WPDATA 3524\00148-counsel.wpd
cc: clients

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JUL 13 2000

ELAM & BURKE

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SCOTT L. CAMPBELL

July 1, 1999

SENT VIA FACSIMILE

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Allen D. Merritt, Regional Manager
Idaho Department of Water Resources
Southern Region
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

Re: L&S Partners' Application for Transfer No. 5400 and
Aslett Ranches' Application for Transfer No. 5456

Dear Harold and Allen:

As you are aware, I have been attempting to secure a date and time for a pre-hearing conference in the above-referenced matters. Please note that July 23, 1999, at 10:00 AM, is not acceptable to Jim Speck and his client, as indicated in a letter I received from Mr. Speck via facsimile on June 29, 1999 (copy attached).

By copy of this correspondence to Mr. Speck, Norm Semanko, and Mike Creamer, I am requesting apposing counsel to immediately advise you and me of their available dates for July, August, and September, 1999, so that we may secure a date and go forward with these matters.

Thank you for your attention to these matters.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:thm G:\Thm\WPDATA\3524\00150-IDWR.wpd
cc: Clients
James Speck
Norm Semanko
Michael Creamer

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JUL 13 2000

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY O. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
TIMOTHY J. STOVER

Chartered
ATTORNEYS AT LAW

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TWIN FALLS, IDAHO 83303-1906
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FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

July 7, 1999

Scott L. Campbell
Elam & Burke, PA
P.O. Box 1539
Boise, ID 83701-1539

RE: L & S Partners' Application for Transfer No. 5400 and
Aslett Ranches' Application for Transfer No. 5456

Dear Scott:

In response to your letter to Harold Jones and Allen Merritt of the Idaho Department of Water Resources, dated July 1, 1999, I have forwarded a copy of your letter to our client, Mark Gates, asking for his available dates during July, August and September for a pre-hearing conference. I will respond with the dates that we are both available as soon as possible.

Also, in response to your other letter of July 1, addressed to "Counsel", I have not received a copy of the Amended Application for Permit No. 5400 referred to in your letter. Please send me a copy at your earliest convenience.

Thank you for your cooperation.

Sincerely,

NORMAN M. SEMANKO

NMS/jl
cc: Michael Creamer
James Speck
Mark Gates
Harold Jones, IDWR
Allen Merritt, IDWR

(nms99/gates/campbell1)

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JUL 13 2000

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SCOTT L. CAMPBELL

E-mail: slc@elamburke.com

July 14, 1999

VIA FACSIMILE

Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402

Re: Application for Permit No. 5400 (McCaleb Estates Water Rights Purchase)
Application for Permit No. 5456 (Bumps Property)

Dear Harold:

I have received only one response to my correspondence of July 1, 1999, to counsel for the objectors in the above-referenced matters. Norm Semanko replied to my correspondence recently, indicating that he and his client were available on August 16 and 19, 1999. I request the Department schedule a prehearing conference on either one of those two dates. Since Mr. Speck and Mr. Creamer have not responded to my correspondence, I believe that they are available for a conference on those days, or they will make the necessary arrangements to attend such a conference. If they object to those dates, I request that the Department schedule this matter as soon as possible on some alternative date and allow the operation of the Rules of Practice and Procedure to govern the attendance and participation of the parties. I do not believe it is fair to my client that this matter be delayed unnecessarily because the protestants are unwilling to agree upon a date for prehearing conference.

Thank you for your anticipated cooperation.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:pw

cc: Norman M. Semanko
Michael C. Creamer
James P. Speck
Steve Aslett

MICROFILMED
JUL 13 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
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BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

JUL 12 1999

July 9, 1999

Scott L. Campbell
Elam & Burke, PA
P.O. Box 1539
Boise, ID 83701-1539

RE: Aslett and L&S Partners Pre-hearing Conference

Dear Scott:

In response to your request, Mark Gates and I are both available for a pre-hearing conference on the following dates in July, August and September:

July – none
August 16, 19
September – none

Please let us know as soon as possible whether the pre-hearing conference will be held on one of these dates.

Sincerely,

NORMAN M. SEMANKO

NMS/jl
cc: Michael Creamer
James Speck
Mark Gates
Harold Jones, IDWR
Allen Merritt, IDWR

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JUL 13 2000

(nms99/gates/campbel2)

JUL 16 1999

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

July 15, 1999

Scott L. Campbell
Elam & Burke, P.A.
Post Office Box 1539
Boise, Idaho 83701-1539

Re: Aslett & L & S Partners Prehearing Conference

Dear Scott:

In response to your request, Dave Stoecklein and I are both available for a prehearing conference in these matters on only September 20, 21, 27-30, 1999, during the months of July, August and September, 1999.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____
James P. Speck

JPS:jal
cc: Client (via fax)
Mike Creamer (via fax)
Norman Semanko (via fax)
Hill Jones, IDWR (via fax)
Allen Merritt, IDWR (via fax)

CC: _____ Date _____

MICROFILMED
JUL 13 2000

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

July 19, 1999

VIA FACSIMILE

Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, 10th Floor
P.O. Box 1539
Boise, ID 83701-1539

Matter: In the Matter of L&S Partners
Our File: 4562-4

Dear Scott:

I have been out of my office for an extended period, and have just returned today. Both I and Mr. Blake Quinn would be available for a prehearing conference on the Aslett and L&S Partners applications on the following dates:

August 19th
September 14th and 15th

Please let me know when a final date has been scheduled regarding this matter.

Sincerely,

Michael C. Creamer

MCC:dr
S:\Clients\4562\4\Corr\Letter to Scott Campbell Re Available Dates.wpd

cc: Peter Anderson (via facsimile)
James Speck (via facsimile)
Norman Semanko (via facsimile)
Blake Quinn (via facsimile)

MICROFILMED
JUL 13 2000

RECEIVED
JUN 0 3 1999
Department of Water Resources
Eastern Region

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

May 28, 1999

VIA FACSIMILE and U.S. MAIL

Mr. Ronald Carlson, Manager
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402-6105

Matter: 6X Ranch, LLC
Our File: 4562-4

Dear Mr. Carlson:

Enclosed for filing please find 6X Ranch, LLC's Protest to Application to Transfer In The matter of the Application of Aslett Ranches to Transfer Water Right No. 34-00469. Also enclosed is a check in the amount of $25.00, the appropriate fees required to file the Protest, as well as an additional copy of the Protest to be conformed and returned to me in the self-addressed stamped envelope.

If you have any questions concerning the enclosed, please call me immediately.

Sincerely,

Michael C. Creamer

MCC:dr
Enclosure
S:\Clients\4562\4\Corr\Letter to Ronald Carlson Enclosing Protest to Application.wpd

cc: Blake Quinn (w/encl.)
Parties on Cert. of Service (w/encl.)

MICROFILMED
JUL 1 3 2000

Receipt #E025034

E625034

RECEIVED
JUN 0 3 1999
Department of Water Resources
Eastern Region

Michael C. Creamer
GIVENS PURSLEY LLP
P.O. Box 2720
277 No. 6th Street, Suite 200
Boise, Idaho 83701
(208) 388-1200
(208) 388-1201 Fax
S:\Clients\4562\4\Pleadings\Transfer Protest.wpd

Attorneys for 6X Ranch, LLC

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of the Application of Aslett Ranches to Transfer Water Right No. 34-00469	**6X RANCH, LLC'S PROTEST TO APPLICATION TO TRANSFER**

6X RANCH, LLC ("Protestant"), through its attorneys Givens Pursley, LLP, hereby Protests the Application for Transfer of Water Right No. 34-00469 filed by Aslett Ranches ("Applicant").

The grounds for this Protest are as follows:

1. Protestant holds water rights from, among others, the Big Lost River, Warm Springs Creek, Parsons Creek and Pole Stackyard Creek, and certain ground water rights, all of which have points of diversion and places of use in the immediate vicinity of the proposed new point of diversion and place of use for water right no. 34-00469.

2. If granted without appropriate conditions, the proposed transfer may:

   a. result in injury to Protestant's water rights;

   b. result in an enlargement of Water Right No. 34-00469;

   c. increase the consumptive use of Water Right No. 34-00469;

   d. be contrary to the public interest; and

   e. be inconsistent with the conservation of water resources.

MICROFILMED

JUL 1 3 2000

Protestant reserves the right to state other and additional grounds as facts and its interests may later appear through discovery or otherwise.

DATED this 28th day of May, 1999.

GIVENS PURSLEY LLP

By: _____

Michael C. Creamer
Attorneys for 6X Ranch, LLC

RECEIVED
JUN 0 3 1999
Department of Water Resources
Eastern Region

MICROFILMED
JUL 1 3 2000

RECEIVED
JUN 0 3 1999
Department of Water Resources
Eastern Region

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Aslett Ranches
P.O. Box B
Twin Falls, ID 83303

☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ FedEx

Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, 10th Floor
P.O. Box 1539
Boise, ID 83701-1539

☒ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ FedEx

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

☐ U.S. Mail ☐ Fax ☒ Hand Delivery ☐ FedEx

Mr. Ronald Carlson, Manager
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402-6105

☒ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ FedEx

Michael C. Creamer

MICROFILMED
JUL 1 3 2000

RECEIVED
JUN - 1 1999
Department of Water Resources

James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone (208) 726-4421
Facsimile (208) 726-0752
Attorneys for Protestants David R. Stoecklein, Mary J. Stoecklein, Walter Stoecklein, Shelley Stoecklein and Bar Horseshoe Cattle & Livestock

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5456: **Aslett Ranches, Applicant.** **David R. Stoecklein, Mary J. Stoecklein, Walter Stoecklein, Shelley Stoecklein and Bar Horseshoe Cattle & Livestock Company,** **Protestants.**	**NOTICE OF PROTEST**

David R. Stoecklein, Mary J. Stoecklein, Walter Stoecklein, Shelley Stoecklein and Bar Horseshoe Cattle & Livestock ("Protestants"), by and through their attorneys, Speck & Aanestad, A Professional Corporation, hereby file their Notice of Protest to the approval of Application for Transfer No. 5456. The grounds for this protest are as follows:

1. The Application for transfer violates some or all of the criteria set forth in I.C. § 42-222.

2. The portions of the water rights sought to be transferred have been forfeited in whole or in part.

3. For such other and further reasons as may be presented at the hearing on this matter.

MICROFILMED
JUL 13 2000

Dated this 28 day of May, 1999.

SPECK & AANESTAD
A Professional Corporation
Attorneys for David R. Stoecklein, Mary J. Stoecklein, Walter Stoecklein, Shelley Stoecklein and Bar Horseshoe Cattle & Livestock

By: J. P. Speck
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of May 1999, I served a true and correct copy of the within and foregoing document upon the persons named below in the manner noted:

Aslett Ranches
c/o Steve Aslett
P.O. Box B
Twin Falls, ID 83303-0015

- ☑ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Mr. Scott L. Campbell
ELAM & BURKE
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise ID 83701

- ☑ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

IDAHO DEPARTMENT OF WATER RESOURCES
Eastern Regional Office
900 N. Skyline, Suite A
Idaho Falls ID 83402

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☑ Facsimile, with copy by United States Mail, Postage Prepaid

MICROFILMED
JUL 13 2000

Mr. Karl J. Dreher
Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 N. Orchard
P.O. Box 83720
Boise, ID 83720-0098

☑ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile, with copy by United States Mail, Postage Prepaid

J. P. Speck

JAMES P. SPECK

MICROFILMED
JUL 13 2000

RECEIVED
MAY 28 1999
Department of Water Resources
Southern Region

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83703-1906
Telephone: (208) 734-0700
05289901.NMS

RECEIVED
JUN 0 2 1999
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. T5456; Water Right Nos. 34-00469 and 34-00471 APPLICANT: ASLETT RANCHES	**NOTICE OF PROTEST**

****

Mark T. Gates, Jr., Trustee, by and through his attorneys, Rosholt, Robertson & Tucker, files his Notice of Protest to the continuance or approval of Application for Transfer No. 5456 filed in the name of Aslett Ranches. The basis for the protest is as follows:

1. The proposed change in use of the waters described in the aforesaid application violates all, or a portion of, the criteria set forth in Idaho Code Section 42-222; and

2. For such other and further reasons as may be set forth at the hearing on this matter.

5/28/99
Receipt # 5022214
Allen E. Bates

MICROFILMED
JUL 13 2000

DATED this 28th day of May, 1999.

ROSHOLT, ROBERTSON & TUCKER

By: _____
Norman M. Semanko

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of May, 1999, I served a copy of the foregoing NOTICE OF PROTEST, by hand delivery or by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Idaho Department of Water Resources — by U.S. Mail
Eastern Regional Office
900 N. Skyline
Idaho Falls, ID 83401-3653

Aslett Ranches — by U.S. Mail
c/o Scott Campbell
Elam & Burke, P.A.
P.O. Box 1539
Boise, ID 83701

_____
Norman M. Semanko

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 9, 1999

SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

RE: Application for Transfer No. 5456 for Aslett Ranches

Dear Protestant:

This letter acknowledges receipt of the protest filed by you against the above referenced applications for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute enlargement in the use of the original right?

3. Is the change consistent with the conservation of water resources within the state of Idaho?

4. Does the change conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question. The address is as follows:

ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SCOTT L CAMPBELL
ELAM & BURKE
PO BOX 1539
BOISE ID 83701

MICROFILMED

JUL 13 2000

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 9, 1999

SCOTT L CAMPBELL
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

RE: Application for Transfer No.: 5456 for Aslett Ranches

Dear Applicant:

Enclosed please find copies of the protests filed against the above referenced application for transfer of a water right. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1) Are other water rights injured by the transfer?
2) Does the change constitute enlargement in the use of the original water right?
3) Is the change consistent with the conservation of water resources within the state of Idaho?
4) Does the change conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the four items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR State Office

MICROFILMED
JUL 13 2000

RECEIVED
JUN - 1 1999
Department of Water Resources

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

E025024

May 28, 1999

34-00469
00471

SENT VIA FACSIMILE: 1-208-525-7177
ORIGINAL TO FOLLOW
Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive Suite A
Idaho Falls, Idaho 83402

RECEIVED
JUN 04 1999
Department of Water Resources
Eastern District Office

Re: In the Matter of Application for Transfer No. 5456

Dear Harold:

Enclosed you will find a Notice of Protest together with my firm's check payable to the Department in the sum of $25.00 for the protest fee for the above-referenced Application for Transfer. I have also included a copy of the Notice of Protest for the Department to date stamp and return to me in the self-addressed and postage prepaid envelope enclosed for that purpose. Please call me if you have any questions.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____
James P. Speck

JPS:jal
Enclosures
cc: Client (w/encl.)
Aslett Ranches (w/encl.)
Scott Campbell, Esq. (w/encl.)
Karl J. Dreher (w/encl.)
Mike Creamer, Esq. (via fax-w/encl.)
Norman Semanko, Esq. (via fax-w/encl.)

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 3, 1999

SCOTT L CAMPBELL
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

RE: Application for Transfer No.: 5456 for Aslett Ranches

Dear Applicant:

Enclosed please find copies of the protests filed against the above referenced application for transfer of a water right. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

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If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR State Office

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 3, 1999

MICHAEL C CREAMER
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

RE: Application for Transfer No. 5456 for Aslett Ranches

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In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question. The address is as follows:

ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SCOTT L CAMPBELL
ELAM & BURKE
PO BOX 1539
BOISE ID 83701

MICROFILMED

JUL 13 2000

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

MICROFILMED

JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 3, 1999

NORMAN M SEMANKO
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83703-1906

RE: Application for Transfer No. 5456 for Aslett Ranches

Dear Protestant:

This letter acknowledges receipt of the protest filed by you against the above referenced applications for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

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PO BOX B
TWIN FALLS ID 83303

SCOTT L CAMPBELL
ELAM & BURKE
PO BOX 1539
BOISE ID 83701

MICROFILMED

JUL 13 2000

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

MICROFILMED
JUL 13 2000

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS
120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

RECEIVED
JUN 0 1 1999
Department of Water Resources
Eastern Region

May 28, 1999

SENT VIA FACSIMILE: 1-208-525-7177
ORIGINAL TO FOLLOW
Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive Suite A
Idaho Falls, Idaho 83402

Re: In the Matter of Application for Transfer No. 5456

Dear Harold:

Enclosed you will find a Notice of Protest together with my firm's check payable to the Department in the sum of $25.00 for the protest fee for the above-referenced Application for Transfer. I have also included a copy of the Notice of Protest for the Department to date stamp and return to me in the self-addressed and postage prepaid envelope enclosed for that purpose. Please call me if you have any questions.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____
James P. Speck

JPS:jal
Enclosures
cc: Client (w/encl.)
Aslett Ranches (w/encl.)
Scott Campbell, Esq. (w/encl.)
Karl J. Dreher, (w/encl.)
Mike Creamer, Esq. (via fax-w/encl.)
Norman Semanko, Esq. (via fax-w/encl.)

MICROFILMED
JUL 13 2000

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Figuron
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Kari T. Klein
David R. Lombardi
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Kenneth H. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

May 28, 1999

VIA FACSIMILE and U.S. MAIL

Ronald Carlson, Manager
o Department of Water Resources
North Skyline Drive
o Falls, ID 83402-6105

Matter: 6X Ranch, LLC
Our File: 4562-4

r Mr. Carlson:

Enclosed for filing please find 6X Ranch, LLC's Protest to Application to Transfer In The er of the Application of Aslett Ranches to Transfer Water Right No. 34-00469. Also enclosed check in the amount of $25.00, the appropriate fees required to file the Protest, as well as an tional copy of the Protest to be conformed and returned to me in the self-addressed stamped lope.

If you have any questions concerning the enclosed, please call me immediately.

Sincerely,

Michael C. Creamer

:dr
osure
s\4562\4\Corr\Letter to Ronald Carlson Enclosing Protest to Application.wpd

Blake Quinn (w/encl.)
Parties on Cert. of Service (w/encl.)

MICROFILMED
JUL 13 2000

[redacted]ael C. Creamer
[redacted]ENS PURSLEY LLP
[redacted] Box 2720
[redacted]No. 6th Street, Suite 200
[redacted]e, Idaho 83701
[redacted] 388-1200
[redacted] 388-1201 Fax
[redacted]s\4562\4\Pleadings\Transfer Protest.wpd

[redacted]neys for 6X Ranch, LLC

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

[redacted] the Matter of the Application of Aslett [redacted]nches to Transfer Water Right No. 34-00469	**6X RANCH, LLC'S PROTEST TO APPLICATION TO TRANSFER**

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The grounds for this Protest are as follows:

1. Protestant holds water rights from, among others, the Big Lost River, Warm Springs [redacted]k, Parsons Creek and Pole Stackyard Creek, and certain ground water rights, all of which have [redacted]s of diversion and places of use in the immediate vicinity of the proposed new point of diversion [redacted]lace of use for water right no. 34-00469.

2. If granted without appropriate conditions, the proposed transfer may:

   a. result in injury to Protestant's water rights;

   b. result in an enlargement of Water Right No. 34-00469;

   c. increase the consumptive use of Water Right No. 34-00469;

   d. be contrary to the public interest; and

   e. be inconsistent with the conservation of water resources.

MICROFILMED
JUL 13 2000

Protestant reserves the right to state other and additional grounds as facts and its interests later appear through discovery or otherwise.

DATED this 28th day of May, 1999.

GIVENS PURSLEY LLP

By: _____
Michael C. Creamer
Attorneys for 6X Ranch, LLC

MICROFILMED
JUL 13 2000

CERTIFICATE OF SERVICE

certify that on May 28, 1999 I caused to be served a true and correct copy of the of the persons named below by the method indicated below each of their names.

Aslett Ranches
P.O. Box B
Twin Falls, ID 83303

☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ FedEx

Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, 10th Floor
P.O. Box 1539
Boise, ID 83701-1539

☒ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ FedEx

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

☐ U.S. Mail ☐ Fax ☒ Hand Delivery ☐ FedEx

Mr. Ronald Carlson, Manager
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402-6105

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ FedEx

Michael C. Creamer

MICROFILMED
JUL 13 2000

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Ruth E. Burchill, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated May 13 1999 and ending with the issue dated May 20 1999.

Ruth E. Burchill

STATE OF IDAHO

COUNTY OF CUSTER

On this 20th day of May in the year of 1999 before me, a Notary Public, personally appeared Ruth E. Burchill known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

JANET L. SANGIS NOTARY STATE OF IDAHO

Janet L. Sangis
Notary Public for Idaho
Residing at Challis
My commission expires: 4/30/04

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO. T5456

Notice is hereby given that Aslett Ranches, P.O. Box B, Twin Falls ID 83303, c/o Scott L. Campbell, Elam & Burke, P.A., P.O. Box 1539, Boise ID 83701, has applied to the Department of Water Resources to change a place of use of a surface water source. The rights sought to be changed is evidenced by a decrees and recorded as follows:

Decree No.: 34-00469
Amount: 3.20 cfs
Source: Warm Springs Creek
Big Lost River
Priority: 11/01/1892
Decree No: 34-00471
Amount: 0.80 cfs
Source: Warm Springs Creek
Big Lost River
Priority: 07/12/1907

Point of Diversion(s): SWNESE SEC 34 T08N R22E, Custer County

The water is used for irrigation of 213 acres within the SEC 6 T07N R23E and SEC 31 T08N R23E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to stop irrigating the NESW of SEC 31 T08N R23E and instead irrigate the SWNE of SEC 1 T07N R22E. All the other acres stay the same.

Any protests against approval of the proposed changes must be filed with the Idaho Department of Water Resources, 900 N. Skyline Dr. Ste. A, Idaho Falls, ID 83402, together with a protest fee of $25 on or before June 1, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director
Pub: May 13 & 20, 1999.

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MAY 2 1 1999
Department of Water Resources
Eastern Region

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JUL 1 3 2000

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MAY 18 1999
Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF
WATER RIGHT NO. Transfer no 5456

WATER DISTRICT: 34

WATERMASTER: Doug Rosenkrance

DATE: 5/17/99

HAS THIS WATER RIGHT(S) BEEN DELIVERED WITHIN THE LAST FIVE YEARS?

YES Y NO _____

COMMENTS: _____

Y I do endorse approval of this change.

_____ I do not endorse approval of this change.

I recommend the following conditions of approval:

Doug Rosenkrance
Watermaster

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JUL 13 2000

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MAY 13 1999
Department of Water Resources
Eastern Region

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

May 11, 1999

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Re: Aslett Ranches Application for Transfer No. 5456
Water Right Nos. 34-00469 and 34-00471

Dear Harold:

Pursuant to your recent request, I have enclosed a copy of a 1998 Tax Bill/Receipt regarding the Aslett Ranch property involved in the above referenced transfer application.

Please let me know if I can be of further assistance to you regarding this matter.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:thm G:\Thm\WPDATA\3524\00140-slc.wpd
Encl.
cc: Clients

MICROFILMED
JUL 13 2000

ECK PAYABLE TO:
COUNTY TAX COLLECTOR
)X 350
S, IDAHO 83226

1998 TAX BILL/RECEIPT

BILL# 5275 CODE AREA 45-00

PARCEL NUMBER
RP08N23E31480

L 58.0
I 137.1

1ST HALF DUE		2ND HALF DUE		FULL DUE		TOT MV	195,2
1,001.05	TAX	1,001.05	TAX	2,002.10			
	LATE		LATE				
	INT		INT				
	COST		COST			TOT ACS	120.1
	TOT		TOT				

ASLETT LEON
& ASLETT MARVIN
% ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83301

LOT 4
E2SW4
SEC 31 T8N R23E

TAXING DISTRICT	RATE	AMOI
STATE	.000000000	
COUNTY	.001823945	356
SCHOOL #182	.003885244	758
LOST RIVER HWY	.000655763	128
B.L.R. CEMETERY	.000214273	41
SO. CUSTER FIRE	.000755991	147
MACKAY LIBRARY	.000320278	62
L. R. HOSP	.001512986	295
BATGND MOS ABAT	.000454607	88
S. C. AMBULANCE	.000249294	48
DISTRICT TOTAL	.009872381	1,927
SOLID WASTE		75
AMOUNT DUE		2,002

★ ★ ★IMPORTANT★ ★ ★
PLEASE READ BOTH FRONT AND BACK
★ ★ MONTHLY PAYMENTS ARE ACCEPTED ★ ★ ★

PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE APPLIED TO THE OLDEST DELINQUENT YEAR.

TO AVOID LATE CHARGES, PAYMENTS MUST BE RECEIVED OR POSTMARKED BY THE DUE DATE.

KEEP TOP PORTION FOR YOUR RECORDS.

PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE.

IPT NOT VALID UNTIL CHECK CLEARS
< YOU

MICROFILMED
JUL 13 2000

RECEIVED
MAY 13 1999
Department of Water Resources
Eastern Region

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 1999

CHALLIS MESSENGER
PO BOX 405
CHALLIS ID 83226

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the dates indicated in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before June 1, 1999.

Respectfully submitted,

Sharla Cox
Administrative Assistant

Enc.

MICROFILMED
JUL 13 2000

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. T5456

Notice is hereby given that Aslett Ranches, PO Box B, Twin Falls ID 83303, c/o Scott L Campbell, Elam & Burke, P.A., PO Box 1539, Boise ID 83701, has applied to the Department of Water Resources to change a place of use of a surface water source. The rights sought to be changed is evidenced by a decrees and recorded as follows:

Decree No.:	34-00469	Source:	Warm Springs Creek Big Lost River
Amount:	3.20 cfs	Priority:	11/01/1892
Decree No.:	34-00471	Source:	Warm Springs Creek Big Lost River
Amount:	0.80 cfs	Priority:	07/12/1907

Point of Diversion(s): SWNESE SEC 34 T08N R22E, Custer County

The water is used for irrigation of 213 acres within the SEC 6 T07N R23E and SEC 31 T08N R23E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to stop irrigating the NESW of SEC 31 T08N R23E and instead irrigate the SWNE of SEC 1 T07N R22E. All the other acres stay the same.

Any protests against approval of the proposed changes must be filed with the Idaho Department of Water Resources, 900 N Skyline Dr. Ste A, Idaho Falls, ID 83402, together with a protest fee of $25.00 on or before June 1, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

Published in the Challis Messenger on May 13 and 20, 1999.

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

May 5, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

SCOTT L CAMPBELL
ELAM & BURKE P.A
PO BOX 1539
BOISE ID 83701

RE: Application for Transfer #5456 for Aslett Ranches

Dear Applicant:

This office is currently in the process of advertising the application in the Challis Messenger on May 13 and 20, 1999. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ::sc

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JUL 1 3 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 1999

DOUG ROSENKRANCE
WATERMASTER # 34
PO BOX 53
MACKAY ID 83251

RE: Application for Transfer #5456

Dear Doug:

Please find enclosed â copy of the above referenced application. Please review the application and submit any comments you may have to our Department by June 1, 1999.

If you have any questions, please feel free to contact us.
Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ:sc

enc.

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

May 5, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

RE: Application for Transfer #5456

Dear Applicant:

This office is currently in the process of advertising the application in the Challis Messenger on May 13 and 20, 1999. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ::sc

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JUL 13 2000

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

April 23, 1999

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

RECEIVED
APR 2 6 1999
Department of Water Resources
Eastern Region

Re: Aslett Ranches Application for Transfer No. 4906
Water Right Nos. 34-00469 and 34-00471

Dear Harold:

You may recall that on September 16, 1997, Aslett Ranches, by and through their counsel, orally withdrew their Application for Transfer No. 4906, followed-up with a written withdrawal on the same date. Soon thereafter, the Protestants to the Application, the Stoeckleins, filed a Motion to Deny Withdrawal of Application, and on October 10, 1997, Hearing Officer Glen Saxton issued an order denying their motion. Thus, the Application was withdrawn.

At this time, Aslett Ranches would like to re-submit their Application for Transfer of a Water Right, for water right nos. 34-00469 and 34-00471. Therefore, for filing, I have enclosed an original and one copy of the Application for Transfer of Water Right. Additionally, I have enclosed a check in the amount of $100.00 to cover the statutory filing fee.

I have also enclosed an additional copy to be receive-stamped and returned to our offices in the enclosed self-addressed stamped envelope.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:thm G:\Thm\WPDATA\3524\00129-slc.wpd
cc: Clients
James Speck
Norm Semanko

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JUL 1 3 2000

FAX TRANSMISSION

File - 34-00469

SPECK & AANESTAD
P. O. Box 987
Ketchum, ID 83340
1-208-726-4421
Fax: 1-208-726-0752

To:	Scott King, IDWR	**Date:**	July 21, 1998
Fax #:	1-208-327-7866	**Pages:**	4, including this cover sheet.
From:	Randi Diem for Jim Speck		
Subject:	Aslett Ranches - Stoecklein		

COMMENTS:

Dear Mr. King:

Enclosed you will find the correspondence to the attention of Mr. Norman Young regarding the above matter.

Sincerely,

SPECK & AANESTAD
A Professional Corporation

Randi

Randi S. Diem
Assistant to James P. Speck

:rsd
enclosure

THE INFORMATION CONTAINED IN THIS FAX TRANSMISSION IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE ABOVE-NAMED RECIPIENT AND MAY BE THE SUBJECT OF ATTORNEY/CLIENT PRIVILEGE. IF THE READER OF THIS MESSAGE IS NOT THE ABOVE-NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISTRIBUTION, DISSEMINATION, COPYING OR OTHER USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.

MICROFILMED
JUL 13 2000

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

July 8, 1998

Mr. Norman C. Young
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise ID 83720-9000

34-00469
34-00471

Re: Aslett Ranches - David and Mary Stoecklein and Bar Horseshoe Cattle & Likestock Co.

Dear Norm:

I represent David and Mary Stoecklein and Bar Horseshoe Cattle & Likestock Company, an Idaho general partnership. In 1996, Aslett Ranches filed Application for Transfer of Water Right No. 4906 to change a portion of the place of use of a water right diverted from Warm Springs Creek from lands alongside the Creek to a 40 acre parcel purchased by Aslett Ranches from the BLM. The transfer was protested by my clients and others. Immediately prior to the hearing scheduled for September 16, 1997, Aslett Ranches withdrew its transfer application. Therefore, to our knowledge there is no water right appurtenant to the SW 1/4 NE 1/4, Section 1, Township 7 North, Range 22 East, B.M., Custer County, Idaho.

This mater was brought to the attention of Aslett Ranches' attorney last fall by my September 18, 1997 letter, a copy of which is enclosed. I've also enclosed a copy of Mr. Campbell's response. Aslett Ranches has ignored our request and resumed irrigation of these lands this summer. Therefore, my clients demand that this matter be immediately investigated and an appropriate order issued to enjoin any further illegal use of water on the Aslett Ranches' land.

Please contact me immediately if you have any questions about this matter. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____
James P. Speck

JPS:rsd
cc: clients

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JUL 13 2000

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE

SCOTT L. CAMPBELL

208-384-5844

September 18, 1997

SENT VIA FACSMILIE

James P. Speck
Hogue, Speck & Aanestad
PO Box 987
Ketchum, ID 83340

Re: Aslett Ranches Transfer No. 4906

Dear Jim:

Thank you for you correspondence of September 18, 1997 which I received by facsimile transmission today. I am sending a copy of your correspondence to my clients and will discuss with them the issues you have raised in your letter. I will attempt to provide you with a response on or before September 26, 1997.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TLG\WPDATA\SS\3400\027.LTR

cc: Mr. Steve Aslett
Norman Semanko, Esq.
Karl Dreher, Director of IDWR

MICROFILMED
JUL 13 2000

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

September 18, 1997

VIA FACSIMILE - 1-208-384-5844
ORIGINAL TO FOLLOW BY MAIL

Mr. Scott L. Campbell
Elam & Burke
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise, ID 83701

Re: Aslett Ranches - Transfer No. 4906 - 34-00469 471

Dear Scott:

You clients have irrigated over the past few months, and continue to irrigate, those lands it acquired from the Bureau of Land Management (without any appurtenant water rights) to fill in the southeast corner of their pivot. These lands are the new place of use proposed by Transfer No. 4906 and perhaps the irrigation of the lands was done in anticipation of approval of the Transfer. Absent such approval or the proper transfer of some other valid water right to those lands, the irrigation of those lands is an illegal use of water as proscribed by I.C. § 42-351. Please confirm on or before September 26, 1997 that your clients will not irrigate those lands next year unless and until the transfer of a valid water right to those lands is approved by the Idaho Department of Water Resources ("IDWR"). If I do not timely receive this confirmation, IDWR will be requested to take appropriate action under I.C. § 42-351 to prevent a recurrence of this illegal use of water.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.

James P. Speck

JPS/j
cc: Clients
Norman Semanko, Esq.
Karl Dreher, Director of IDWR

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JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

October 10, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JAMES P SPECK
HOGUE SPECK & AANSTEAD
PO BOX 987
KETCHUM ID 83340-0987

Re: Transfer 4906 - Aslett Ranches

Dear Mr. Speck:

Enclosed please find the Order Denying Motion to Deny Withdrawal of Application in the above entitled matter.

Sincerely,

Kari Lynn Townsend
Secretary

/k

Enclosure

cc: Scott Campbell
Norman M. Semanko

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OCT 22 1997

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Department of Water Resources

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

October 7, 1997

HAND-DELIVERED

Mr. L. Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Re: In the Matter of Transfer No. 4906, Aslett Ranches, Applicant

Dear Glen:

I've enclosed an original and one copy of the Objection to Memorandum in Response to Applicant's Opposition to Motion to Deny Withdrawal. I'm also enclosing an extra copy of the Objection so that it can be date stamped and returned to me in the enclosed pre-addressed stamped envelope. I appreciate your assistance in this regard.

By copy of this correspondence, I am also providing a copy of the Objection to Memorandum to Director Karl Dreher, Phillip Rassier, and Ron Carlson.

Thank you for your attention to this matter.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TMH\WPDATA\3524\00046.LTR

cc: Karl Dreher, Director, IDWR
Phillip Rassier, Esq.
Mr. Ron Carlson
Mr. Steve Aslett
Mr. Steve Aslett, Jr.
Norman Semanko, Esq.
James Speck, Esq.

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OCT 2 2 1997

ORIGINAL

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OCT 0 7 1997
Department of Water Resources

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P.A.
Key Financial Center
702 West Idaho Street, 10th Floor
Post Office Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

Attorneys for Aslett Ranches.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 4906, ASLETT RANCHES, APPLICANT.	**OBJECTION TO MEMORANDUM IN RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DENY WITHDRAWAL**

I.
INTRODUCTION

Aslett Ranches, by and through their attorneys of record Elam & Burke, P.A., hereby objects to the "Memorandum in Response to Applicant's Opposition to Motion to Deny Withdrawal" ("Memorandum in Response") filed by Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co. ("Stoecklein"). The Idaho Department of Water Resources ("Department") Rules of Procedure ("Rules") do not permit a response to an answer such as the one filed by Aslett Ranches. Further, Stoecklein's Memorandum in Response is untimely, because Aslett Ranches' Application is already deemed withdrawn. Finally, the arguments made in the Memorandum in Response are unpersuasive.

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II.
PROCEDURAL BACKGROUND

On September 16, 1997, Aslett Ranches withdrew its Application for Transfer of Water Right No. 4906 ("Application"). Also on that day, Stoecklein filed a Motion to Deny Withdrawal of Application ("Motion to Deny"). In response, and pursuant to IDAPA 37.01.01.270, Aslett Ranches filed its Memorandum in Opposition to Protestants' Motion to Deny Withdrawal of Application ("Memorandum in Opposition"), on September 22, 1997.

Essentially, Stoecklein argues that they should be allowed to pursue the partial forfeiture issue allegedly raised by their protest. Aslett Ranches' position is that its application has been withdrawn and any issues raised by the application or protest are therefore moot.

III.
STOECKLEIN'S MEMORANDUM IN RESPONSE SHOULD NOT BE CONSIDERED BY THE DEPARTMENT.

A. The Department's Rules Of Procedure Do Not Permit A Response To An Answer.

The Department's Rule 270.01 provides the guidelines for answers to pleadings other than motions, including applications, claims, appeals, petitions or protests. IDAPA 37.01.01.270.01. However, Aslett Ranches Memorandum in Opposition does not fit the definition of an application, claim, appeal, petition or protest. *See* IDAPA 37.01.01.210-250 (defining pleadings, applications, claims, appeals, petitions, complaints, and protests). Instead, it is an "answer to a motion" as described in Rule 270.02.

Rule 270.02 states, in relevant part, that "[a]nswers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion." IDAPA 37.01.01.270.02. The Rule does not allow a response to an answer to a motion, which is how

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Stoecklein's Memorandum in Response must be classified. Aslett Ranches was the object of Stoecklein's earlier Motion to Deny, and was also the party opposing the motion. Aslett Ranches' Memorandum in Opposition to that motion was an "answer to a motion," because it was a "pleading[] responding to the allegations or requests of . . . motions. . . ." IDAPA 37.01.01.270. Such an answer is clearly contemplated by the Department's Rules. *See* IDAPA 37.01.01.270.

However, Stoecklein is neither the object of a motion nor a party opposing a motion, at least as to Aslett Ranches' Memorandum in Opposition. A motion is defined as "[a]ll other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings. . . ." Since Aslett Ranches' Memorandum in Opposition was a pleading specifically answering another pleading (i.e., Stoecklein's Motion to Deny), it was not a motion, and Stoecklein therefore cannot be the object of a motion or a party opposing the motion. Instead, Stoecklein is the movant, and is simply seeking one more impermissible opportunity to present its arguments to the Department.

The Department's Rules contemplate one motion with one answer, not a continuing series of responses to the opposing party's previous response. Since Stoecklein's Memorandum in Response is neither contemplated nor permitted by the Department's Rules of Procedure, the Memorandum should be disregarded by the Department.

B. Stoecklein's Memorandum in Response is Untimely Because Aslett Ranches' Application Has Been Deemed Withdrawn.

Rule 305 governs the withdrawal of pleadings and states that:

> The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all

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OCT 22 2007

parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing.

IDAPA 37.01.01.305 (emphasis added). Aslett Ranches withdrew its pleading, specifically its application for transfer, on September 16, 1997. The hearing officer did not issue any orders regarding the withdrawal, including orders which would indicate that the notice of withdrawal was ineffective. Rule 305 is mandatory, stating that unless otherwise ordered, the notice is effective. Therefore, Aslett Ranches' notice of withdrawal became effective on September 30, 1997, fourteen days after it was filed. Consequently, Stoecklein's Memorandum in Response is untimely and should be disregarded.

IV.
THE ARGUMENTS IN STOECKLEIN'S MEMORANDUM IN RESPONSE ARE UNAVAILING.

Even though Stoecklein's Memorandum in Response is not permitted under the Rules and is untimely, Aslett Ranches will address the merits of the arguments contained in the Memorandum, in order avoid prejudicing its case.

A. Stoecklein Did Not Properly Raise The Issue Of Partial Forfeiture.

Stoecklein contends that because their protest set forth the criteria contained in Idaho Code section 42-222(1) as the bases for denial of a transfer application, and because their protest was "in substantial compliance" with the Department's Rules, the issue of partial forfeiture was properly raised during the Application's pendency. However, that argument must fail because forfeiture, much less partial forfeiture, was not properly raised in the protest, and because "substantial compliance" under the Rules is not sufficient.

OCT 22 1997

Stoecklein listed injury to other water rights, enlargement, inconsistency with the conservation of water resources in Idaho, and the local public interest as grounds for their protest. Those criteria are consistent with the bases set forth in Idaho Code section 42-222(1). The next subsection of that statute explicitly provides the manner in which a water right may be reduced or lost due to forfeiture. I.C. § 42-222(2) (Supp. 1997). However, Stoecklein did not allege forfeiture or partial forfeiture in their protest, even though it would have been simple to do so.

Rule 250 states that the form and contents of a protest:

> Should (a) Fully state the facts upon which they are based, including the protestant's claim of right to oppose the application or claim; (b) Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (c) State any proposed limitation (or the denial) of any right, license, award of authority sought in the application.

IDAPA 37.01.01.250 (emphasis added). Stoecklein argues that language is merely advisory, not mandatory. While "should" may not be mandatory language in the same way that "shall" is mandatory, a reading of the purposes behind the Rules leads to the conclusion that use of the word "should" in this context is closer to mandatory than to permissive. Stoecklein is correct that Rule 305 requires that pleadings be liberally construed. However, a liberal construction does not mean that Stoecklein's protest should be or can be construed in such a way that the language of Rule 250 is entirely permissible. If the Department did not think that the information to be included in a protest was important, it would not have explicitly listed it in Rule 250. Thus, "should" must be read to mean something more than "may."

In addition, one of the functions of Rule 250, particularly when read in light of Rule 305, is to provide notice to an applicant of the nature of the issues to be litigated. That notice is provided by the recitation of facts, the applicable statutes and rules, and the rights allegedly affected by the

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OCT 22 2007

application. If a protest does not refer to the particular provision of a statute (in this case I.C. § 42-222(2)) which forms the basis of the protest, an applicant will not have fair notice of the grounds for the protest. To use Stoecklein's phraseology, allegations of forfeiture and partial forfeiture are the bones of a protest, not the flesh to be added during discovery and hearings on the application.

Rule 305 provides not only that "[p]leadings will be liberally construed," but also that "defects that do not affect substantial rights of the parties will be disregarded." IDAPA 37.01.01.305 (emphasis added). However, the defect in Stoecklein's protest, the failure to allege forfeiture as a ground of the protest, does affect the substantial rights of Aslett Ranches. Contrary to Stoecklein's assertion, such an allegation is not "subsumed" by the grounds for protest set forth in Idaho Code § 42-222(1). If that were the case, the Idaho Legislature would not have seen the need to include an additional subsection dealing specifically with forfeiture. I.C. § 42-222(2). Thus, the failure to include forfeiture and partial forfeiture in the protest affects Aslett Ranches' due process right to notice.

Further, construing Rule 250 in the manner advocated by Stoecklein is contrary to Rule 52, which states that:

> The rules in the chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. . . .

IDAPA 37.01.01.052. Construing the Rules 250 and 305 in the manner suggested by Stoecklein would certainly be a liberal construction, but would not secure a just, speedy and economical determination of the issues presented to the agency, particularly since the issue of partial forfeiture was not properly presented to the agency. Further, Stoecklein has not demonstrated that

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compliance with Rule 305 was impracticable, unnecessary, or not in the public interest. Instead, Stoecklein simply did not comply with the Rule, and offers no logical reason for their failure to do so.

B. The Application Has Been Withdrawn And The Partial Forfeiture Issue Is Therefore Moot As To This Particular Proceeding.

Stoecklein continues to argue that because they allegedly raised the partial forfeiture issue during pre-hearing conferences, the issue must be litigated to its conclusion before the Department. However, Stoecklein has lost sight of the definition of a protest: it is a pleading "opposing an application or claim or appeal as a matter of right. . . ." IDAPA 37.01.01.250.01. The purpose of a protest is not to allow the protesting party to litigate any issue regarding the particular water right, but only to litigate the issue of whether the particular application should be approved or denied. Aslett Ranches has withdrawn its application, rendering the issue of whether the application should be approved or denied moot.

The Application has been resolved in a manner contemplated by the Rules, and there is no longer an application to protest. As Aslett Ranches has previously noted, if Stoecklein wishes to pursue the partial forfeiture issue, there are other means by which they may do so. The fact that it may be inconvenient to Stoecklein to litigate the partial forfeiture issue in another manner does not mean that the Rules can be manipulated to permit Stoecklein to force Aslett Ranches to continue to defend an application which it no longer wishes to pursue.

C. *Hardy v. Higginson* Permits A Party To Withdraw His Or Her Application At Any Point, Even After It Has Been Approved.

Stoecklein argues *Hardy v. Higginson*, 123 Idaho 485, 491, 849 P.2d 946, 952 (1993) is distinguishable from this case. First, Stoecklein argues that because they have requested further

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Department action beyond denial of the transfer application, Aslett Ranches may not withdraw their application. Further, they argue that the fact that they are alleging partial forfeiture should allow them to force Aslett Ranches to continue with the application process.

However, contrary to Stoecklein's assertions, *Hardy v. Higginson* contemplates none of those exceptions to its rule that "[i]f a permittee finds the conditions [imposed by the Director on the permit] to be unsatisfactory, the permittee should be allowed to withdraw the application for amendment and be left with what the permittee had before submitting the application to IDWR." *Hardy*, 123 Idaho 485, 491, 849 P.2d 946, 952 (1993). If an applicant is allowed to withdraw an application after it has been approved with conditions, there is no reason why the applicant cannot withdraw the application at any point in the process, particularly if no determination has been made regarding the validity of allegations made in a protest to the Application. Mere allegations of forfeiture or partial forfeiture should not give rise to a requirement that an applicant pursue a transfer application even though he or she no longer wishes to do so.

V.
CONCLUSION

The Department's Rules do not contemplate a response to an answer made in response to a motion. IDAPA 37.01.01.270. Further, Stoecklein's Memorandum in Response, filed on October 2, 1997, is untimely, because Aslett Ranches' notice of withdrawal became effective on September 30, 1997. IDAPA 37.01.01.305. Either one of those facts, standing alone, is sufficient reason for the Department to disregard Stoecklein's Memorandum in Response. Even if the Department does consider the Memorandum in Response, the arguments contained therein are not persuasive. First, Stoecklein did not raise the issue of forfeiture or partial forfeiture in their protest, contrary to the requirements of Rule 250 and the criteria set forth in Idaho Code section 42-222. Second, Aslett

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Ranches withdrew their Application, and any issues raised by the Application and Protest to the Application are therefore moot. Finally, *Hardy v. Higginson* permits withdrawal of the Application under the circumstances of this case.

DATED this 7th day of October, 1997

ELAM & BURKE, P.A.
Attorneys for Aslett Ranches.

By _____
Scott L. Campbell

By _____
Angela D. Schaer

OCT 22 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 1997, I caused a true and correct copy of the foregoing **OBJECTION TO MEMORANDUM IN RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DENY WITHDRAWAL** to be mailed by depositing same in the United States mail, postage prepaid, to:

Idaho Department of Water Resources
Eastern Region Office
900 North Skyline
Idaho Falls, ID 83402

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83720

Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
Post Office Box 1906
Twin Falls, ID 83303-1906

James P. Speck
HOGUE, SPECK & AANESTAD
Post Office Box 987
Ketchum, ID 83340-0987

and by hand-delivering the original and one copy to:

L. Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Scott L. Campbell

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Department of Water Resources

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

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HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

34-00461
34-00471

October 2, 1997

VIA FACSIMILE 208-327-7866
ORIGINAL TO FOLLOW BY MAIL

L. Glen Saxton
IDWR
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: Transfer No. 4906, Aslett Ranches

Dear Mr. Saxton:

Enclosed please find the Memorandum in Response to Applicant's Opposition to Motion to Deny Withdrawal for filing in the above entitled matter.

Sincerely,

HOGUE, SPECK & AANESTAD, P.A.

Randi S. Diem
Assistant to James P. Speck

:rsd
enclosure
c: Karl Dreher, via fax
Ron Carlson, via fax
Phillip Rassier, via fax

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Department of Water Resources

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD, P.A.
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone: 208/726-4421
Facsimile: 208/726-0752

Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF	)	**MEMORANDUM IN RESPONSE TO**
TRANSFER NO. 4906,	)	**APPLICANT'S OPPOSITION TO**
ASLETT RANCHES, APPLICANT.	)	**MOTION TO DENY WITHDRAWAL**
	)	

Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co. (collectively "Stoecklein"), through their attorneys, the law firm of Hogue, Speck & Aanestad, P.A., hereby submits their response to Applicant's opposition to Stoecklein's Motion to Deny Withdrawal of Application.

I.
STATEMENT OF FACTS AND BACKGROUND

Aslett Ranches submitted an Application for Transfer No. 4906 (the "Application") to the Idaho Department of Water Resources (the "Department") proposing to transfer the place of use of a portion of Water Rights Nos. 34-00469 and 34-00471 from the NE¼SW¼ of Section 31,

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T.8N., R.23E., B.M., Custer County, Idaho to the SW¼NE¼ of Section 1, T.7N., R.22E., B.M., Custer County, Idaho. Stoecklein submitted their protest to the water right changes proposed by the Application to the Department by letter dated October 15, 1996. A hearing was scheduled for September 16, 1997 to consider and resolve, among other issues, whether that portion of these water rights appurtenant to the NE¼SW¼ of Section 31 had been forfeited pursuant to the provisions of I.C. § 42-222(2). Immediately prior to the hearing, counsel for Applicant notified the presiding officer the Applicant wished to withdraw the Application. Applicant's notice of withdrawal was confirmed in a letter to the presiding officer on the same day. In response, Stoecklein filed a Motion to Deny Withdrawal of Application, seeking to retain resolution of the issue of partial forfeiture of Water Rights Nos. 34-00469 and 34-00471 before the Department.

II.
ARGUMENT

A. Stoecklein properly raised the issue of partial forfeiture.

The Applicant contends Stoecklein did not raise the issue of partial forfeiture in their protest because they failed to comply with Procedure Rule 250 which governs the contents of protests. However, Stoecklein's protest is in substantial compliance with the Rule: it states Stoecklein is a water user directly affected by the Application, it sets forth the criteria of I.C. § 42-222(1) by which transfer applications are evaluated, and it states Stoecklein protests approval of the Application. Further, Procedure Rule 250 states three items which protestants *should* include; the language of the Rule is merely advisory, not mandatory. Finally, Procedure Rule 52 mandates liberal construction of the Rules of Procedure for the Department ("Rules") in order to promote justice, speed and economy in resolution of disputed issues. Therefore, a strict

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application of Procedure Rule 250 is not required.

Procedure Rule 305 requires pleadings to be liberally construed. Liberal construction promotes full resolution of contested issues and recognizes the ends of justice are not served by strict adherence to formal pleading requirements. The Rule further provides that "defects that do not affect substantial rights of the parties will be disregarded." Stoecklein's protest was sufficient to provide notice of the objections to the Application which is all pleadings are required to do. The Rules provide ample opportunity for the parties to flesh out the bones of pleadings through discovery and prehearing conferences. Stoecklein does not contend statements made during the prehearing process amend initial pleadings or that they did so in this case, only that no amendment is necessary.

The Applicant contends due process will be violated if Stoecklein is permitted to pursue partial forfeiture of Applicant's water rights. This argument contemplates either a lack of notice or the opportunity to be heard. Neither is lacking here. The specific ground of forfeiture is subsumed by all of the four bases identified in Stoecklein's protest and Stoecklein's counsel stated they would be pursuing the issue at a prehearing conference. Hence, the Applicant had notice the issue was pending. Stoecklein is requesting the issue be fully litigated and resolved by the Department. Therefore, the Applicant will be afforded an opportunity to be heard. The Applicant's due process argument is without merit.

B. Procedure Rule 305 concerning withdrawal is not mandatory.

Procedure Rule 305 governs withdrawal of pleadings. Procedure Rule 305 states:

> A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy.

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> ***Unless otherwise ordered*** by the presiding officer, the notice is effective fourteen (14) days after filing. (Emphasis added).

Procedure Rule 305 requires party who desires to withdraw a pleading to provide notice of such desire, and provides the presiding officer with discretion to accept or deny the requested withdrawal. Procedure Rule 305 does not grant withdrawal as an unfettered right, but provides the presiding officer with authority to consider whether the withdrawal should be permitted. However, Procedure Rule 305 does not contain standards to guide the presiding officer's consideration of a notice of withdrawal. Other legal authority must, therefore, fill the gap left in Procedure Rule 305.

C. The Rules of Procedure for the Department support retention of the Application.

The Applicant acknowledges Procedure Rule 305 permits the presiding officer to deny withdrawal, and cites several of the Rules which it contends should guide the presiding officer's decision. However, those Rules are better served by retention of the Application than by its withdrawal.

Procedure Rule 52 requires liberal construction of the Rules in order to "secure just, speedy and economical determination of all issues presented to the agency." Stoecklein's protest presents the issue of partial forfeiture of Applicant's water rights to the Department. If the Applicant is permitted to withdraw the Application, another proceeding will be required to determine this issue, resulting in further delays and expenses to the parties and the Department. This is not a "just" result for Stoecklein, other water users effected by the Applicant's use of its water rights or the Department. Further, it serves the ends of speed and economy to permit the parties to litigate and resolve the partial forfeiture issue in the context of this Application rather

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than forcing the Department to undertake its own investigation of the matter and proceed against the Applicant pursuant to I.C. § 42-351.

The Applicant cites two other Procedure Rules, 554 and 500, both of which endorse expeditious, efficient and sensible resolution of contested cases, and argues withdrawal of the Application serves these ends. To demonstrate how withdrawal serves these ends, the Applicant focuses on only the changes requested in the Application and ignores the partial forfeiture issue which will go entirely unresolved if withdrawal is granted. This is not a sensible resolution of the partial forfeiture issue. Nor, as stated above, will it result in an efficient use of Department resources.

D. The Idaho Rules of Civil Procedure support the Department's retention of jurisdiction to resolve the issue of partial forfeiture.

Stoecklein has requested more than denial of the Application from the Department -- Stoecklein seeks a declaration that a portion of the Applicant's water rights have been forfeited -- which is analogous to asserting a counterclaim in litigation. Although the Idaho Rules of Civil Procedure do not apply in this proceeding, they provide important guidance for resolving this issue which is not addressed by the Rules of Procedure for the Department. In actions governed by the Idaho Rules of Civil Procedure, Rule 41(a)(2) would prevent dismissal of an action in which a counterclaim has been asserted over the objection of the counterclaimant. Rule 41(a)(2) does permit dismissal of an action in which a counterclaim has been asserted, however, if the "counterclaim can remain pending for independent adjudication" by the tribunal. This is possible in this case and it is the result Stoecklein seeks.

Despite the Applicant's argument to the contrary, if it chooses not to pursue Department

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determination of the changes to its water rights, it need not do so. This is not what Stoecklein requests. Stoecklein requests only that the Application remain pending before the Department on the partial forfeiture issue so the issue can be resolved.

E. *Hardy v. Higginson*[1] does not support withdrawal of the Application.

In *Hardy v. Higginson*, the Supreme Court addressed whether the Department could properly impose conditions in approving an application for transfer. In dicta, the Court stated an applicant is not required to accept such conditions; the applicant can either withdraw the application and continue with the right as originally established, or appeal the conditions.[2] Although *Hardy* involved an application to which protests had been filed, as is the case here, a crucial distinction exists between these cases: the protestants in *Hardy* did not request Department action beyond denial of the application for transfer, as Stoecklein has.[3]

If *Hardy* had involved a determination by the Department that the application be denied or conditioned based upon forfeiture, it is extremely unlikely the Court would have stated the application could be withdrawn and the forfeiture ignored. At that point, the applicant no longer has the right to continue with the right as originally established and withdrawal of the application could not "unforfeit" the water right. This is exactly the situation the Applicant wishes to avoid by preemptively withdrawing the Application. The Court's ruling in *Hardy* provides no basis for allowing the Applicant to do so.

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[1] 123 Idaho 485, 849 P.2d 946 (1993).

[2] *Hardy*, 123 Idaho at 491.

[3] *Id.* at 487.

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III.
CONCLUSION

Stoecklein has raised the issue of partial forfeiture of the Applicant's water rights. Procedure Rule 305 does not grant the Applicant the unilateral right to withdraw this issue from the jurisdiction of the Department, nor is such a result supported by the policies contained in the Rules. Rather, those policies which endorse just resolution of pending issues provide compelling grounds to retain the Application before the Department and resolve Stoecklein's partial forfeiture challenge. Neither the ends of the Rules nor the interests of the Department in administering the water resources of this State will be served by permitting withdrawal of this case. Stoecklein requests, therefore, the withdrawal be denied.

DATED this 21st day of October 1997.

HOGUE, SPECK & AANESTAD, P.A.
Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

By _____
James P. Speck

OCT 22 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October 1997, I served a true and correct copy of the foregoing document on the following persons in the manner designated below:

Scott L. Campbell, Esq.
Elam & Burke, P.A.
Key Financial Center
702 West Idaho
P.O. Box 1539
Boise, ID 83701
Fax: 1-208-384-5844

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☑ Facsimile, with copy by United States Mail, Postage Prepaid

Norman M. Semanko, Esq.
Roshalt, Robertson & Tucker
142 3rd Avenue North
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax: 1-208-736-0041

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☑ Facsimile, with copy by United States Mail, Postage Prepaid

JAMES P. SPECK

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ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

FACSIMILE TRANSMISSION

October 3, 1997

Please deliver the following pages to:

NAME:	L. Glen Saxton, P.E.
COMPANY:	Idaho Department of Water Resources
ADDRESS:	
TEL. #:	
FAX #:	327-7866
FROM:	Angela D. Schaer
SENDER:	Tiffiny M. Hudak
File No.:	3524-9014

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FACSIMILE
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ANGELA D. SCHAER

October 3, 1997

SENT VIA FACSIMILE

Mr. L. Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Re: In the Matter of Transfer No. 4906, Aslett Ranches, Applicant

Dear Mr. Saxton:

We received a copy of Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle & Livestock Co.'s ("Stoecklein") "Memorandum in Response to Applicant's Opposition to Motion to Deny Withdrawal" by fax yesterday afternoon. This letter is to inform you that we intend to file a written objection to that memorandum on or before Wednesday, October 8, 1997, at 5 p.m.

Thank you very much for your consideration in this matter.

Very truly yours,

ELAM & BURKE
A Professional Association

Angela D. Schaer

Angela D. Schaer

ADS:tmh G:\TMH\WPDATA\352400042.LTR

cc: Mr. Steve Aslett, Sr.
Mr. Steve Aslett, Jr.
Norman Semanko, Esq.
James Speck, Esq.

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Department of Water Resources

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HOGUE, SPECK & AANESTAD, P.A.
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Post Office Box 987
Ketchum, Idaho 83340
Telephone: 208/726-4421
Facsimile: 208/726-0752

Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF	)	**MEMORANDUM IN RESPONSE TO**
TRANSFER NO. 4906,	)	**APPLICANT'S OPPOSITION TO**
ASLETT RANCHES, APPLICANT.	)	**MOTION TO DENY WITHDRAWAL**
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If *Hardy* had involved a determination by the Department that the application be denied or conditioned based upon forfeiture, it is extremely unlikely the Court would have stated the application could be withdrawn and the forfeiture ignored. At that point, the applicant no longer has the right to continue with the right as originally established and withdrawal of the application could not "unforfeit" the water right. This is exactly the situation the Applicant wishes to avoid by preemptively withdrawing the Application. The Court's ruling in *Hardy* provides no basis for allowing the Applicant to do so.

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[3] *Id.* at 487.

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III.
CONCLUSION

Stoecklein has raised the issue of partial forfeiture of the Applicant's water rights. Procedure Rule 305 does not grant the Applicant the unilateral right to withdraw this issue from the jurisdiction of the Department, nor is such a result supported by the policies contained in the Rules. Rather, those policies which endorse just resolution of pending issues provide compelling grounds to retain the Application before the Department and resolve Stoecklein's partial forfeiture challenge. Neither the ends of the Rules nor the interests of the Department in administering the water resources of this State will be served by permitting withdrawal of this case. Stoecklein requests, therefore, the withdrawal be denied.

DATED this 2nd day of October 1997.

HOGUE, SPECK & AANESTAD, P.A.
Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

By _____
James P. Speck

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 1997, I served a true and correct copy of the foregoing document on the following persons in the manner designated below:

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J. P. Speck

JAMES P. SPECK

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FAX TRANSMISSION

HOGUE, SPECK & AANESTAD
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FAX: 1-208-726-0752

To:	L. Glen Saxton	**Date:**	October 2, 1997
Fax #:	208-327-7866	**Pages:**	10, including this cover sheet.
From:	*Jim Speck*		
Subject:	Transfer No. 4906, Aslett Ranches		

COMMENTS:

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Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF	)	**MEMORANDUM IN RESPONSE TO**
TRANSFER NO. 4906,	)	**APPLICANT'S OPPOSITION TO**
ASLETT RANCHES, APPLICANT.	)	**MOTION TO DENY WITHDRAWAL**
	)	

Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co. (collectively "Stoecklein"), through their attorneys, the law firm of Hogue, Speck & Aanestad, P.A., hereby submits their response to Applicant's opposition to Stoecklein's Motion to Deny Withdrawal of Application.

I.
STATEMENT OF FACTS AND BACKGROUND

Aslett Ranches submitted an Application for Transfer No. 4906 (the "Application") to the Idaho Department of Water Resources (the "Department") proposing to transfer the place of use of a portion of Water Rights Nos. 34-00469 and 34-00471 from the NE¼SW¼ of Section 31,

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T.8N., R.23E., B.M., Custer County, Idaho to the SW¼NE¼ of Section 1, T.7N., R.22E., B.M., Custer County, Idaho. Stoecklein submitted their protest to the water right changes proposed by the Application to the Department by letter dated October 15, 1996. A hearing was scheduled for September 16, 1997 to consider and resolve, among other issues, whether that portion of these water rights appurtenant to the NE¼SW¼ of Section 31 had been forfeited pursuant to the provisions of I.C. § 42-222(2). Immediately prior to the hearing, counsel for Applicant notified the presiding officer the Applicant wished to withdraw the Application. Applicant's notice of withdrawal was confirmed in a letter to the presiding officer on the same day. In response, Stoecklein filed a Motion to Deny Withdrawal of Application, seeking to retain resolution of the issue of partial forfeiture of Water Rights Nos. 34-00469 and 34-00471 before the Department.

II.
ARGUMENT

A. Stoecklein properly raised the issue of partial forfeiture.

The Applicant contends Stoecklein did not raise the issue of partial forfeiture in their protest because they failed to comply with Procedure Rule 250 which governs the contents of protests. However, Stoecklein's protest is in substantial compliance with the Rule: it states Stoecklein is a water user directly affected by the Application, it sets forth the criteria of I.C. § 42-222(1) by which transfer applications are evaluated, and it states Stoecklein protests approval of the Application. Further, Procedure Rule 250 states three items which protestants *should* include; the language of the Rule is merely advisory, not mandatory. Finally, Procedure Rule 52 mandates liberal construction of the Rules of Procedure for the Department ("Rules") in order to promote justice, speed and economy in resolution of disputed issues. Therefore, a strict

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application of Procedure Rule 250 is not required.

Procedure Rule 305 requires pleadings to be liberally construed. Liberal construction promotes full resolution of contested issues and recognizes the ends of justice are not served by strict adherence to formal pleading requirements. The Rule further provides that "defects that do not affect substantial rights of the parties will be disregarded." Stoecklein's protest was sufficient to provide notice of the objections to the Application which is all pleadings are required to do. The Rules provide ample opportunity for the parties to flesh out the bones of pleadings through discovery and prehearing conferences. Stoecklein does not contend statements made during the prehearing process amend initial pleadings or that they did so in this case, only that no amendment is necessary.

The Applicant contends due process will be violated if Stoecklein is permitted to pursue partial forfeiture of Applicant's water rights. This argument contemplates either a lack of notice or the opportunity to be heard. Neither is lacking here. The specific ground of forfeiture is subsumed by all of the four bases identified in Stoecklein's protest and Stoecklein's counsel stated they would be pursuing the issue at a prehearing conference. Hence, the Applicant had notice the issue was pending. Stoecklein is requesting the issue be fully litigated and resolved by the Department. Therefore, the Applicant will be afforded an opportunity to be heard. The Applicant's due process argument is without merit.

B. Procedure Rule 305 concerning withdrawal is not mandatory.

Procedure Rule 305 governs withdrawal of pleadings. Procedure Rule 305 states:

> A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy.

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> ***Unless otherwise ordered*** by the presiding officer, the notice is effective fourteen (14) days after filing. (Emphasis added).

Procedure Rule 305 requires party who desires to withdraw a pleading to provide notice of such desire, and provides the presiding officer with discretion to accept or deny the requested withdrawal. Procedure Rule 305 does not grant withdrawal as an unfettered right, but provides the presiding officer with authority to consider whether the withdrawal should be permitted. However, Procedure Rule 305 does not contain standards to guide the presiding officer's consideration of a notice of withdrawal. Other legal authority must, therefore, fill the gap left in Procedure Rule 305.

C. The Rules of Procedure for the Department support retention of the Application.

The Applicant acknowledges Procedure Rule 305 permits the presiding officer to deny withdrawal, and cites several of the Rules which it contends should guide the presiding officer's decision. However, those Rules are better served by retention of the Application than by its withdrawal.

Procedure Rule 52 requires liberal construction of the Rules in order to "secure just, speedy and economical determination of all issues presented to the agency." Stoecklein's protest presents the issue of partial forfeiture of Applicant's water rights to the Department. If the Applicant is permitted to withdraw the Application, another proceeding will be required to determine this issue, resulting in further delays and expenses to the parties and the Department. This is not a "just" result for Stoecklein, other water users effected by the Applicant's use of its water rights or the Department. Further, it serves the ends of speed and economy to permit the parties to litigate and resolve the partial forfeiture issue in the context of this Application rather

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than forcing the Department to undertake its own investigation of the matter and proceed against the Applicant pursuant to I.C. § 42-351.

The Applicant cites two other Procedure Rules, 554 and 500, both of which endorse expeditious, efficient and sensible resolution of contested cases, and argues withdrawal of the Application serves these ends. To demonstrate how withdrawal serves these ends, the Applicant focuses on only the changes requested in the Application and ignores the partial forfeiture issue which will go entirely unresolved if withdrawal is granted. This is not a sensible resolution of the partial forfeiture issue. Nor, as stated above, will it result in an efficient use of Department resources.

D. The Idaho Rules of Civil Procedure support the Department's retention of jurisdiction to resolve the issue of partial forfeiture.

Stoecklein has requested more than denial of the Application from the Department -- Stoecklein seeks a declaration that a portion of the Applicant's water rights have been forfeited -- which is analogous to asserting a counterclaim in litigation. Although the Idaho Rules of Civil Procedure do not apply in this proceeding, they provide important guidance for resolving this issue which is not addressed by the Rules of Procedure for the Department. In actions governed by the Idaho Rules of Civil Procedure, Rule 41(a)(2) would prevent dismissal of an action in which a counterclaim has been asserted over the objection of the counterclaimant. Rule 41(a)(2) does permit dismissal of an action in which a counterclaim has been asserted, however, if the "counterclaim can remain pending for independent adjudication" by the tribunal. This is possible in this case and it is the result Stoecklein seeks.

Despite the Applicant's argument to the contrary, if it chooses not to pursue Department

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determination of the changes to its water rights, it need not do so. This is not what Stoecklein requests. Stoecklein requests only that the Application remain pending before the Department on the partial forfeiture issue so the issue can be resolved.

E. *Hardy v. Higginson*[1] does not support withdrawal of the Application.

In *Hardy v. Higginson*, the Supreme Court addressed whether the Department could properly impose conditions in approving an application for transfer. In dicta, the Court stated an applicant is not required to accept such conditions; the applicant can either withdraw the application and continue with the right as originally established, or appeal the conditions.[2] Although *Hardy* involved an application to which protests had been filed, as is the case here, a crucial distinction exists between these cases: the protestants in *Hardy* did not request Department action beyond denial of the application for transfer, as Stoecklein has.[3]

If *Hardy* had involved a determination by the Department that the application be denied or conditioned based upon forfeiture, it is extremely unlikely the Court would have stated the application could be withdrawn and the forfeiture ignored. At that point, the applicant no longer has the right to continue with the right as originally established and withdrawal of the application could not "unforfeit" the water right. This is exactly the situation the Applicant wishes to avoid by preemptively withdrawing the Application. The Court's ruling in *Hardy* provides no basis for allowing the Applicant to do so.

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[1] 123 Idaho 485, 849 P.2d 946 (1993).

[2] *Hardy*, 123 Idaho at 491.

[3] *Id.* at 487.

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III.
CONCLUSION

Stoecklein has raised the issue of partial forfeiture of the Applicant's water rights. Procedure Rule 305 does not grant the Applicant the unilateral right to withdraw this issue from the jurisdiction of the Department, nor is such a result supported by the policies contained in the Rules. Rather, those policies which endorse just resolution of pending issues provide compelling grounds to retain the Application before the Department and resolve Stoecklein's partial forfeiture challenge. Neither the ends of the Rules nor the interests of the Department in administering the water resources of this State will be served by permitting withdrawal of this case. Stoecklein requests, therefore, the withdrawal be denied.

DATED this 2nd day of October 1997.

HOGUE, SPECK & AANESTAD, P.A.
Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

By _____
James P. Speck

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 1997, I served a true and correct copy of the foregoing document on the following persons in the manner designated below:

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JAMES P. SPECK

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MEMORANDUM

To: Pam Skaggs

From: L. Glen Saxton

RE: **WITHDRAWN APPLICATION FOR TRANSFER NO. 4906 FILED IN THE NAME OF ASLETT RANCHES**

Date: September 30, 1997

The applicant has withdrawn the above referenced application for transfer involving water right Nos. 34-00469 and 34-00471.

Even though the correspondence of Scott Campbell dated September 22, 1997, suggests that the department needs to issue an order denying a motion, the department does not need to issue an order.

I am forwarding the original file and the manila folder transfer file so that we can make appropriate changes to the data base and take any needed action on the files.

Thank you.

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Department of Water Resources

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SCOTT L. CAMPBELL

September 18, 1997

SENT VIA FACSMILIE

James P. Speck
Hogue, Speck & Aanestad
PO Box 987
Ketchum, ID 83340

Re: Aslett Ranches Transfer No. 4906

Dear Jim:

Thank you for you correspondence of September 18, 1997 which I received by facsimile transmission today. I am sending a copy of your correspondence to my clients and will discuss with them the issues you have raised in your letter. I will attempt to provide you with a response on or before September 26, 1997.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TMH\WPDATA\3524\00037.LTR

cc: Mr. Steve Aslett
Norman Semanko, Esq.
Karl Dreher, Director of IDWR

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Department of Water Resources

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SCOTT L. CAMPBELL

September 22, 1997

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Department of Water Resources

Mr. L Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Re: In the Matter of Transfer No. 4906, Aslett Ranches, Applicant

Dear Glen:

I've enclosed an original and one copy of the Memorandum in Opposition to Protestants' Motion to Deny Withdrawal of Application. I'm also enclosing an extra copy of the Memorandum so that it can be date stamped and returned to me in the enclosed pre-addressed stamped envelope. I appreciate your assistance in this regard.

By copy of this correspondence, I am also providing a copy of the Memorandum to Director Karl Dreher, Phillip Rassier, and Ron Carlson.

Thank you for your attention to this matter. Obviously, Aslett Ranches is hopeful that the Protestants' Motion to Deny Withdrawal of Application will be denied.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TMH\WPDATA\3524\00040.LTR

cc: Karl Dreher, Director, IDWR
Phillip Rassier, Esq.
Mr. Ron Carlson
Mr. Steve Aslett
Mr. Steve Aslett, Jr.
Norman Semanko, Esq.
James Speck, Esq.

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Attorneys for Aslett Ranches.

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Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 4906, ASLETT RANCHES, APPLICANT.	**MEMORANDUM IN OPPOSITION TO PROTESTANTS' MOTION TO DENY WITHDRAWAL OF APPLICATION.**

I.
INTRODUCTION

Aslett Ranches, pursuant to IDAPA 37.01.01.270, hereby responds to the "Motion to Deny Withdrawal of Application" ("Motion") filed by Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle and Livestock Co. (collectively referred to as "Protestants"), and request that the Idaho Department of Water Resources (the Department) deny the Motion. The Motion was filed in response to the notice of withdrawal of Aslett Ranches' Application for Transfer. The notice of withdrawal was given verbally by counsel for the Applicant Aslett Ranches prior to the formal hearing set for September 16, 1997, at 10:00 a.m, and was followed by a confirmatory letter on the same day. *See* Exhibit A.

In response to the notice, the Protestants concede that the verbal notice and confirming letter conform to the notice requirements for withdrawal of pleadings set forth in IDAPA 37.01.01.270. As a preliminary matter, Aslett Ranches acknowledges that IDAPA 37.01.01.305

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states that "[u]nless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing." Thus, the presiding officer may decline to accept the notice of withdrawal. However, for the reasons set forth below, the presiding officer should accept the notice, and deny the Protestants' motion.

II.
ARGUMENT

The Protestants assert that because "the issue of partial forfeiture was raised by the protest filed by Stoecklein" to Aslett Ranches' Application for Transfer, they are "therefore entitled to litigate this issue to its conclusion before the Department." That bare assertion is made without any legal support or precedent, and for the reasons which follow, is untenable. Additionally, this assertion misrepresents the record before the Department, because the issue of "partial forfeiture" was not raised by the Protestants in their protest. *See* Exhibit B. Thus, the Protestants are improperly attempting to raise the issue at this late date, and as Aslett Ranches shows in section II(D), *infra*, such a tactic is not permitted under the Rules of Procedure for the Department ("Rules").

A. The IDAPA Rules Which Apply to the Idaho Department of Water Resources Demonstrate a Clear Intent to Resolve Contested Applications Quickly and Economically.

Rule 52 of the Rules of Procedure for the Department provides that the Rules "will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. . . ." IDAPA 37.01.01.052. Thus, the overarching concern of the Rules is that they be applied in a manner which allows matters addressed by the Department to be resolved not only fairly and justly, but with speed and economy firmly in mind.

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Several other Rules illustrate those principles. First, Rule 554 governs conferences at hearing, and permits the presiding officer to conduct conferences immediately before the hearing and during recesses in the hearing in order to resolve "matters that may expedite orderly conduct of the hearing." IDAPA 37.01.01.554. This is another example of how the Rules contemplate speedy resolution of contested matters before the Department. Certainly, withdrawal of an Application expedites orderly conduct, since it obviates the need for a formal hearing. *See also* IDAPA 37.01.01. 510 (setting forth similar rationales for prehearing conferences).

Second, as noted in the Rules, "[t]he Idaho Legislature encourages informal means of alternative dispute resolution (ADR) . . . These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be obtained under formal contested case procedures. . . ." IDAPA 37.01.01.500. While withdrawal of the Application is not one of the specific types of ADR contemplated by Rule 500, it certainly leads to an "efficient and sensible" outcome. In fact, it would be inefficient and nonsensical to force Aslett Ranches to continue to pursue an application when it clearly no longer wishes to do so, particularly since withdrawal of the application is conceivably one of the outcomes which would result from ADR.

The goals of the Rules will clearly be served by allowing Aslett Ranches to withdraw its Application. Nothing could be more speedy and economical, and if the Application is withdrawn by the Applicant itself, the result will surely be just.

B. The Idaho Supreme Court Has Endorsed the Withdrawal of an Application in Analogous Proceedings.

In a case involving an application to amend two existing water permits, the Idaho Supreme Court endorsed the withdrawal of an application at an even later stage in the proceedings than the stage at which Aslett Ranches withdrew its Application. *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993). Hardy sought an additional point of diversion for his permits, pursuant to Idaho

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Code section 42-204. The Department approved the Application, although it imposed certain conditions on the approval. Hardy ultimately appealed to the Idaho Supreme Court.

After ruling, *inter alia*, that the Director could impose conditions on Hardy's permit, the Court stated the following:

> However, this is not to say that a permittee requesting an amendment to a water permit must accept the risk of losing any previously approved points of diversion. If a permittee finds the conditions to be unsatisfactory, the permittee should be allowed to withdraw the application for amendment and be left with what the permittee had before submitting the application to the IDWR. Similarly, a permittee should be allowed to appeal any conditions imposed by a Director, to ensure that such conditions were not imposed unreasonably or arbitrarily, without fear of losing the State's consent to put the water to a beneficial use under the terms of the original permit.

Id. at 491. Thus, the Idaho Supreme Court endorsed the idea that an Applicant could withdraw his or her application for amendment even after the entire formal hearing process, and after the Application had been approved, albeit with unfavorable conditions.

Aslett Ranches is in a better procedural posture than *Hardy*. Even if the entire process had taken place, there is a strong argument that under *Hardy*, Aslett Ranches would still be allowed to withdraw its Application. However, Aslett Ranches withdrew its application before the formal hearing began, not after the entire formal hearing had taken place and a decision been rendered. Thus, the withdrawal sought by Aslett Ranches will have even less of an economic impact on the parties and the taxpayers than the withdrawal which would have been allowed by the Idaho Supreme Court in *Hardy*. Granted, the Application was withdrawn shortly before the formal hearing was set to begin. Nevertheless, this should not alter the analysis nor the result. Aslett Ranches should be allowed to withdraw its application, and the Protestants' motion should be denied.

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C. A Protestant to an Application for Transfer Should Not Be Permitted to Force an Applicant to Proceed with the Application, When the Applicant Wishes to Withdraw the Application.

Aslett Ranches, as the Applicant, had the burden of proof in the transfer application proceeding. *Idaho Department of Water Resources Conference and Hearing Procedure,* Attachment to Notice of Prehearing Conference, March 27, 1997. After carefully assessing the situation, and considering its options, Aslett Ranches then decided that it did not desire to proceed with the Application. Now, however, the Protestants wish to force Aslett Ranches to go forward with an action which it does not wish to pursue. In other words, the Protestants are attempting to force Aslett Ranches to carry a burden of proof which it does not wish to carry, and which it should not be legally required to carry. There is no authority for the Protestants' position. In fact, common sense tells one that a party with the burden of proof, who bears the risk of losing if the burden is not carried, should not be forced by an opposing party to take that risk and assume that burden.

Additionally, a curious precedent would be established by granting Protestants' Motion. Whenever an applicant determines that proceeding with the application is no longer necessary or cost-effective, a protestant could force the applicant to continue through the administrative process, including a formal contested hearing. This would be a dangerous precedent for the Department to establish. It also would constitute a dramatic departure from the Department's historic practice and add some undefined "good cause" requirement for withdrawal of applications which is not set forth in the Department's Rules.

The due process implications of such a determination are obvious. Such a determination would impinge upon an applicant's due process rights to have notice of the procedural and

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substantive standards which govern the administrative law process. In this case, Aslett Ranches' due process rights would be violated.

D. The Protestants are Improperly Attempting to Raise the Issue of Partial Forfeiture for the First Time.

Contrary to their assertion, the "issue" of partial forfeiture was not raised by the Protestants in their protest (Exhibit B). This contradicts the specific requirements of Rule 250, which states that protests should:

> a. *Fully* state the facts upon which they are based, including the protestant's claim of right to oppose the application or claim;
>
> b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and
>
> c. State any proposed limitation (or the denial) of any right, license, award of [sic] sought in the application.

IDAPA 37.01.01.250 (emphasis added). The only issues raised by the Protestants were (1) injury to other water rights; (2) enlargement; (3) consistency with conservation of the State's water resources; and (4) local public interest. *See* Exhibit B. By its plain language, the October 15, 1996 protest identified those four issues, and only those four issues, as the grounds for the protest against the water right changes proposed by Transfer Number 4906.

Not only was the partial forfeiture issue not raised in the protest, it was not raised at all by the Protestants until the filing of their pending Motion on September 16, 1997, nearly one year after the initial protest was filed. While the Protestants asserted in their counsel's letter to L. Glen Saxton, dated August 26, 1997, that they raised the issue of "forfeiture" at a prehearing conference, oral statements at such an *informal, off-the-record* conference do not serve to amend pleadings under the Department's Rules. To allow such statements to amend the pleadings would surely violate the spirit of Rule 500, which, as noted above in Section II(A), encourages the use of ADR.

If every statement made in such a conference was considered an amendment of the pleadings, parties would certainly be much less forthcoming and much less likely to submit to ADR. Further, Rule 514 specifically provides that facts disclosed, offers made, and all other aspects of negotiation in a prehearing conference in a contested case are not part of the record. IDAPA 37.01.01.514.

It also is noteworthy that the partial forfeiture issue was raised only after the Idaho Supreme Court resolved the issue in its opinion issued on September 10, 1997. *In re SRBA -- Basin Wide Issue No. 10: State v. Hagerman Water Right Owners, Inc.*, Docket No. 23214, 1997 Idaho Supreme Court Opinion No. 119. In any event, "forfeiture" is not the same legal concept as "partial forfeiture." If those concepts were identical, the Idaho Supreme Court would not have distinguished the two in its recent decision.

The tactic of raising an issue at such a late date is not permitted under the Rules. First, as just noted, Rule 250 requires a protestant to *fully* state the facts upon which the protest is based. The protest lists no facts or argument regarding partial forfeiture. Second, the Protestants could have filed additional documents during the informal stage of the proceedings. Rule 210 provides, in relevant part, that

> [a] party's initial pleading in any proceeding must comply with Rule 200 [governing Initial Pleading by Party -- Listing of Representatives], but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303.

IDAPA 37.01.01.210. Thus, the Protestants could have filed additional documents raising the partial forfeiture issue during the informal stage of this matter, and those documents would have been considered part of the initial pleadings. However, they did not do so, and now any additional issues must be raised pursuant to Rules 300 through 303.

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Third, if there are any such additional documents which were intended to be part of the record, they were not served on Aslett Ranches' representatives as required by Rule 203. IDAPA 37.01.01.203 (stating that "[f]rom the time a party files its initial pleading in a contested case, that party must serve. . . all future documents intended to be part of the agency record upon all other parties' representatives. . . unless otherwise directed by order or notice or by the presiding officer on the record.")

Fourth, the Protestants did not comply with Rule 305, which governs the amendment and withdrawal of pleadings. That rule provides that "[t]he presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. . . ." IDAPA 37.01.01.305. The Protestants did not attempt to amend their pleadings, and if they are allowed to raise the partial forfeiture issue at this late juncture, without following the proper procedural rules, substantial rights of Aslett Ranches will be affected, including the right to due process.

E. The Protestants Have No Rights in This Particular Application Independent of the Application Itself.

Even if the Protestants had properly "raised" the partial forfeiture issue, they would not be "entitled" to litigate the issue in this proceeding to its conclusion. As previously noted, the Protestants have asserted that they are "entitled to litigate this issue [of partial forfeiture]." However, the Protestant's posture in this matter was solely as protestant to an Application for Transfer by Aslett Ranches. Once Aslett Ranches withdrew its Application, the Protestants had no further independent interest in the matter as presented. In other words, without an Application there is nothing to protest. Thus, the Protestants are not "entitled" to litigate any issues regarding the Application merely because they "raised" them, absent bringing an independent action. If the

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Protestants wish to pursue their partial forfeiture argument, there are means by which they may do so. However, they are without the right to force Aslett Ranches to pursue its Application.

III.
CONCLUSION

The Rules of Procedure of the Department clearly envision the just, speedy and economical resolution of matters which come before the Department. With those principles firmly in mind, Aslett Ranches made the carefully considered decision to withdraw its Application for Transfer, and did so even earlier than the time which the Idaho Supreme Court stated would be permissible in analogous proceedings.

On the other hand, the Protestants have impermissibly attempted to raise an issue which should have been raised in its initial protest, or, if at a later time, in a manner which was in compliance with the Rules. The Protestants should not now be permitted to raise the partial forfeiture issue. The Protestants wish to force Aslett Ranches, the party with the burden of proof, to continue to pursue an Application merely so that they can proceed with their protest. The Department's Rules and historic practice do not allow such a result.

The Protestants motion should be denied, and Aslett Ranches should be permitted to withdraw its Application for Transfer.

DATED this 22nd day of September, 1997

ELAM & BURKE, P.A.
Attorneys for Aslett Ranches.

By _____
Scott L. Campbell

RECEIVED
OCT 22 1997

By _____
Angela D. Schaer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 22nd day of September, 1997, I caused a true and correct copy of the foregoing MEMORANDUM IN OPPOSITION TO PROTESTANTS' MOTION TO DENY WITHDRAWAL OF APPLICATION to be mailed by depositing same in the United States mail, postage prepaid, to:

Idaho Department of Water Resources
Eastern Region Office
900 North Skyline
Idaho Falls, ID 83402

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83720

Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
Post Office Box 1906
Twin Falls, ID 83303-1906

James P. Speck
HOGUE, SPECK & AANESTAD
Post Office Box 987
Ketchum, ID 83340-0987

Scott L. Campbell

MICROFILMED
OCT 22 1997

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

September 16, 1997

SENT VIA FACSIMILE AND U.S. MAIL

L. Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Re: Aslett Ranches Transfer No. 4906

Dear Glen:

Pursuant to our conversation this morning, prior to the commencement of the hearing in the above-referenced transfer, the applicant has withdrawn its application.

Again, I apologize for the short notice of the withdrawal. Unfortunately, the decision to withdraw the application was made only minutes before my conversation with you.

Thank you for your cooperation and assistance.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TMH\WPDATA\HEADING.SLC

cc: Mr. Norm Semanko, Esq.
Mr. James P. Speck, Esq.
Mr. Steve Aslett
Mr. Allen Merritt
Mr. Harold Jones

EXHIBIT
A

ELAM & BURKE
A Professional Association
ATTORNEYS AT LAW

OCT 17 1996

RECEIVED

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 15, 1996

VIA FACSIMILE – (208) 525-7177
ORIGINAL TO FOLLOW BY MAIL

COPY

Mr. Ernie Carlson
Idaho Department of Water Resources
Eastern Region
900 N. Skyline, Ste. A
Idaho Falls, ID 83402

Re: Aslett Ranches – Application for Transfer of Water Right No. 4906

Dear Mr. Carlson:

I represent Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle and Livestock Co. My clients own land along and have the right to divert water from Warm Springs Creek which is the source of water for the water rights that are the subject of the above-referenced Application for Transfer. This letter is a protest by my clients against the water right changes proposed by Transfer No. 4906 on the following grounds:

1. The proposed change will injure other water rights;

2. The proposed change constitutes an enlargement in use of the subject water rights;

3. The proposed change is not consistent with the conservation of water resources within the state of Idaho;

4. The proposed change is not in the local public interest.

EXHIBIT
5
Blumberg No. 6110

I trust this protest is timely filed since October 14, 1996 was a state and federal holiday and your office, as well as the United States Post Office on that day. Please find enclosed our check no. 26324 in the sum of $25.00, in payment of the protest fees. Please contact me immediately if you have any questions about this protest.

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck

JPS:jrs
c: Dave Stoecklein
Aslett Ranches
Scott L. Campbell, Esq.

F:\WPDATA\JIM\LETTERS\CARLSON.001

RECEIVED
OCT 22 1996

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS
P. O. Box 987
Ketchum, ID 83340
1-208-726-4421
Fax: 1-208-726-0752

FAX COVER SHEET/MEMO

To:	Mr. Karl J. Dreher	**Date:**	September 18, 1997
Fax #:	(208) 327-7866	**Pages:**	2, including this cover sheet.
From:	James P. Speck		
Subject:	***Aslett Ranches - Transfer No. 4906***		

COMMENTS:

THE INFORMATION CONTAINED IN THIS FAX TRANSMISSION IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE ABOVE-NAMED RECIPIENT AND MAY BE THE SUBJECT OF ATTORNEY/CLIENT PRIVILEGE. IF THE READER OF THIS MESSAGE IS NOT THE ABOVE-NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISTRIBUTION, DISSEMINATION, COPYING OR OTHER USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.

MICROFILMED
OCT 22 1997

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

34-00469/471
withdrawn/T#4906

September 18, 1997

VIA FACSIMILE - 1-208-384-5844
ORIGINAL TO FOLLOW BY MAIL

Mr. Scott L. Campbell
Elam & Burke
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise, ID 83701

Re: Aslett Ranches - Transfer No. 4906

Dear Scott:

You clients have irrigated over the past few months, and continue to irrigate, those lands it acquired from the Bureau of Land Management (without any appurtenant water rights) to fill in the southeast corner of their pivot. These lands are the new place of use proposed by Transfer No. 4906 and perhaps the irrigation of the lands was done in anticipation of approval of the Transfer. Absent such approval or the proper transfer of some other valid water right to those lands, the irrigation of those lands is an illegal use of water as proscribed by I.C. § 42-351. Please confirm on or before September 26, 1997 that your clients will not irrigate those lands next year unless and until the transfer of a valid water right to those lands is approved by the Idaho Department of Water Resources ("IDWR"). If I do not timely receive this confirmation, IDWR will be requested to take appropriate action under I.C. § 42-351 to prevent a recurrence of this illegal use of water.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.

James P. Speck

JPS/j
cc: Clients
Norman Semanko, Esq.
Karl Dreher, Director of IDWR

MICROFILMED
OCT 22 1997

Form 1-222
12-92

Page 1 of 8

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4906

APPLICATION FOR TRANSFER OF WATER RIGHT

RECEIVED
SEP 0 6 1996
Department of Water Resources
Eastern Region

PART 1

Name of applicant Aslett Ranches c/o Phone (208) 735-5333

Post Office address P.O. Box B, Twin Falls, ID, 83303 c/o Scott L. Campbell, Elam & Burke, P.A.
P.O. Box 1539, Boise, ID, 83701
(208) 343-5454

A. PURPOSE OF TRANSFER

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

2. Describe the reason for the proposed changes Applicant desires to re-arrange the place of use.

WITHDRAWN 09-17-97

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
34-00469	11/01/1892	3.20	Irrigation	05/01	to	10/15
34-00471	07/12/1907	0.80	Irrigation	05/01	to	10/15
					to	
					to	

2. Total amount of water being transferred 4.00 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Warm Springs Creek tributary to Big Lost River

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	SE	34	8N	22E	Custer	

WITHDRAWN 09-16-97

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	22E	1			40														40
7N	23E	6					42 L-3	41 L-4	5 L-5	5									93
8N	23E	31											40 Lot 4	40					80

MICROFILMED OCT 22 1997

Application Withdrawn 09-17-97

Total acres 213

Transfer No. 4906

PART 1

6. General Information:

a. Description of diversion system Water is diverted from Fish Hatchery Canal via pump to sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

NESW of Section 31 will not be irrigated.

d. Remarks:

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____.

_____

MICROFILMED
OCT 22 1997

Part 2

AJ5808NP
(OD-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

07/05/96 11:35:04
Page 1

Water Right Number - 34-00471 Prefix Translation: WATER RIGHT Old (D) Number -

Last Name	First Name	Address
*** C - CURRENT OWNER ***		
ASLETT RANCHES		1 - PO BOX B 2 - 3 - City- TWIN FALLS State- ID Zip- 83303 Phone - 208-734-5533
*** O - ORIGINAL OWNER ***		
LEHMAN	RUDOLPH	1 - 2 - 3 - City- XXX State- ID Zip- 000 Phone - 208-000-0000

Priority Date	Region	Stage	Status
07/12/1907	15 EASTERN	D - DECREED	

Source	Tributary
WARM SPRINGS CREEK	BIG LOST RIVER

Point of Diversion

Twn	Rng	Sec	Tract	Lot	RFlg	County	Diversion Name
08N	22E	34	SW NE SE			(37) CUSTER	

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
01	IRRIGATION	05/01	10/15	0.800	

Total Div. Rate	Total Div. Volume	Total Div. Capacity	Total Consumptive Use	KW Usage
0.800			0.0	

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07N	23E	6	NE NW	3	42.0	01	IRRIGATION	(37) CUSTER
07N	23E	6	NW NW	4	41.0	01	IRRIGATION	(37) CUSTER
07N	23E	6	SW NW	5	5.0	01	IRRIGATION	(37) CUSTER
07N	23E	6	SE NW		5.0	01	IRRIGATION	(37) CUSTER
08N	23E	31	NE SW		40.0	01	IRRIGATION	(37) CUSTER
08N	23E	31	SW SW	4	40.0	01	IRRIGATION	(37) CUSTER
08N	23E	31	SE SW		40.0	01	IRRIGATION	(37) CUSTER

Total Acres: 213.0

+ - - Diversion Means - CONC. HEADGATE TO EARTHEN DITCH WITH PUMP TO SPRINKLERS

+ - - Non-Irrigation Use - NONE

+ - - Other Rights for Same Use - A34-00469

OCT 22 1997
MACGOFLAND

3 of 8

4/96

Water right number - 34-00471 Prefix Translation: WATER RIGHT

Remarks

GEN USE OF THIS RIGHT WITH RIGHT NO. 34-00469 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 532.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 213 ACRES IN A SINGLE IRRIGATION SEASON.
WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.

Old Water Right Numbers

No Old Water Right Numbers found.

Conditions of Approval

No Conditions of Approval found.

Decree Plaintiff	Decree Defendant	Decree Date
UTAH CONSTRUCTION	JOHN F. ABBOTT, ET AL	00/00/0000

Audit Fields - 11/29/90 DCARLSON 03/26/91 DCARLSON 04/12/91 DCARLSON 05/21/91 DCARLSON 06/17/91 DCARLSON 07/09/91 DCARLSON 01/26/92 PR-PRODM 07/01/92 CPSHAW 12/02/92 ADT-SHAW 04/09/93 CM1-SMIT 06/17/93 UPD-SCHU 03/29/95 POST-STD

Certified Numbers & Date Mailed - 255698 01/21/92

Comments

No Comments Found

Adjudication Rights Dates and Flags Area

Court Report Filing	- 06/18/1992	Field Inspection Made	- 09/28/1990	Civil Case Number	- 39576
Objection Filed Date	- 02/26/1993	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 06/11/1993	Verified Date	- 07/09/1991	Old Judicial District	-
Claim Received Date	- 12/21/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	- 34
Licensed Date	- 00/00/0000	Receipt Number	- S010740	Federal/State Indicator	- S
		POU Ownership Flag	- Y	Presumption Flag	-
		Name Connector	-	Notice of Error Flag	-

RECEIVED
OCT 22 1997
WATER RESOURCES

4 of 8

9966

Part 2

AJ5808NP
(OD-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

07/03/96 16:17:49
Page 1

Water Right Number - 34-00469 Prefix Translation: WATER RIGHT Old (D) Number -

Last Name	First Name	Address
*** C - CURRENT OWNER ***		
ASLETT RANCHES		1 - PO BOX B 2 - 3 - City- TWIN FALLS State- ID Zip- 83303 Phone - 208-734-5333
*** O - ORIGINAL OWNER ***		
LEHMAN	RUDOLPH	1 - 2 - 3 - City- XXX State- ID Zip- 000 Phone - 208-000-0000

Priority Date	Region	Stage	Status
11/01/1892	15 EASTERN	D - DECREED	

Source	Tributary
WARM SPRINGS CREEK	BIG LOST RIVER

Point of Diversion

Twn	Rng	Sec	Tract	Lot	RFlg	County	Diversion Name
08N	22E	34	SW NE SE			(37) CUSTER	

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
01	IRRIGATION	05/01	10/15	3.200	
04	STOCKWATER	10/16	04/30	0.020	

Total Div. Rate	Total Div. Volume	Total Div. Capacity	Total Consumptive Use	KW Usage
3.200			0.0	

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07N	23E	6	NE NW	3	42.0	01	IRRIGATION	(37) CUSTER
07N	23E	6	NW NW	4	41.0	01	IRRIGATION	(37) CUSTER
07N	23E	6	SW NW	5	5.0	01	IRRIGATION	(37) CUSTER
07N	23E	6	SE NW		5.0	01	IRRIGATION	(37) CUSTER
08N	23E	31	NE SW		40.0	01	IRRIGATION	(37) CUSTER
08N	23E	31	SW SW	4	40.0	01	IRRIGATION	(37) CUSTER
08N	23E	31	SE SW		40.0	01	IRRIGATION	(37) CUSTER

Total Acres: 213.0

+ - - Diversion Means - CONC. HEADGATE TO EARTHEN DITCH WITH PUMP TO SPRINKLERS

+ - - Non-Irrigation Use - STOCKWATER 350 RANGE CATTLE

+ - - Other Rights for Same Use - A34-00471

RECEIVED
OCT 2 1996
WATER RESOURCES

5 of 8

4/96

Water right number - 34-00469 Prefix Translation: WATER RIGHT

Remarks

GEN USE OF THIS RIGHT WITH RIGHT NO. 34-00471 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 532.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 213 ACRES IN A SINGLE IRRIGATION SEASON.
WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.

Old Water Right Numbers

No Old Water Right Numbers found.

Conditions of Approval

NO1 - THE APPROPRIATOR IS ENTITLED TO THE AMOUNT OF WATER DESCRIBED - ABOVE FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE - THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED ABOVE.
NO2 - THE PORTION OF THIS RIGHT FOR STOCK WATER PURPOSES MAY BE - DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF - DIVERSION FOR STOCK WATER PURPOSES DOES NOT CONSTITUTE - UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC - INTEREST, AS DETERMINED BY THE DIRECTOR.

Decree Plaintiff	Decree Defendant	Decree Date
UTAH CONSTRUCTION	JOHN F. ABBOTT, ET AL	00/00/0000

Audit Fields - 11/29/90 DCARLSON 04/12/91 DCARLSON 05/21/91 DCARLSON 06/17/91 DCARLSON 07/08/91 DCARLSON 07/09/91 DCARLSON 01/26/92 PR-PRODM 02/20/92 SCHULTZ 04/16/92 DCARLSON 04/21/92 DCARLSON 07/01/92 CPSHAW 12/02/92 ADT-SHAW 04/09/93 CM1-SMIT 06/24/93 UPD-SCHU 03/29/95 POST-STD

Certified Numbers & Date Mailed - 255697 01/21/92

Comments

Date: 04/16/1992 User Id: DCARLSON Subject: NOTICE OF ERROR
STOCKWATER OUTSIDE IRR SEASON

Adjudication Rights Dates and Flags Area

Court Report Filing	- 06/18/1992	Field Inspection Made	- 09/28/1990	Civil Case Number	- 39576
Objection Filed Date	- 02/26/1993	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 06/18/1993	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 12/20/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	- 34
Licensed Date	- 00/00/0000	Receipt Number	- S010740	Federal/State Indicator	- S
		POU Ownership Flag	- Y	Presumption Flag	-
		Name Connector	-	Notice of Error Flag	- C

Transfer No. 4906

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

See Attachment B

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OCT 22 1997

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

Transfer No. 4906

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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

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

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 willful misrepresentations made in this application may result in voiding its approval.

Stan Aslett
(Signature of Applicant)

Subscribed and sworn to before me this 28 day of August, 19 96.

Bonnie Templeman
(Notary Public)

My commission expires 2/12/02

FOR DEPARTMENT USE ONLY

Transfer contains 8 pages and 4 attachments

Received by HWJ Date 9-6-96 Protest filed by MARK GATES

Prelim. check by _____ Fee $100 ~~$~~

Receipted by HWJ #E022551 Date 9-6-96

Published in _____ Copies of protest forwarded by HWJ

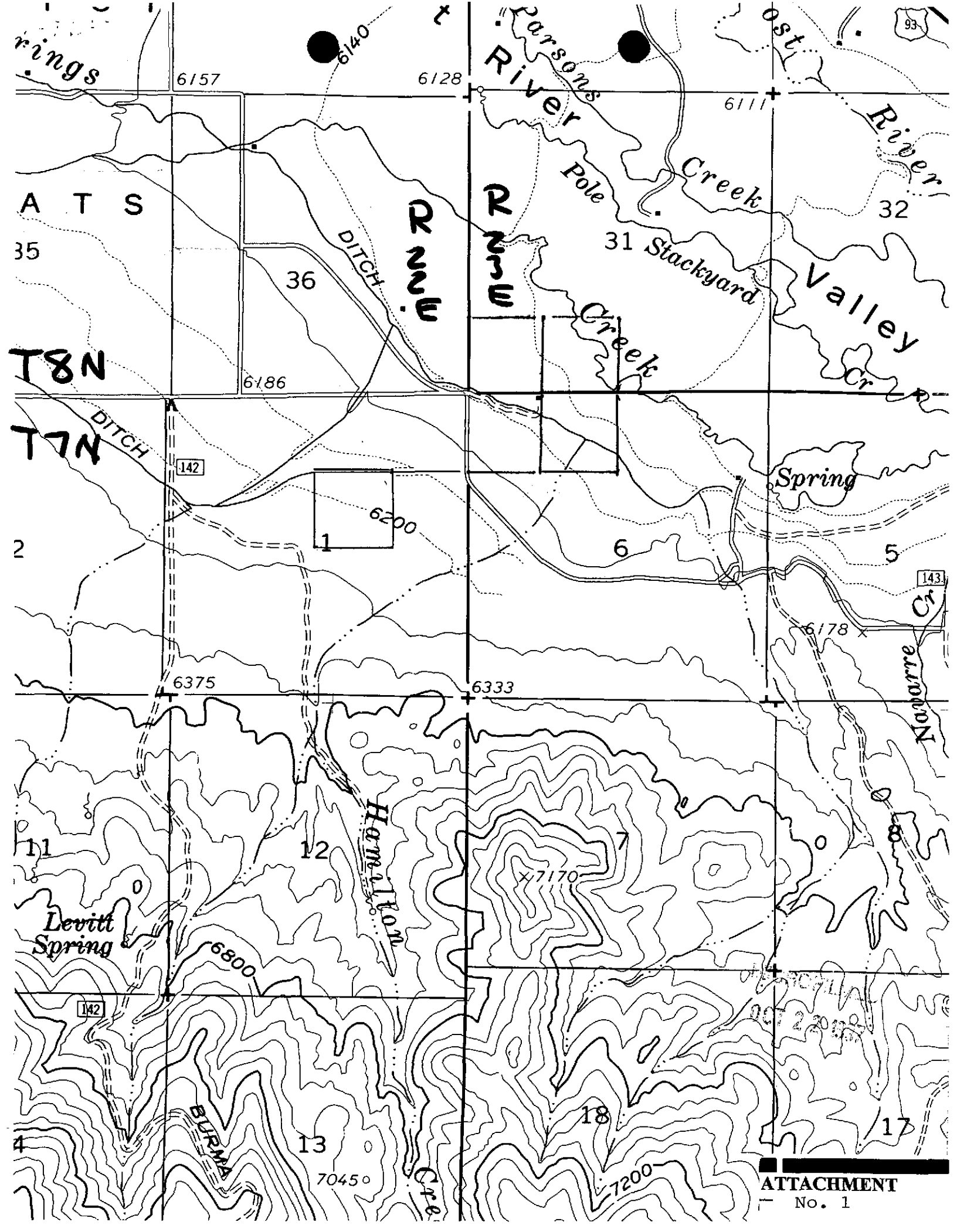
Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on Sept. 16, 96. Recommended for ☐ approval ☐ denial

WD 34 Rosenkrance rec'd. Sept. 20, 96 by _____

Copy of transfer sent to lien holder _____

MICROFILMED
OCT 22 1997



ATTACHMENT
No. 1

ATTACHMENT A

Form 1860-9
(January 1988)

209387

Custer County Rec. of Title
Custer County Idaho
3:41 P.M.
8-22-1995
Wanda Murphy Deputy
6 no

The United States of America

To all to whom these presents shall come, Greeting:

IDI-31137

WHEREAS

L & S Partnership, an Idaho Partnership

is entitled to a land patent pursuant to Section 206, Act of October 21, 1976, as amended (43 U.S.C. 1716) for the following described land:

Boise Meridian, Idaho

T.7 N., R. 22 E.,
sec. 1: S½NE¼.

T.7 N., R. 23 E.,
sec. 6, lot 8.

Containing 121.71 acres.

NOW KNOW YE, that there is, therefore, granted by the **UNITED STATES** unto L & S Partnership, the land described above; **TO HAVE AND TO HOLD** the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto L & S Partnership, and its successors and assigns, forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

SUBJECT TO:

1. Those rights for a buried telephone line granted to Mountain States T & T, its successors or assigns, by right-of-way No. IDI 21021, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE¼NE¼ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T. 7 N., R. 23 E.

2. Those rights for an electric line granted to Lost River Electric Cooperative, its successors or assigns, by right-of-way No. IDI 20934, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE¼NE¼ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T.7 N., R. 23 E.

3. Those rights held by Lost River Highway District, its successors or assigns, for an existing road exercised under RS 2477 and noted under Serial No. IDI 23188.

4. The patentee agrees that it takes the real estate subject to the existing grazing use of Lost River Ranch, holder of grazing authorization No. 114360. The rights of Lost River Ranch to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114360 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Lost River Ranch in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

Fee: $ 124.00

ATTACHMENT
No. 2

Form 1860-10
(March 1985)

209387

5. The patentee agrees that it takes the real estate subject to the existing grazing use of Terrence V. Donahue, holder of grazing authorization No. 114316. The rights of Terrence V. Donahue to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114316 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Terrence V. Donahue in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

6. The patentee agrees that it takes the real estate subject to the existing grazing use of Bar 13 LTD, holder of grazing authorization No.114343. The rights of Bar 13 LTD to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114343 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Bar 13 LTD in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

7. The patentee agrees that it takes the real estate subject to the existing grazing use of Dean T. Pence, holder of grazing authorization No.114350. The rights of Dean T. Pence to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114350 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Dean T. Pence in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

8. The patentee agrees that it takes the real estate subject to the existing grazing use of Bret Zollinger, holder of grazing authorization No.114375. The rights of Bret Zollinger to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114375 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Bret Zollinger in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

9. The patentee agrees that it takes the real estate subject to the existing trailing use of Scott McAffee, holder of trailing authorization No. 114347. The rights of Scott McAffee to trail domestic livestock on the real estate according to the conditions and terms of authorization No. 114347 will cease on March 29, 1997.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Boise, Idaho, the twenty-second day of August in the year of our Lord one thousand nine hundred and NINETY-FIVE and of the Independence of the United States the two hundred and TWENTIETH.

By _____
Deputy State Director,
Operations Support Team

ATTACHMENT
No. 3

ATTACHMENT
No. 4

MAKE CHECK PAYABLE TO: TAX BILL/RECEIPT 1996 PAID BACK 45.00
CUSTER COUNTY TAX COLLECTOR
P.O. BOX 350 TAX YEAR 1995 BILL NO 4940
CHALLIS, IDAHO 83226

PARCEL NUMBER
RP08N23E314801A

L	42,635
I	136,412
TOT MV	179,047
TOT ACS	120.100

1ST HALF	TAX	1,024.77	2ND HALF	TAX	1,024.77	FULL	TAX 2,049.54
	PEN			PEN			PEN
	INT			INT			INT
	COST			COST			COST
	TOT			TOT			TOT

ASLETT LEON
& ASLETT MARVIN
% ASLETT RANCHES
PO BOX 2
TWIN FALLS ID 83301

LOT 4
E2SW4
SEC 31 T8N R23E

TAXING DISTRICT	**RATE**	**AMOUNT**
STATE	.000000000	
COUNTY	.001921175	343.98
SCHOOL #182	.004213734	754.46
S. C. AMBULANCE	.000317534	56.84
L. R. HOSP	.001694684	303.42
MACKAY LIBRARY	.000376004	67.32
B.L.R. CEMETERY	.000257017	46.02
BATGND MOS ABAT	.000655768	117.40
LOST RIVER HWY	.000819068	146.64
SO. CUSTER FIRE	.000829146	148.46
DISTRICT TOTALS	.011084130	1,984.54
SOLID WASTE		65.00
AMOUNT DUE		2,049.54

OCT 22 1996

★ ★ ★ IMPORTANT ★ ★ ★
PLEASE READ BOTH FRONT AND BACK

PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE APPLIED TO THE OLDEST DELINQUENT YEAR.

TO AVOID LATE CHARGES, PAYMENTS MUST BE RECEIVED OR POSTMARKED BY THE DUE DATE.

KEEP TOP PORTION FOR YOUR RECORDS.

PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE.

RECEIPT NOT VALID UNTIL CHECK CLEARS
THANK YOU

RECEIVED
SEP 17 1997
Department of Water Resources

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

September 16, 1997

SENT VIA FACSIMILE AND U.S. MAIL

L. Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Re: Aslett Ranches Transfer No. 4906

Dear Glen:

Pursuant to our conversation this morning, prior to the commencement of the hearing in the above-referenced transfer, the applicant has withdrawn its application.

Again, I apologize for the short notice of the withdrawal. Unfortunately, the decision to withdraw the application was made only minutes before my conversation with you.

Thank you for your cooperation and assistance.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TMH\WPDATA\HEADING.SLC

cc: Mr. Norm Semanko, Esq.
Mr. James P. Speck, Esq.
Mr. Steve Aslett
Mr. Allen Merritt
Mr. Harold Jones

MICROFILMED
OCT 22 1997

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

FACSIMILE TRANSMISSION

Please deliver the following pages to:

TO:	L. Glen Saxton	327-5400
	Norm Semanko	(208) 736-0041
	Jim Speck	(208) 726-0752
	Steve Aslett	(208) 734-4238
	Allen Merritt	(208) 736-3037
	Harold Jones	(208) 525-7177

DATE : September 16, 1997

FROM: Tiffiny M. Hudak, Elam & Burke

OUR FILE: 3524-9014

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 2

COMMENTS:

CONFIDENTIALITY NOTICE

The information in this facsimile is confidential and intended only for the use of the addressee. The data transmitted is attorney privileged and may be exempt from disclosure. Do not copy or distribute to anyone other than the addressee. Reliance on this data by other than the intended recipient is prohibited. Please notify us immediately if you have received this communication in error. Upon notification, we will arrange for return of the fax copies to Elam & Burke, Chartered. Thank you for your assistance.

If you had any problems receiving, please call the FAX operator at (208) 343-5454.

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

September 16, 1997

SENT VIA FACSIMILE AND U.S. MAIL

L. Glen Saxton, P.E.
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

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Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\TMH\WPDATA\HEADING.SLC

cc: Mr. Norm Semanko, Esq.
Mr. James P. Speck, Esq.
Mr. Steve Aslett
Mr. Allen Merritt
Mr. Harold Jones

MICROFILMED
OCT 22 1997

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS
P. O. Box 987
Ketchum, ID 83340
1-208-726-4421
Fax: 1-208-726-0752

FAX COVER SHEET/MEMO

To:	Mr. L. Glen Saxton	**Date:**	September 16, 1997
Fax #:	(208) 327-7866	**Pages:**	5, including this cover sheet.
From:	James P. Speck		
Subject:	In the Matter of Transfer No. 4906		

COMMENTS:

THE INFORMATION CONTAINED IN THIS FAX TRANSMISSION IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE ABOVE-NAMED RECIPIENT AND MAY BE THE SUBJECT OF ATTORNEY/CLIENT PRIVILEGE. IF THE READER OF THIS MESSAGE IS NOT THE ABOVE-NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISTRIBUTION, DISSEMINATION, COPYING OR OTHER USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.

MICROFILMED
OCT 22 1997

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

September 16, 1997

VIA FACSIMILE - (208) 327-7866
ORIGINAL TO FOLLOW BY MAIL

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Re: In the Matter of Transfer No. 4906

Dear Mr. Saxton:

Enclosed for filing in this matter is a Motion to Deny Withdrawal of Application by Protestants, Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co. I am transmitting by mail a copy of the Motion to be date stamped when filed and returned to me in the postage prepaid and addressed envelope included for that purpose.

Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.

James P. Speck

JPS/j
(enclosures)
cc: Scott L. Campbell, Esq. (w/ enc.)
Norman M. Semanko, Esq. (w/ enc.)
Clients (w/ enc.)

MICROFILMED
OCT 22 1997

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD
Post Office Box 987
120 East Avenue
Ketchum, Idaho 83340
Telephone: (208) 726-4421

Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 4906, ASLETT RANCHES, APPLICANT	))))	**MOTION TO DENY WITHDRAWAL OF APPLICATION**

Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co. (collectively "Stoecklein"), through their attorneys, the law firm of Hogue, Speck & Aanestad, P.A., hereby moves the Idaho Department of Water Resources (the "Department") pursuant to IDAPA 37.01.01.260 and 37.01.01.305 for its order denying the notice of withdrawal of the Application for Transfer No. 4906 (the "Application") made verbally by counsel for the Applicant immediately prior to the hearing ("hearing") set for 10:00 a.m. on September 16, 1997 on the protests to approval of the Application filed by Stoecklein and Mark T. Gates, Jr. ("Gates") and confirmed in writing on the same day by letter to the presiding officer. In support thereof, Stoecklein states as follows:

1. IDAPA 37.01.01.305 requires,

> A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. ***Unless otherwise ordered*** by the presiding officer, the notice is effective fourteen (14) days after filing. (Emphasis added).

MICROFILMED
OCT 22 1997

The verbal statement and confirming letter by counsel for Applicant constitute such a notice of withdrawal.

2. The Application proposes to transfer the place of use of a portion of Water Rights Nos. 34-00469 and 34-00471 from the NE¼SW¼ of Section 31, T.8N., R.23E., B.M., Custer County, Idaho to the SW¼NE¼ of Section 1, T.7N., R.22E., B.M., Custer County, Idaho. The purpose of the hearing was to resolve, among other issues, whether that portion of these water rights appurtenant to the NE¼SW¼ of Section 31 had been forfeited pursuant to the provisions of I.C. § 42-222(2).

3. The issue of partial forfeiture of the water rights was raised by the protest filed by Stoecklein to the Application. Stoecklein is therefore entitled to litigate this issue to its conclusion before the Department. IDAPA 37.01.01.305 does not grant the Applicant the unilateral right to withdraw this issue from the jurisdiction of the Department. Instead, it grants the presiding officer the discretion to deny the request for withdrawal of the Application.

WHEREFORE, Stoecklein respectfully requests the Department to grant this Motion, issue its order denying withdrawal of the Application and set this matter for hearing on the issue of partial forfeiture of the water rights which are the subject of the Application.

DATED this 16th day of September, 1997.

HOGUE, SPECK & AANESTAD, P.A.
Attorneys for Dave Stoecklein, Walter Stoecklein and Bar Horseshoe Cattle & Livestock Co.

By _____
James P. Speck

MICROFILMED
OCT 22 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 1997, I served a true and correct copy of the foregoing MOTION TO DENY WITHDRAWAL OF APPLICATION on the following persons in the manner designated below:

Scott L. Campbell, Esq.
Elam & Burke, P.A.
Key Financial Center
702 West Idaho
P.O. Box 1539
Boise, ID 83701
Fax: 1-208-384-5844

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☑ Facsimile, with copy by United States Mail, Postage Prepaid

Norman M. Semanko, Esq.
Roshalt, Robertson & Tucker
142 3rd Avenue North
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax: 1-208-736-0041

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☑ Facsimile, with copy by United States Mail, Postage Prepaid

JAMES P. SPECK

MICROFILMED
OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 27, 1997

James P. Speck
HOGUE, SPECK & AANESTAD
120 E. Avenue
P.O. Box 987
Ketchum, ID 83340

RE: APPLICATION FOR TRANSFER NO. 4906 IN THE NAME OF ASLETT RANCHES

Dear Mr. Speck:

I have received by FAX your letter dated August 26, 1997 in which you request the department to conduct a field examination and prepare a report of the examiner's findings in connection with the above referenced application for transfer.

While Section 42-222, Idaho Code, does describe that it is the duty of the director to "investigate" a protest, the investigation does not necessarily require a field inspection. At this point in the protested matter, the department declines to conduct a field investigation due to the short time before the scheduled hearing, the opportunity to conduct a field examination after the hearing if determined to be necessary and due to the other avenues available to the department to investigate the protest.

The applicants, of course, will need to carry the burden of persuasion relative to whether the application should be approved including a showing that there is a valid water right available for transfer.

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

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: Scott Campbell
Norman Semanko
Allen Merritt - IDWR

MICROFILMED
OCT 22 1997

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

August 26, 1997

RECEIVED
AUG 27 1997
Department of Water Resources

VIA FACSIMILE - (208) 327-7866
ORIGINAL TO FOLLOW BY MAIL

Mr. Glen W. Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Re: Aslett Ranches Transfer No. 4906

Dear Glen:

I represent Dave Stoecklein, Walter Stoecklein and Bar Horshoe Cattle and Livestock Co., protestants against Transfer No. 4906. As presented at the pre-hearing conference, one of the bases of our protest is that the water right has not been used on the lands from which it is proposed to be transferred for a period of five or more consecutive years and, therefore, has been forfeited.

Under I.C. § 42-222 it is the duty of the director to "investigate" any protest. Has a representative of the Department done the field exam necessary to determine if the water right has been delivered to and used on those lands? If so, would you please provide all counsel with a copy of the report. If not, will you please make arrangements for the examination to be completed and results provided to counsel prior to the hearing scheduled in this matter for September 16 - 17, 1997. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.

James P. Speck

JPS/j
cc: clients
Norman Semanko, Esq.
Scott Campbell, Esq.

MICROFILMED
OCT 22 1997

RECEIVED
AUG 26 1997
Department of Water Resources

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
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August 26, 1997

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1301 North Orchard Street
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Boise, ID 83720-9000

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Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.

James P. Speck

JPS/j
cc: clients
Norman Semanko, Esq.
Scott Campbell, Esq.

MICROFILMED
OCT 22 1997

Form 222a
6/78

9-9-96 - Heft

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

RECEIVED
AUG 29 1997
Department of Water Resources

INITIAL REVIEW BY: PRM

1. Right number 34-000 34-00468, 471 Applicant Aslett Ranches

2. Type of right: ☒ Decree ☐ License ☐ Claim T#4906

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.

5. Amount of land &/or water transferred:
   a. ☑ 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).*
   c. ☑ Check description of point(s) of diversion.
   d. ☑ Check description of place of use.
   e. ☑ Check map (shows p.d. and p.u. after transfer).
   f. ☑ Check for correct signature, notarization, and fee.
   g. ☐ Check proof of ownership of right &/or land from which water is transferred.
   h. ☒ Check for expansion in use of right. Comments N/A
   i. ☑ Check for existing water rights from same source, on land water is being transferred to.
      Right number(s) None
   j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No Send Copy
      If yes, what district? Water Dist. 34

WITHDRAWN 09-17-97

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on Sept 16, 1996 Received on _____
2. Is transfer published correctly? ☐ Yes ☐ No
3. Protest received? ☐ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* _____
4. By _____ Date _____

WITHDRAWN 09-17-97

** All uses within Watermaster Districts require special conditions.*

T#4906

From: DWR60::MBALDWIN 9-JUN-1997 13:44:18.03
To: MBALDWIN,DWR70::HJONES
CC:
Subj: MTG. ROOM

We have reserved a Conference Room for 25 people at the DEQ Bldg,601 Poleline Rd for Sept 16 & 17 from 8:00 a.m. - 5:00 p.m. for you.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

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

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

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

Consult postmaster for fee.

3. Article Addressed to:

JAMES P SPECK ESQ
HOGUE SPECK & [redacted]
PO BOX 987
KETCHUM ID 83340

4a. Article Number 15

4b. Service Type

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

7. Date of Delivery

5. Received By: *(Print Name)* [redacted]

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

6. Signature: *(Addressee or Agent)* [redacted]

PS Form **3811,** December 1994 102595-97-B-0179 Domestic Return Receipt

Transcribe your name and address on the reverse side of this form so that we can return this card to you.

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

RECEIVED
AUG 18 1997
Department of Water Resources
Eastern Region

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

MICROFILMED
OCT 22 1997

Is your **RETURN ADDRESS** completed on the reverse side?

SENDER:

- [redacted]plete items 1 and/or 2 for additional services.
- [redacted]plete items 3, 4a, and 4b.
- [redacted]t your name and address on the reverse of this form so that we can return this card to you.
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I also wish to receive the following services (for an extra fee):

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

Consult postmaster for fee.

3. Article Addressed to:

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

4a. Article Number 14

4b. Service Type

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

7. Date of Delivery 8-15

5. Received By: *(Print Name)*

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

6. Signature: *(Addressee or Agent)*

[redacted] Velma Thompson

PS Form **3811**, December 1994 102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

RECEIVED
AUG 18 1997
Department of Water Resources
Eastern Region

SENDER:

- [redacted]plete items 1 and/or 2 for additional services.
- [redacted]plete items 3, 4a, and 4b.
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- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

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

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

Consult postmaster for fee.

3. Article Addressed to:

STEVE ASLETT
ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

4a. Article Number

11

4b. Service Type

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

7. Date of Delivery

8-14-97

5. Received By: *(Print Name)*

LISA Feller

6. Signature: *(Addressee or Agent)*

[redacted] Lisa Feller

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

PS Form **3811,** December 1994 102595-97-B-0179 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

RECEIVED
AUG 15 1997
Department of Water Resources
Eastern Region

For Accountable Mail

Name and Address of Sender	Indicate type of mail	Check appropriate block for Registered Mail:	Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
DEPARTMENT OF WATER RESOURCES EASTERN DISTRICT OFFICE 900 N. SKYLINE DR. 8-13-97 IDAHO FALLS, IDAHO 83402	☐ Registered ☐ Return Receipt for Merchandise ☐ Insured ☐ Int'l Recorded Del. ☐ COD ☐ Express Mail ☒ Certified	☐ With Postal Insurance ☐ Without Postal Insurance	*Postmark and Date of Receipt*

Line	Article Number	Name of Addressee, Street, and Post Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If COD	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee / Remarks
1	11	Steve Asbell PO Box B Twin	.32	$.35					$.10			Asbell Hearing
2	12	Scott Campbell PO Box 1539 Boise 83701										T4906
3	13	Mark T. Bates 200 Emerson Palo Alto Ca 94301										
4	14	Norman Semanko PO Box 1906 Twin Falls										
5	15	James Speck PO Box 987 Ketchum 83340										
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PS Form **3877**, February 1994 — **Form Must be Completed by Typewriter, Ink or Ball Point Pen** — *U.S. Government Printing Office: 1994 — 386-01

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION) NOTICE OF
FOR TRANSFER NO. 4906) HEARING
IN THE NAME OF ASLETT RANCHES)

On September 6, 1996, Scott L. Campbell of Elam & Burke, a professional association, filed an application for transfer of water right on behalf of Aslett Ranches with the Department of Water Resources.

On October 11, 1996, the application was protested by Norman Semanko, of Rosholt, Robertson, & Tucker, on behalf of Mark T. Gates, Jr.. On October 15, 1996, the application was protested by James P. Speck, of Hogue, Speck & Aanestad, on behalf of Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle and Livestock Co.

On March 24, 1997, a Prehearing Conference was held. The conference ended with the understanding that all parties would continue to review the Semanko proposal to see if they could come to a workable agreement. It was decided to meet again either April 9 or 11, 1997 to either discuss setting a hearing or finalize an agreement.

On April 9, 1997, a second Prehearing Conference was held. All parties seemed satisfied to continue to work on resolutions.

THE DEPARTMENT HAS NOW SCHEDULED THE MATTER FOR HEARING ON SEPTEMBER 16 AND 17, 1997. AT 10:00 A.M., AT THE DEQ BUILDING, 601 POLELINE RD., SUITE 2, TWIN FALLS, ID. GLEN SAXTON WILL BE THE PRESIDING OFFICER.

The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources. A copy of the rules may be obtained from the Department upon request.

If you plan to offer exhibits for the record, note the IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten(10) days prior to the hearing.

Dated this 13th day of August, 1997.

RONALD D. CARLSON
Eastern Regional Manager

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OCT 2 2 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 1997, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

Steve Aslett
Aslett Ranches
P.O. Box B
Twin Falls, ID 83303

Scott Campbell, ESQ
Elam & Burke PA
P.O. Box 1539
Boise, ID 83701

Mark T. Gates, Jr., Trustee
700 Emerson Street
Palo Alto, CA 94301

Norman M. Semanko, ESQ
Rosholt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

James P. Speck, ESQ
Hogue, Speck & Aanstead
P.O. Box 987
Ketchum, ID 83340

Rita Bodell
Rita Bodell, Secretary

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OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 9, 1997

NORMAN M SEMANKO
C/O ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

RE: ASLETT RANCHES TRANSFER #4906

Dear Mr. Semanko:

This is to inform you that it is the Department intention to hold a formal hearing on the protested Aslett Ranches transfer #4906 on September 16th and 17th, 1997, in Twin Falls at 10:00 A.M.

A formal hearing notice will be sent to all parties in early August 1997.

Sincerely,

Harold W Jones
Water Resources Supervisor

HWJ:sc

MICROFILMED
OCT 2 2 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 9, 1997

JAMES P SPECK
C/O HOGUE SPECK & AANSTEAD
PO BOX 987
KETCHUM ID 83340

RE: ASLETT RANCHES TRANSFER #4906

Dear Mr. Speck:

This is to inform you that it is the Department intention to hold a formal hearing on the protested Aslett Ranches transfer #4906 on September 16th and 17th, 1997, in Twin Falls at 10:00 A.M.

A formal hearing notice will be sent to all parties in early August 1997.

Sincerely,

Harold W Jones
Water Resources Supervisor

HWJ:sc

MICROFILMED
OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 9, 1997

SCOTT CAMPBELL
C/O ELAM & BURKE
PO BOX 1539
BOISE ID 83701

RE: ASLETT RANCHES TRANSFER #4906

Dear Mr. Campbell:

This is to inform you that it is the Department intention to hold a formal hearing on the protested Aslett Ranches transfer #4906 on September 16th and 17th, 1997, in Twin Falls at 10:00 A.M.

A formal hearing notice will be sent to all parties in early August 1997.

Sincerely,

Harold W Jones
Water Resources Supervisor

HWJ:sc

MICROFILMED
OCT 22 1997

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

May 2, 1997

RECEIVED
MAY 06 1997
Department of Water Resources
Southern Region

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: In the Matter of Transfer No. 4906 - In the Name of Aslett Ranches

Dear Harold:

I regret to inform you that our substantial efforts to settle the outstanding protests against the application for transfer of water rights no. 4906 have not been successful. At this point, my client would like the Department to schedule a formal contested hearing in this matter so that the Application can proceed.

I believe that it would be more convenient for most of the parties and witnesses in this proceeding to conduct the hearing in Twin Falls, Idaho instead of Idaho Falls. Available dates for a hearing are as follows:

July 7-10, 14-16, and 21-25;
August 4-8, and 11-13;
September 4-26.

Please provide me with notification of the selected dates for a contested hearing as soon as possible so that I can release the other dates for other scheduling purposes. Thank you for your assistance in this matter.

Very truly yours,

ELAM & BURKE
A Professional Association

MICROFILMED
OCT 22 1997

Scott L. Campbell

SLC:kc g:\kcc\wpdata\3524\00017

cc: Mr. Steve Aslett
Norman M. Semanko, Esq.
James P. Speck, Esq.
Mr. Allen Merritt, Southern Region Department of Water Resources

From: DWR60::AMERRITT 11-APR-1997 11:58:59.57
To: DWR03::GSAXTON,DWR70::HJONES
CC: AMERRITT
Subj: Big Lost Transfers

FROM: Allen Merritt DATE: April 11, 1997

TO: Glen Saxton, Harold "Skip" Jones

SUBJECT: Second Pre-hearing conference for Transfers 4906 & 4985

On 4/9/97 I conducted a second pre-hearing conference with the parties involved with these transfers as prescribed by the first conference I held on 3/24.

At the conference there were various alternatives to settle the protests discussed including:

> Have Aslett transfer his rights to a well and leave water in the creek. (Aslett indicated they did not feel this to be economically feasible due to expense of well.)
>
> Have Aslett transfer his rights downstream and divert below similar to the Gates proposal. (Aslett indicated they did not feel this to be economically feasible due to expense of long pipeline.)
>
> The discussion then centered on the need to have a study of the seepage loss in the ditch so that any transfers out of the ditch could be appropriately conditioned to prevent injury. Semanko had Dr. Brockway come and review with the parties what may be involved to do a study of this issue. All parties agreed to have Brockway visit the area and prepare a study proposal. In principle, all parties agreed to share in cost of this preliminary expense and probably the entire cost of the study. It was agreed that any work to improve individual measuring devices would be at the expense of the owner.

I got a sense that the parties (Aslett, Gates, Reno/Johnson) would continue to work on language for agreement for the transfers to move forward. The other party (Stoecklein) was agreeable to allow this study process to continue but they had additional concerns about the Reno right (34-00470A) which I understand will be modified in the SRBA process. We attempted to contact Mat Howard to get an update on this process but Mat was sick so Speck will contact him later this week. Stoecklein seems to be the wild card in this whole agreement process; I do not know if he will be satisfied without having a hearing.

I discussed with the parties the possibility of scheduling a hearing on either transfer. The dates provided by Glen in May were too soon for the parties to consider so nothing further was discussed. They all seemed satisfied to continue to work on resolution and get the study underway. We did not discuss further conferences.

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OCT 22 1997

Do you want me to keep these files or forward back to Eastern?

RE: T# 4906-WR# 34-00469, 34-00471 (Aslett Ranches)
TW 4985-WR# 34-00870 (Mark T. Gates, Trustee)

PLACE: IDWR Southern Region Conference Room

DATE: 1:00 p.m.-Wednesday-April 9, 1997

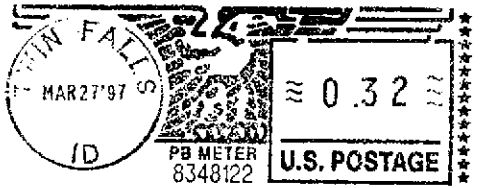
CONFERENCE OFFICER: Allen D. Merritt, Manager-Southern Region

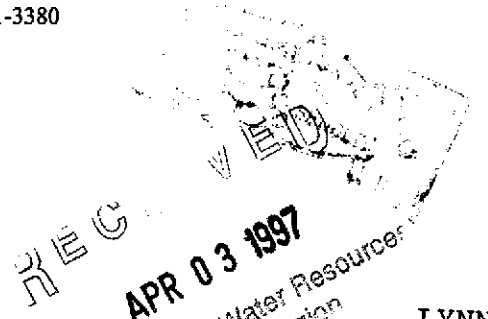
ASSISTED BY:

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Steve Aslett Jr	Mackay Id	Aslett Ranches
Doug Ramsbottom	Mackay Id.	Water Dist 34
Scott Johnson	Mackay	Johnson - Reno
Scott Campbell	Boise	Aslett Ranches
Steve Aslett	Twin. Falls	" "
Norm Semanko	P.O. Box 1906, Twin Falls	Mark Gates
Ross Goddard	Mackay Id.	Goddard Ranch
Jim Gregory	Mackay ID	Big Lost Ranch
Chuck Brockway	706 Sunrise N. Twin Falls	
Jim Speck	Box 987 Ketchum	Dave Stoedelin
Dick Stoedelin	Box 834 Ketchum	—
	MICROFILMED	
	OCT 22 1997	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380





AUTHORIZED TIME FOR FORWARDING HAS EXPIRED

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR TRANSFER NOS. 4906 & 4985	)	NOTICE OF PRE-HEARING CONFERENCE
ASLETT RANCHES, Applicant MARK GATES, Applicant	)	SOURCE: Warm Springs Creek Tributary to Big Lost River COUNTY: Custer

The above referenced applicants have filed applications to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said applications.

On September 6, 1996-Aslett Ranches filed Application for Transfer No. 4906 to make changes to Water Rights No. 34-00469 and 34-00471. Protests to Transfer No. 4906 have been received from Mark T. Gates, Jr; Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle & Livestock Co.

On December 20, 1996-Mark T. Gates, Trustee filed Application for Transfer No. 4985 to make changes to Water Right No. 34-00870. Protests to Transfer No. 4985 have been received from Steve Aslett; Victor and Scott Johnson; and Lynn Reno. The protest by the Bureau of Land Management has been withdrawn.

The conference held on March 24, 1997 did not resolve the issues; THEREFORE, the Department has set the matters of protest for a joint conference on **Wednesday, April 9, 1997 at 1:00 p.m.** in the Conference Room, Department of Water Resources Southern Regional Office, 1341 Fillmore Street-Suite 200; Twin Falls ID 83301.

The purpose of the joint conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this 27th day
of March, 1997.

Allen D. Merritt, P.E.
Regional Manager

MICROFILMED
OCT 22 1997

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of March, 1997 a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by first class mail to the parties listed:

Mary A. Baldwin
Secretary

STEVE ASLETT
ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SCOTT L CAMPBELL ESQ
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

MARK T GATES TRUSTEE
700 EMERSON STREET
PALO ALTO CA 94301

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

VICTOR & SCOTT JOHNSON
CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251

MICROFILMED
OCT 2 2 1997

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?

2. Will the proposed transfer constitute an enlargement in the use of the original right?

3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

MICROFILMED

OCT 2 2 1997

RECEIVED
MAR 2 8 1997
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR TRANSFER NOS. 4906 & 4985	)	NOTICE OF PRE-HEARING CONFERENCE
ASLETT RANCHES, Applicant MARK GATES, Applicant	)	SOURCE: Warm Springs Creek Tributary to Big Lost River COUNTY: Custer

The above referenced applicants have filed applications to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said applications.

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The conference held on March 24, 1997 did not resolve the issues; THEREFORE, the Department has set the matters of protest for a joint conference on **Wednesday, April 9, 1997 at 1:00 p.m.** in the Conference Room, Department of Water Resources Southern Regional Office, 1341 Fillmore Street-Suite 200; Twin Falls ID 83301.

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Dated this 27th day
of March, 1997.

Allen D. Merritt, P.E.
Regional Manager

MICROFILMED
OCT 2 2 1997

CERTIFICATE OF MAILING

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Mary A. Baldwin
Secretary

STEVE ASLETT
ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

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ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

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PALO ALTO CA 94301

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
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TWIN FALLS ID 83303-1906

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PO BOX 987
KETCHUM ID 83340

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CHURNDASHER RANCH
STAR ROUTE
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LYNN RENO
RENO RANCH
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MACKAY ID 83251

MICROFILMED
OCT 22 1997

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
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Regional Manager

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CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251

MICROFILMED
OCT 2 2 1997

FROM: Allen Merritt DATE: March 25, 1997

TO: Glen Saxton, Harold "Skip" Jones

SUBJECT: Pre-hearing conference for Transfer #4906 in the name of Aslett and Transfer #4985 in the name of Gates

Transfer #4906 was protested by: Gates (Semanko)
Stoecklein (Speck)

Gates, Semanko & Speck were present. Stoecklein was not present but was represented by Speck.
The applicant Aslett and his attorney Semanko were present.

Transfer #4985 was protested by: Aslett (Campbell)
BLM
Reno/Johnson

Aslett, Campbell & Johnson were present. Reno was not present but Johnson represented his interest. BLM was not present but Fred Price from the BLM State Office in Boise called and indicated that they were going to withdraw their protest and would be sending a letter to that affect.
The applicant Gates and his attorney Campbell were present.

Other interested parties present were Jim Gregory representing "Big Lost Ranch" or Gate's ranch. Also Ross Goddard representing "Bar 13 Ranch" which appears to side with Johnson & Reno's concerns.

The issues involved in the protest of Aslett's transfer is that Stoecklein feels that the lands being dried up have historically been irrigated by subwater and to move these acres and irrigate by pivot would be an expansion. (Issues: Expansion & Local Public Interest) Gates feels similar (Issues: Expansion & Injury).

The issues involved in the protest of Gate's transfer is mainly that of injury to users in the ditch if water is taken out. Reno/Johnson main concern is injury. Aslett reserves to argue about all four issues. It appears the Aslett protest is also being used as leverage against the Gates protest of their transfer.

At the conference Semanko presented an outline of a stipulation for the parties to enter into to resolve the protests. It appeared that Aslett, Gates & Reno/Johnson are open to study the conveyance loss issue in the ditch for a time and allow both transfers to go forward as long as the final conveyance reflects the results of the study. The idea being that a portion of the Gates right would be left in the ditch so there would not be injury to the other users. Stoecklein's position is that he is in favor of the Gates transfer moving water out of the ditch and down the stream since Stoecklein wants to see more water flowing down the creek on his property. He is opposed to the Aslett transfer since he feels the land being dried up has historically been sub-irrigated so to move these acres so a pivot can water them is an expansion but since he wasn't there Speck needs to consult with Stoecklein. It may be he would buy off

LMED
2 2 1997

on getting the Gates approved in some sort of trade-off.

We ended the conference with the following understanding. All parties would continue to review the Semanko proposal to see if they could come to a workable agreement. Since Stoecklein seem to be the critical person to decide if he wants to go this route we decided to meet again either 4/9 or 4/11 in Twin Falls to either discuss setting hearings or finalizing an agreement. Note that it is the desire of both applicants and the protestants that if hearings are set that they be set separately. They agreed that I could notify them of either 4/9 or 4/11 meeting by regular mail.

Note that one side issue with Stoecklein is the diversion of 34-00470A belonging to someone else. Speck indicated that it is diverted two places but SRBA reports only one place. Johnson said it could be and is diverted thru Hatchery Ditch by exchange agreement. Speck complains that it should only be diverted below as described by SRBA recommendation or they should file a transfer.

MICROFILMED

OCT 2 2 1997

RE: T# 4906-WR# 34-00469, 34-00471 (Aslett Ranches)
TW 4985-WR# 34-00870 (Mark T. Gates, Trustee)

PLACE: IDWR Southern Region Conference Room

DATE: 1:00 p.m.-Monday-March 24, 1997

CONFERENCE OFFICER: Allen D. Merritt, Manager-Southern Region

ASSISTED BY:

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Jim Gregory	5306 Zollinger RD Mackay, ID 83251	Big Lost Ranch
Ross GODDARD	4905 Hwy 93 Mackay	Bar 13 Ranch
Scott Johnson	5364 Fish Hatchery Rd	Chandler Ranch - Lynn Read
Steve Aslett	Box B	Aslett Ranches LLC
Scott Campbell	P.O. Box 1539 Boise	Aslett Ranches
Jim Speck	P.O. Box 987 Ketchum	Dave Stockdale
Norm Semanko	P.O. Box 1906	Mark Gates/Big Lost Ranch
mark T. Gates	P.O. 700 E. Jackson St. Palo Alto Ca.	Big Lost Ranch
	MICROFILMED	
	OCT 22 1997	

OUTLINE OF PROPOSED
JOINT STIPULATION BETWEEN PARTIES
TO TRANSFER NO. 4906 (ASLETT RANCHES)
AND TRANSFER NO. 4985 (GATES)

1. Parties

a. Parties to Transfer No. 4906 (Aslett Ranches) are Aslett, Gates and Stoecklein.

b. Parties to Transfer No. 4985 (Gates) are Gates, Aslett, Johnson, Reno, and the U.S. Bureau of Land Management (BLM).

c. Gates will seek to have BLM withdraw its protest or enter into a separate stipulation. All other parties will sign joint stipulation.

2. Resolution of Protests

a. Protests to Transfer No. 4906 (Aslett Ranches) will be resolved by agreement by Asletts to install measuring device and agreement by all parties to support conditional approval of Transfer No. 4985 (Gates). The parties agree that Transfer No. 4906 (Aslett Ranches) should be approved by IDWR, subject to this agreement.

b. Protests to Transfer No. 4985 (Gates) will be resolved by agreement to support conditional approval of the transfer. As a condition of approval, Gates will agree to continue to divert a percentage of his water right into the Fish Hatchery Canal. For the first three years, this percentage will be agreed to by the parties. During this three-year period, a jointly sponsored hydrologic study will be conducted to determine the impact of the transfer on other water rights diverted to the Fish Hatchery Canal (see attached "Hatchery Ditch Shrinkage Study" outline). This study will be designed to determine the appropriate percentage of Gates' water right that must be diverted into the Fish Hatchery Canal to prevent injury to others who divert water to the Fish Hatchery Canal. The study will be conducted by a mutually agreeable hydrologist and the parties will agree to the method for measuring shrink prior to the study being conducted. The parties further agree that a final assessment will be made at the end of the three-year period/study regarding the appropriate percentage of Gates' water right which must be diverted to the Fish Hatchery Canal to prevent injury. The parties agree that Transfer No. 4985 (Gates) should be approved by IDWR, conditioned on the three-year hydrologic study and final assessment referred to above.

02289704.NMS

Attachment

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OCT 2 2 1997

Hatchery Ditch Shrinkage Study

for three (3) years

Objectives

Assess shrink in the Hatchery Ditch at each headgate location at three times during the irrigation season under the following two scenario's:

1. When all the water currently allocated to the ditch is being diverted (this includes water owned by the Big Lost Ranch [formerly Zollinger Ranch]).

2. When all water currently allocated to the ditch, except that owned by the Big Lost Ranch, is being diverted.

Protocol

Shrink will be assessed during the early, mid, and late (May, July, and September respectively) irrigation season at each headgate diversion by measuring discharge at each headgate and in the ditch upstream from each headgate.

Immediately upstream from Ross Goddard's diversion
In Ross Goddard's diversion
Immediately upstream from Johnson's diversion
In Johnson's diversion
Immediately upstream from Aslet's first pump station
Immediately downstream from Aslet's last pump station

Shrink will then be calculated for each section (the area between diversions), and a weighted average will be used (shrink per distance) to obtain an average value for shrink over the length of the ditch (from diversion point to Aslet's last pump station).

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OCT 22 1997

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OCT 2 2 1997

MESSAGE CONFIRMATION
TRANSMISSION

[illegible] TUE 08:46

TERM ID: WATER RESOURCES ID P-9999
TEL NO.: 208 736 3037

NO.	DATE	ST. TIME	TOTAL TIME	ABBR/SBD	ID	DEPT CODE	#PGS
059	03-04	08:44	00°02'28	00	I D W R		OK- 2 NG- 0

Ship @ Eastern

Confirmed by T/C
to adj.

TRANSMITTAL COVER SHEET

OMNIFAX G66

TO: Skip Jones

Eastern

TOTAL PAGES SENT: 6

DOCUMENT DESCRIPTION: Conference Notice - Aslett / Gates

FROM: IDAHO DEPARTMENT OF WATER RESOURCES

1341 FILLMORE-SUITE 200

TWIN FALLS ID 83301-3380

PHONE: 736-3033

FAX: 736-3037

SENDER: Mary

CHARGES:

One (1) free copy per request, cover sheet not counted. Two (2) or more copies per request will cost $0.25 per page. ($0.50 minimum)

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OCT 22 1997

Please consider this document as a billing statement.

The charge for your fax copies is: _____

Please remit to the above address.

COMMENTS: I'll send a paper copy in mail today. Our E-mail is down so will fax it to you.

RECEIVED
MAR 0 5 97
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR TRANSFER NOS. 4906 & 4985	NOTICE OF PRE-HEARING CONFERENCE
ASLETT RANCHES, Applicant MARK GATES, Applicant	SOURCE: Warm Springs Creek Tributary to Big Lost River COUNTY: Custer

The above referenced applicants have filed applications to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said applications.

On September 6, 1996-Aslett Ranches filed Application for Transfer No. 4906 to make changes to Water Rights No. 34-00469 and 34-00471. Protests to Transfer No. 4906 have been received from Mark T. Gates, Jr; Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle & Livestock Co.

On December 20, 1996-Mark T. Gates, Trustee filed Application for Transfer No. 4985 to make changes to Water Right No. 34-00870. Protests to Transfer No. 4985 have been received from Steve Aslett; Bureau of Land Management; Victor and Scott Johnson; and Lynn Reno.

The Department has set the matters of protest for a joint conference on **Monday-March 24, 1997 at 1:00 p.m.** in the Conference Room, Department of Water Resources Southern Regional Office, 1341 Fillmore Street-Suite 200; Twin Falls ID 83301.

The purpose of the joint conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this
4th day of March, 1997

Allen D. Merritt, P.E.
Regional Manager

MICROFILMED
OCT 22 1997

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of March, 1997 a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by first class mail to the parties listed:

Mary Baldwin
Secretary

STEVE ASLETT
ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SCOTT L CAMPBELL ESQ
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

MARK T GATES TRUSTEE
700 EMERSON STREET
PALO ALTO CA 94301

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

REX SMART
USDI BUREAU OF LAND MANAGEMENT
RT 2 BOX 610
SALMON ID 83467

VICTOR & SCOTT JOHNSON
CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251

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OCT 2 2 1997

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?

2. Will the proposed transfer constitute an enlargement in the use of the original right?

3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

MICROFILMED
OCT 22 1997

MAILING LIST FOR TWO TRANSFERS FOR EASTERN REGION

T# 4985 (34-00870)-Mark T. Gates, Trustee

Applicant:

MARK T. GATES TRUSTEE
700 EMERSON STREET
PALO ALTO CA 94301

Filed by:

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

Protestants:

STEVE ASLETT
C/O SCOTT L CAMPBELL
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

REX SMART
USDI BUREAU OF LAND MANAGEMENT
RT 2 BOX 610
SALMON ID 83467

VICTOR & SCOTT JOHNSON
CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251

MICROFILM
OCT 22 1997

MAILING LIST FOR TWO TRANSFERS FROM EASTERN REGION

T# 4906, (34-00469, 34-00471)-Aslett Ranches

Applicant:

ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

C/O
SCOTT L CAMPBELL ESQ
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

Protestants:

MARK T GATES JR
C/O NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

DAVE STOECKLEIN
WALTER STOECKLEIN
BAR HORSESHOE CATTLE & LIVESTOCK CO
C/O JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

MICROFILMED
OCT 22 1997

Memo

From: H.W. Jones - Eastern
TO: Allan Merritt - Southern
RE: Prehearing conf. for transf 4906 (Aslett Ranch) & TV 4985 (Gates

From the correspondence, it appears all parties are available for March 24th, 1997.

Applicants are Aslett Ranches - Tv. 4906
and Mark Gates - Tr. 4985

The main issue is tr. 4906. Protestants are Dave & Walter Stoecklein (Jim Spreck, Atty) & Mark Gates (Norman Semanko, Atty).

Mark Gates filed his transfer later & Mr. Aslett is one of the protestants. The request was made by Norman Semanko to address this applic. for transfer also since the two applicant/protestants will be there.

There are other protestants of the Gates transfer (BLM & Churndasher Ranch) and they should probably be invited to this conference. It may be that Gates & Aslett Ranches just want to hammer out their differences & Gates will address the other protests at some other time.

I asked Mary if she would send out the conference notice & she agreed.

Thanks again!

Skip

MICROFILMED
OCT 2 2 1997

ROSHOLT ROBERTSON & [illegible]
ATTORNEYS AT LAW

142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
FAX (208) 736-0041

[illegible]

[illegible] FAX NO. (208) 525-7177
[illegible] (208) 384-5844
[illegible] (208) 726-0752

[illegible] Gates

[illegible] CALL US BACK AS SOON AS

[illegible] ATTORNEY/CLIENT PRIVILEGED AND/OR [illegible]
[illegible] AL OR ENTITY NAMED ABOVE. IF THE R[illegible]
[illegible] LOYEE OR AGENT RESPONSIBLE TO DEL[illegible]
[illegible] ISSEMINATION, DISTRIBUTION OR C[illegible]
[illegible] IS STRICTLY PROHIBITED. IF YOU HAV[illegible]
[illegible] 734-0700, AND RETURN THIS FACSIMI[illegible]

MICROFILMED
OCT 2 2 1997

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. NAGLE
TIMOTHY [illegible]
NORMAN [illegible]

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 733-0700
FAX (208) 756-8815

Boise Office
251 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

February 21, 1997

Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, ID 83402-1718

VIA FAX

Re: [illegible] Application for Transfer No. 4906
[illegible] Application for Transfer No. 4985

Dear Harold:

[illegible] Mark Gates, and in response to your telephone inquiry, [illegible] could also facilitate a March [illegible]'96 [illegible] We also [illegible] the conference be held in Twin Falls [illegible] the department [illegible] and protestants.

Once the parties to Transfer No. 4906 (Aslett Ranches transfer) are advised as to a date for the prehearing conference, we request that you attempt to schedule the prehearing conference for Transfer No. 4985 (Gates transfer) on the same day and in the same location. As discussed previously, there is some overlap in issues and parties and the [illegible] settlement of the protests) will undoubtedly be discussed. This should also save some time and expense.

We look forward to hearing from you.

Sincerely,

NORMAN M. SEMANKO

[illegible]MS
[illegible] Campbell
[illegible]

MICROFILMED
OCT 22 1997

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
.....
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

February 14, 1997

RECEIVED
FEB 18 1997
Department of Water Resources
Eastern District Office

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Aslett Ranches Application for Transfer No. 4906

Dear Harold:

I have enclosed a copy of my correspondence to Mr. Norm Semanko concerning the above referenced matter.

On behalf of this firm's client, Aslett Ranches, I hereby request that the Department schedule a pre-hearing conference at the earliest opportunity. Because of the involvement of multiple parties, I request that the Department attempt to schedule the conference at a time and location which is mutually agreeable to the parties. My available dates in March and April are as follows: March 3-14, 17, 19-21, 24-31, April 1-4, 8-14, 16-18, 21-24, 28-30.

OK Ron

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:kc g:\kcc\wpdata\3524\00017
Enclosure

cc: Mr. Steve Aslett (w/o enclosure)
Norman M. Semanko, Esq. (w/o enclosure)
James P. Speck, Esq. (w/o enclosure)
Carl Burke, Esq. (w/o enclosure)

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

February 14, 1997

Norman M. Semanko, Esq.
ROSHOLT, ROBERTSON & TUCKER
142 3rd Avenue North
Post Office Box 1906
Twin Falls, Idaho 83303-1906

Re: Aslett Ranches Application for Transfer No. 4906

Dear Norm:

I apologize for not being able to respond to your correspondence of January 17, 1997 until now. I have been swamped with the Idaho Supreme Court proceedings of which you are aware.

I have spoken with our client concerning your proposal. Mr. Aslett indicates that he has no objection in considering such a proposal as a way to resolve your client's concerns about the transfer. In order to fully evaluate the possibilities of such a resolution, it is necessary to involve the other users of the delivery ditch in question. Mr. Aslett indicates that the following additional parties should be advised of the proposal and involved in any potential study: Scott Johnson, Lynn Reno, and Ross Goddard. We recommend that these individuals be contacted by you, and advised of the nature of the proposal.

In the interim, Mr. Aslett has requested that I inform the Idaho Department of Water Resources that he desires to proceed with a pre-hearing conference on his transfer application. Consequently, I have enclosed a copy of the correspondence which I have sent to Mr. Harold Jones of the Eastern Regional office of the Department. Mr. Aslett is interested in resolving this contested matter by negotiation, if possible. He does believe that the additional parties I have identified are critical to the proposal which you have described in your correspondence.

MICROFILMED
OCT 2 2 1997

Please provide me with your response at your convenience.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:kc g:\kcc\wpdata\3524\00016
Enclosure

cc: Mr. Steve Aslett (with enclosure)
James P. Speck, Esq. (with enclosure)
Carl Burke, Esq. (with enclosure)
Mr. Harold Jones, Eastern Region IDWR (w/o enclosure)

MICROFILMED
OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 17, 1996

ASLETT RANCHES
C/O SCOTT CAMPBELL
PO BOX 1539
BOISE ID 83701

RE: Application for Transfer No. 4906

Dear Applicant:

Enclosed is a copy of a protest filed against the issuance of a transfer. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for transfer (Sec. 42-222, Idaho Code):

1. Are other water rights injured by the transfer?
2. Does the change constitute enlargement in the use of the original water right?
3. Is the change consistent with the conservation of water resources within the state of Idaho?
4. Does the change conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the four items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

If this office can be of further assistance, please contact us.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

pc: IDWR - STATE OFFICE
enc

RECEIVED
OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 17, 1996

JAMES SPECK
PO BOX 987
KETCHUM ID 83340

RE: Application for transfer No. 4906-ASLETT RANCHES

Dear Mr. Speck:

Your client's protest against approval of the above referenced application for transfer has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application (Sec. 42-222, Idaho Code):

1. Are other water rights injured by the transfer?
2. Does the change constitute enlargement in the use of the original water right?
3. Is the change consistent with the conservation of water resources within the state of Idaho?
4. Does the change conflict with the local public interest?

The protestant must be prepared to present proof of allegations involving one or more of the four items.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb
pc: IDWR - State Office

OCT 22 1996

26324

HOGUE, SPECK & AANESTAD
ATTORNEYS AT LAW
P.O. BOX 987, KETCHUM, IDAHO 83340
208/726-4421

FIRST SECURITY BANK OF IDAHO
KETCHUM, IDAHO 83340
92-6-1241

PAY TO THE ORDER OF *** Twenty Five *** and 00/100 Dollars

DATE 10/15/96

AMOUNT $25.00

HOGUE, SPECK & AANESTAD

Protest Filing Fee

Security features included. Details on back.

⑈026324⑈ ⑆124100064⑆029 00838 15⑈

HOGUE, SPECK & AANESTAD

26324

Date: 10/15/96

Amount: $25.00

Paid To: Idaho Department of Water Resources

RECEIVED
OCT 15 1996
Department of Water Resources
Eastern Region

MICROFILMED
OCT 22 1997

Explanation: Protest Filing Fee

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
Attorneys at Law
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Phone: (208) 726-4421
FAX: (208) 726-0752

FAX MEMO/COVER SHEET

DATE: October 15, 1996

RECEIVED
OCT 15 1996
Department of Water Resources
Eastern Region

PAGE 1 OF 4

TO: Mr. Ernie Carlson
Idaho Department of Water Resources

FAX NO: (208) 525-7177

SUBJECT: Aslett Ranches -- Application for Transfer of Water Right No. 4906

FROM: James P. Speck

MICROFILMED
OCT 22 1997

The information contained in this fax is confidential information intended only for the use of the recipient named above and may be subject of attorney/client privilege. If the reader of this message is not the named recipient, you are hereby notified that any distribution, dissemination, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this message in error, please immediately notify us by telephone. Thank you.

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS
120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

TERRY G. HOGUE
JAMES R SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 15, 1996

VIA FACSIMILE – (208) 525-7177
ORIGINAL TO FOLLOW BY MAIL

RECEIVED
OCT 15 1996
Department of Water Resources
Eastern Region

Mr. Ernie Carlson
Idaho Department of Water Resources
Eastern Region
900 N. Skyline, Ste. A
Idaho Falls, ID 83402

Re: Aslett Ranches -- Application for Transfer of Water Right No. 4906

Dear Mr. Carlson:

I represent Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle and Livestock Co. My clients own land along and have the right to divert water from Warm Springs Creek which is the source of water for the water rights that are the subject of the above-referenced Application for Transfer. This letter is a protest by my clients against the water right changes proposed by Transfer No. 4906 on the following grounds:

1. The proposed change will injure other water rights;

2. The proposed change constitutes an enlargement in use of the subject water rights;

3. The proposed change is not consistent with the conservation of water resources within the state of Idaho;

4. The proposed change is not in the local public interest.

Receipt # E022673

MICROFILMED
OCT 22 1997

I trust this protest is timely filed since October 14, 1996 was a state and federal holiday and your office, as well as the United States Post Office on that day. Please find enclosed our check no. 26324 in the sum of $25.00, in payment of the protest fees. Please contact me immediately if you have any questions about this protest.

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck

JPS:jrs
c: Dave Stoecklein
Aslett Ranches
Scott L. Campbell, Esq.

RECEIVED
OCT 15 1996
Department of Water Resources
Eastern Region

MICROFILMED
OCT 22 1997

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 15, 1996

RECEIVED
OCT 17 1996
Department of Water Resources
Eastern District Office

VIA FACSIMILE -- (208) 525-7177
ORIGINAL TO FOLLOW BY MAIL

Mr. Ernie Carlson
Idaho Department of Water Resources
Eastern Region
900 N. Skyline, Ste. A
Idaho Falls, ID 83402

Re: Aslett Ranches -- Application for Transfer of Water Right No. 4906

Dear Mr. Carlson:

I represent Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle and Livestock Co. My clients own land along and have the right to divert water from Warm Springs Creek which is the source of water for the water rights that are the subject of the above-referenced Application for Transfer. This letter is a protest by my clients against the water right changes proposed by Transfer No. 4906 on the following grounds:

1. The proposed change will injure other water rights;

2. The proposed change constitutes an enlargement in use of the subject water rights;

3. The proposed change is not consistent with the conservation of water resources within the state of Idaho;

4. The proposed change is not in the local public interest.

Rcpt # E022673

MICROFILMED
OCT 22 1997

I trust this protest is timely filed since October 14, 1996 was a state and federal holiday and your office, as well as the United States Post Office on that day. Please find enclosed our check no. 26324 in the sum of $25.00, in payment of the protest fees. Please contact me immediately if you have any questions about this protest.

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck

JPS:jrs
c: Dave Stoecklein
Aslett Ranches
Scott L. Campbell, Esq.

F:\WPDATA\JIM\LETTERS\CARLSON.001

MICROFILMED
OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 15, 1996

ASLETT RANCHES
C/O SCOTT CAMPBELL
PO BOX 1539
BOISE ID 83701

RE: Application for Transfer No. 4906

Dear Applicant:

Enclosed is a copy of a protest filed against the issuance of a transfer. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for transfer (Sec. 42-222, Idaho Code):

1. Are other water rights injured by the transfer?
2. Does the change constitute enlargement in the use of the original water right?
3. Is the change consistent with the conservation of water resources within the state of Idaho?
4. Does the change conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the four items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

If this office can be of further assistance, please contact us.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

pc: IDWR - STATE OFFICE
enc

MICROFILMED
OCT 2 2 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 15, 1996

NORMAN SEMANKO
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

RE: Application for transfer No. 4906-ASLETT RANCHES

Dear Mr. Semanko:

Your protest against approval of the above referenced application for transfer has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application (Sec. 42-222, Idaho Code):

1. Are other water rights injured by the transfer?
2. Does the change constitute enlargement in the use of the original water right?
3. Is the change consistent with the conservation of water resources within the state of Idaho?
4. Does the change conflict with the local public interest?

The protestant must be prepared to present proof of allegations involving one or more of the four items.

If this office can be of further assistance, please contact us.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb
pc: IDWR - State Office

MICROFILMED
OCT 2 2 1997

COPY

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
10099605.NMS\kn

RECEIVED
OCT 11 1996
Department of Water Resources
Southern Region

RECEIVED
OCT 15 1996
of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 4906 Applicant: Aslett Ranches	**NOTICE OF PROTEST**

* * * * * * * * * * *

Mark T. Gates, Jr., by and through his attorney, Rosholt, Robertson & Tucker, files his Notice of Protest to the continuance or approval of Application for Transfer No. 4906 filed in the name of Aslett Ranches. The basis for the protest is as follows:

1. The proposed change in use of the waters described in the aforesaid application violates all, or a portion of, the criteria set forth in Idaho Code §§ 42-222(1); and

2. For such other and further reasons as may be set forth at the hearing on this matter.

DATED this 11 day of October, 1996.

ROSHOLT, ROBERTSON & TUCKER

By: _____
Norman M. Semanko

MICROFILMED
OCT 12 1997

CERTIFICATE OF MAILING

I hereby certify that on this 11 day of October, 1996, I served a copy of the foregoing NOTICE OF PROTEST, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Idaho Department of Water Resources
Eastern Region Office
900 North Skyline
Idaho Falls, ID 83402

Idaho Department of Water Resources
Statehouse Mail
1301 North Orchard
Boise, ID 83720

Scott L. Campbell
Elam & Burke, P.A.
P.O. Box 1539
Boise, ID 83701

Aslett Ranches
P.O. Box B
Twin Falls, ID 83303

Norman M. Semanko

MICROFILMED
OCT 22 1996

RECEIVED
OCT 0 8 1996
Department of Water Resources
Eastern Region

AFFIDAVIT OF PUBLICATION

I, Colleen Babcock
of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with the issue dated Sept. 26, 1996

and ending with the issue dated Oct. 3, 1996

Colleen Babcock

STATE OF IDAHO }
COUNTY OF BUTTE }

On this 4th day of October
in the year of 1996 before me, a Notary Public,
personally appeared
Colleen Babcock
known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Thomas D. [illegible]
Notary Public for Idaho
Residing at Arco, Id
My commission expires: 12-30-97

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

Notice is hereby given that Aslett Ranches, P.O. Box B, Twin Falls, ID 83303, has applied to the Department of Water Resources to change the place of use for a surface water source. The rights sought to be changed are evidenced by the rights as recorded as follows in the Snake River Basin Adjudication:
NO.: 34-00469. Amount: 3.20 cfs
Source: Warm Springs Creek,
Tributary: Big Lost River
Priority: 11/01/1892
NO.: 34-00471. Amount: 0.80 cfs
Source: Warm Springs Creek,
Tributary: Big Lost River
Priority: 07/12/1907

The water is used for irrigation of 213 acres for 5/01 to 10/15 within T01N R23E Section 6, the NW ¼ and T08N R23E Section 31 for most of SW ¼.

TO BE CHANGED AS FOLLOWS:

The place of use will be 213 acres within T07N R22E Section 1, SWNE, T7N R23E Section 6, NW ¼ and T08N R23E Section 31, S ½ SW ¼.

Anyone wishing to protest the above change must submit a written protest to the applicant at the above address and to the Department of Water Resources with a fee of $25.00 on or before October 14, 1996.

KARL J. DREHER
Director

Published September 26 and October 3, 1996.

MICROFILMED
OCT 2 2 1997

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 34-00469 3 tv. 4906
34-00471

WATER DISTRICT 34

WATERMASTER Doug Rosenhauer

DATE: 9-19-96

COMMENTS: HAS THIS WATER RIGHT(S) BEEN DELIVERED WITHIN THE LAST FIVE YEARS?

Yes.

✓ I do endorse approval of this change.

___ I do not endorse approval of this change.

I recommend the following conditions of approval:

Doug Rosenhauer
Watermaster

MICROFILMED

OCT 22 1997

RECEIVED

SEP 20 1996

Department of Water Resources
Eastern Region

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
.....
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

September 17, 1996

RECEIVED
SEP 19 1996
Department of Water Resources
Eastern Region

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Application for Transfer of Water Right Nos. A34-00469 and A34-00471

Dear Mr. Jones:

Pursuant to your recent request, I have enclosed a copy of a tax bill regarding the Aslett Ranch property involved in the above referenced Application for Transfer of Water Right.

Please let me know if I can be of further assistance to you regarding this matter.

Very truly yours,

ELAM & BURKE
A Professional Association

for Scott L. Campbell

SLC:kc g:\kcc\wpdata\3524\00007.ltr
Enclosure

cc: Mr. Steve Aslett (w/o enclosures)

MICROFILMED
OCT 22 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 16, 1996

DOUG ROSENKRANCE
BOX 53
MACKAY ID 83251

RE: Application for Transfer No. 4906

Dear Mr. Rosenkrance:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department as soon as possible.

If we may be of further assistance, please feel free to contact us.

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones
Water Right Supervisor

HWJ/rb
enc.

MICROFILMED
OCT 2 2 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 16, 1996

THE ARCO ADVERTISER
PO DRAWER C
ARCO ID 83213

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the date indicated in your newspaper. If you cannot publish the notice on the proposed date, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before OCTOBER 14, 1996.

Yours truly,

Rita Bodell
Secretary

Enc.

OCT 22 1996

NOTICE OF PROPOSED CHANGE

OF WATER RIGHT

Notice is hereby given that Aslett Ranches, P.O. Box B, Twin Falls, ID 83303, has applied to the Department of Water Resources to change the place of use for a surface water source. The rights sought to be changed are evidenced by the rights as recorded as follows in the Snake River Basin Adjudication:

NO.: 34-00469. Amount: 3.20 cfs
Source: Warm Springs Creek, Tributary: Big Lost River
Priority: 11/01/1892
NO.: 34-00471. Amount: 0.80 cfs
Source: Warm Springs Creek, Tributary: Big Lost River
Priority: 07/12/1907

The water is used for irrigation of 213 acres for 5/01 to 10/15 within T01N R23E Section 6, the NW 1/4 and T08N R23E Section 31 for most of SW 1/4.

TO BE CHANGED AS FOLLOWS:

The place of use will be 213 acres within T07N R22E Section 1, SWNE, T7N R23E Section 6, NW 1/4 and T08N R23E Section 31, S 1/2 SW 1/4.

Anyone wishing to protest the above change must submit a written protest to the applicant at the above address and to the Department of Water Resources with a fee of $25.00 on or before October 14, 1996.

KARL J. DREHER
Director

Published September 26 and October 3, 1996

MICROFILMED
OCT 22 1997

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

September 4, 1996

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

RECEIVED
SEP 0 6 1996
Department of Water Resources
Eastern Region

Re: Application for Transfer of Water Right Nos. A34-00469 and A34-00471

Dear Mr. Jones:

I have enclosed a revised Application for Transfer of Water Right regarding water right numbers A34-00469 and A34-00471. I have also enclosed the statutory fee of $100.00 for processing this Application. Please review this Application for completeness and institute processing.

Please provide all notices and correspondence relating to this matter to me directly. I will be representing Aslett Ranches with respect to this matter.

Also, I have enclosed a copy of the Application for confirmation by the Department and ask that it is returned to me in the enclosed pre-addressed stamped envelope.

Thank you for your cooperation in this regard.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:kc g:\kcc\wpdata\3524\00006.ltr
Enclosures

cc: Mr. Steve Aslett (w/o enclosures)
Carl Burke, Esq. (w/o enclosures)

April 18, 1944

Mr. J. H. Pearsom, Watermaster,
Water District # 27
Mackay, Idaho

Dear Mr. Pearson:

We are enclosing herewith Order and Certificate of Transfer No. 662, of George R. Leavitt, of Mackay, Idaho.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:A
Encls.

April 18, 1944

Mr. George L. Ambrose
Attorney at Law
Mackay, Idaho

Dear George:

We are enclosing herewith Order and Certificate of Transfer, in duplicate, of the George R. Leavitt transfer of water right, one copy for the copy and a copy for your files, as you request.

We did not think it necessary to telegraph you relative to the Lehman transfer, as you should have received this Certificate in Monday's mail.

Any way, we hope you received same, and we are sorry if our delay in completing the Lehman transfer caused you any inconvenience. We have been rushed during the past two weeks, and were delayed in getting the Lehman transfer to you.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:A
Encls.

RECEIVED

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT.

Notice is hereby given that George R. Leavitt of Mackay, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of Four (4) cubic feet per second of the water of Warm Springs Creek from the land upon which it is now used, i.e. Lots 3 & 4, Section 6, Twp. 7 N., Range 23 E. B. M., Lot 4, E½ SW¼ & NW¼ SW¼, Sec. 31, Twp. 8 N., Range 23 E., B. M., and NE¼ SE¼, Sec. 36, Twp. 8 N., Range 22 E., B. M. to the following described tract Lots 3 & 4, Section 6, Twp. 7 N., Range 23 E., B. M., E½ SW¼ and SW¼ SW¼, Section 31, Twp. 8 N., Range 23 E., B. M.

And that, on the 18th day of April, A. D. 1944, at 10:00 o'clock A. M., in Room 107 State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

JAMES SPOFFORD,
State Reclamation Engineer.
First publication March 30, 1944
Last publication April 6, 1944.

Affidavit of Publication

State of Idaho }
County of Custer } ss.

I, F. A. Spraktes, Editor of the MACKAY MINER, a weekly newspaper of General Circulation published weekly at Mackay, Idaho, continuously since February 16, 1906, do solemnly swear that a copy of the notice, as per clipping attached, was published weekly in the regular and entire issue of said newspaper and not in any supplement thereof, for two consecutive weeks, commencing with the issue dated March 30, 1944, and ending with the issue dated April 6, 1944.

F. A. Spraktes

Subscribed and sworn to before me this 12th day of April, 1944.

George D. Armbruster
Notary Public

Cost of publication $6.00

GEORGE L. AMBROSE
ATTORNEY AND COUNSELLOR
MACKAY, IDAHO

RECEIVED
MAR

March 23, 1944

Mr. Roy W. Thompson,
Deputy Commissioner of Reclamation,
State Capitol,
BOISE, Idaho.

Dear Roy:-

Herewith is the George R. Leavitt transfer, which is connected with the John E. Lehman transfer. I have had it signed by H. H. Pearson, Water Master of District No. 27. You can prepare the notice for publication and send to me or direct to the Mackay Miner.

Publication of the Lehman transfer is in the Miner this week.

I will likely be in Boise the 27th, next Monday. In view of the fact that I may not be here if you send the notice direct to me, I suggest you send it direct to the Miner, advising me you have done so. I am anxious to get these transfer in order.

With kind regards, I am,

Yours very truly,

A.
1 Incl.

MICROFILMED

FORM 21

Notice of Proposed Transfer of Water Right

Notice is hereby given that George R. Leavitt of Mackay Idaho, has applied to the State Reclamation Engineer Commissioner of Reclamation of the State of Idaho for a certificate authorizing him to transfer the use of Four (4) cubic feet per second of the water of Warm Springs Creek

from the land upon which it is now used, i. e. Lots 3 & 4, Section 6, Twp. 7 N., Range 23 E.B.M., Lot 4, E½ SW¼ & NW¼ SW¼, Sec. 31, Twp. 8 N., Range 23 E., B.M., and NE¼ SE¼ Sec. 36, Twp. 8 N., Range 22 E., B.M.

to the following described tract Lots 3 & 4, Section 6, Twp. 7 N., Range 23 E., B.M., E½ SW¼ and SW¼ SW¼ Section 31, Twp. 8 N., Range 23 E., B.M.

And that, on the 18th day of April, A. D. 1944, at 10:00 o'clock A.M., in Room 107 State House, Boise, Idaho before the State Reclamation Engineer Commissioner of Reclamation, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

JAMES SPOFFORD
Commissioner of Reclamation.
State Reclamation Engineer

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

Date . March 25, 1944 .

Mackay Miner

Mackay, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to April 18, 1944, the date set for proof, the expense of the publication to be paid by the applicant, hearing

George R. Leavitt, Mackay, Idaho

to whom you should furnish proof of publication on or prior to the date for proof. hearing

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

JAMES SPOFFORD

State Reclamation Engineer

~~Commissioner of Reclamation~~

By

Roy A. Thompson

Supervisor of Water Distribution

RECEIVED

Form 20.

Application For Transfer of Water Right

STATE OF IDAHO
County of Custer } ss.

George R. Leavitt, being first duly sworn, deposes and says:

That his name is George R. Leavitt; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is Mackay, Idaho

That he is the owner and using a certain water right, bearing date of priority of Nov. 1, 1892 3.2 July 12 1907, for 0.8 cubic feet per second of the waters of Warm Springs Creek County of Custer, State of Idaho, decreed to Rudolph Lehman by decree of Judge, Farrington of the U.S. ~~Judicial~~ District Court, Eastern Div. of the State of Idaho, in and for the County of Custer & Butte in the case of Utah Construction Company vs. John F. Abbott, et al, said decree bearing date of March 15, 1923 ~~(or claim filed in my office as No.~~ ~~, issued by the State Engineer of the State of Idaho,~~ ~~dated~~ ~~, 19~~, bearing date of ~~, 19~~) for the purpose of irrigating the following described lands situate, lying and being in Water District No. 27 in the County of Custer and State of Idaho, to-wit:

Lots 3 and 4 of Sec. 6, Twp. 7.N. R. 23 E. Lot 4, and E½ of the SW¼ and the NW¼ of the SW¼ Sec. 31, Twp. 8.N. R. 23. E. and the NE¼ of the SE¼ Sec. 36, Twp. 8.N. R. 22. E. B.M.

and is the person (or ~~representative of the corporation~~) to whom such right so issued, or has become the owner thereof in the following manner, i. e. By purchase as per abstract of title of said water right hereto attached and made a part of this statement:

That said waters are now diverted from said stream in the South-east quarter of Section 34, Township 8.N., Range 22.E., B. M., and conducted to the above described lands through private ditch as per map herewith and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of 11-1-1892 3.2 7-12-1907 0.8 cubic feet per second of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Custer and State of Idaho, to-wit:

Lots 3 and 4 of Sec. 6, Twp. 7.N. R. 23. E. and E½ of the SW¼ and the SW¼ of the SW¼ (lot 4) Sec. 31 Twp. 8.N. R. 23. E. B.M.

That his reasons for desiring to make such transfer are as follows:

Change in ownership necessitates division in water rights.

COPY

That he intends to divert and convey said 3.2 and 0.8 second feet of water to the tract of land last above described in the following manner, to-wit:

Through private ditch with no change in point of diversion.

as set forth upon the map herewith; and that no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the Commissioner of Reclamation of the State of Idaho issue to him the proper certificate authorizing such transfer, in accordance with the provisions of Section 5582 of the Idaho Compiled Statutes.

/ George R. Leavitt.
Applicant.

Subscribed and sworn to before me this 18th day of March, A. D. 1944

George D. Amber
Notary Public

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water diverted? Warm Springs Creek

Where is the diversion point located? SE¼ Section 34. Twp. 8.N. R.22.E.B.M.

Through what ditch is it now conducted? Private Ditch

How much land is now irrigated by the water sought to be transferred? About 200 acres

Give the description: Lots 3 and 4, Sec. 6, Twp. 7 North, Range 23 E., B.M., and Lot 4 and E½ SW¼, Sec. 31, Twp. 8 N., R. 23 E., B. M.

What is the total amount of water in inches, or second feet, dedicated to said land? 5.6 c.f.s.

What kind of crops are being raised? Hay and grain

How much water per acre is now required to irrigate said land? Not less than one inch per acre.

What will be the effect on the land now irrigated, if the use of water on it is discontinued? This transfer is being made in connection with the No effect at all--John E.Lehman transfer in order to make the respective water decrees owned by applicant and the said John E.Lehman appurtenant to the properlands. See the Lehman transfer for confirmation of this

Give location of new point of diversion, if change is to be made. No change in diversion

Through what ditch will it be conducted after transfer? Same ditch, Private ditch.

How much water will be required per acre to irrigate the land to which this water is transferred? Not less than one inch per acre

Do you claim any other water right for the land from which you seek to abandon the use of this water?

If so, give amount, date and source No

Is there now any other water right for the land to which you seek to make this transfer? If so, give amount, date and source Yes. 3.2 sec. feet, priority Nov. 1,1892 and July 12,1907--0.8 sec. feet.

Signed / George R Leavitt.
Applicant.

STATE OF IDAHO,
County of Custer } ss.

John E. Lehman and Nate Larter

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at Mackay, Idaho that he is user of water from Warm Springs Creek, in Water District No. 27 County of Custer, State of Idaho; that he has read or heard read the foregoing affidavit and petition of George R. Leavitt and is familiar with its allegations and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

John E. Lehman
Nate Larter

Subscribed and sworn to before me this 18th day of March A. D. 19 44.

Geo. D. Ambrose
Notary Public for Idaho, residing at Mackay, Idaho. My Com. Expires Oct. 16, 1944.

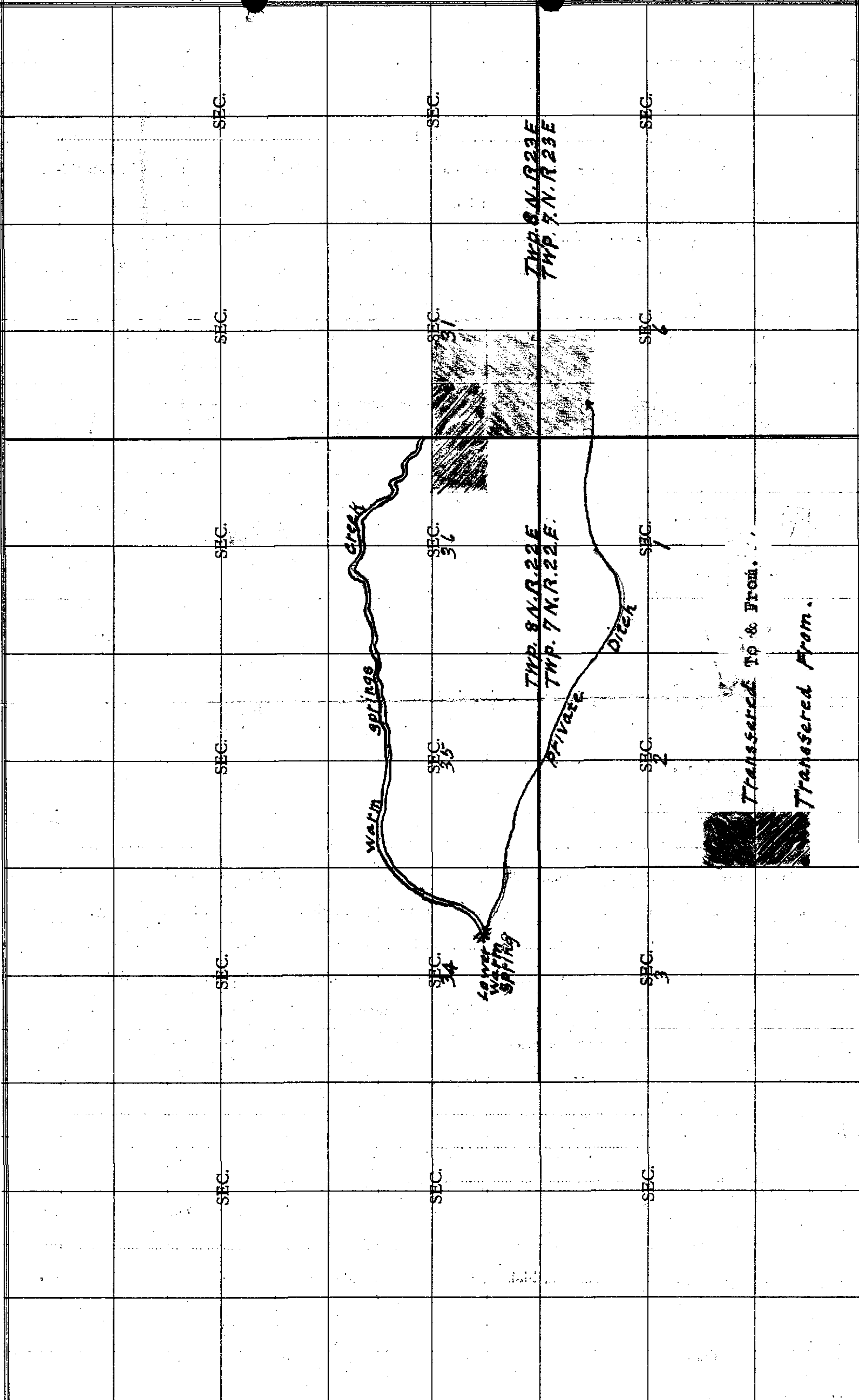
STATE OF IDAHO,
County of Custer } ss.

I, J. H. Pearson, Watermaster of Water District No. 27, County of Custer, State of Idaho, whose postoffice address is Mackay, Idaho, have read or heard read the foregoing affidavit and petition of George R. Leavitt, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the Commissioner of Reclamation issue the certificate of transfer as petitioned; or (~~do not approve of the issuance of the certificate of transfer prayed for~~) for the following reasons:

J. H. Pearson
Watermaster Dist. No. 27

Dated at Moore, Idaho, this 21 day of March, 19 44.

Name of Applicant ....



Scale: 2 Inches—1 Mile. Draw Map in Ink.

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
34-00469	LEAVITT, GEORGE R.	C	11/01/1892	D/	WARM SPRINGS CREEK	IRR	WR
X34-00469	CUSTER SPRINGS LLC	C	11/01/1892	D/	WARM SPRINGS CREEK	IRR STOCK	WR
34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK	P DECR	AJ
34-00469A	ZOLLINGER, BRET L	C	11/01/1892	/W		P DECR	AJ
A34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK HAMILTON CREEK	IRR STOCK	AJ
A34-00469A	ZOLLINGER, BRET L.	C	11/01/1892	/W	WARM SPRINGS CREEK WITHDRAWN	IRR	AJ
R34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK	P DECR	AJ

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JUL 13 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5456
WATER RIGHT NO(S). 34-00469/34-00471

This is to certify that: **CUSTER SPRINGS LLC**
C/O JAMES R BENNETTS
1231 MAIN ST
CHALLIS ID 83226

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

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 34-00469 :			
Priority: 11/01/1892			
IRRIGATION	05/01 to 10/15	3.20 CFS	745.5 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	4.7 AF
		3.20 CFS	750.2 AF
Right No. 34-00471 :			
Priority: 07/12/1907			
IRRIGATION	05/01 to 10/15	0.80 CFS	307.8 AF
	TOTAL:	**4.00 CFS**	*** 750.2 AF**

SOURCE	TRIBUTARY OF
WARM SPRINGS CREEK	BIG LOST RIVER

LOCATION OF POINT(S) OF DIVERSION: SWNESE , Sec. 34, Township 08N, Range 22E
CUSTER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC			ACRES		ACRES		ACRES	TOTAL
07N	22E	1		SWNE	40					40
	23E	6	Lot	3 (NENW)	42	Lot	4 (NWNW) 41	Lot	5 (SWNW) 5	
				SENW	5					93
08N	23E	31	Lot	4 (SWSW)	40		SESW 40			80
							Total number of acres irrigated:			* 213

PLACE OF USE: STOCKWATER, same as IRRIGATION use

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JUL 13 2000

TRANSFER NO. 5456
WATER RIGHT NO(S). 34-00469/34-00471

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/20 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 5/1 and after 10/15 is subordinate to all water rights rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.
7. The quantity of water decreed for Right 34-00469 for stockwater use is not a determination of historical beneficial use and shall not exceed 13,000 gallons per day.
8. The appropriator is entitled to the quantity of water described for stockwater purposes at a point of measurement where the delivery ditch enters the place of use described.
* 9. Rights 34-00469 and 34-00471 when combined shall not exceed a total annual maximum diversion volume of 750.2 af at the field headgate for the irrigation of 213.0 acres and stockwater use.
10. Approval of Transfer 5456 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
11. This approval is specifically conditioned upon the terms and limitations contained in the Stipulation, Settlement, and Joint Motion for Order filed with the Department on October 12, 1999, In the Matter of Aplication for Permit 34-07591, In the Name of L & S Partners, numerous other captioned matters, and the Preliminary Order of the Department issued on November 18, 1999. This approval is subject to any future modifications resulting from or required by the terms of that Stipulation, the Preliminary Order of the Department, and the actions taken pursuant thereto.

Dated this 10th day of July, 2000

L. Dean Taylor
Chief, Water Allocation Bureau

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JUL 13 2000

Form 1??
12-92

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5456

ORIGINAL APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

RECEIVED
APR 2 6 1999
Department of Water Resources
Eastern Region

RECEIVED
FEB - 3 2000
Department of Water Resources

Name of applicant Aslett Ranches Phone (208) ~~734-5535~~ 734-5530

Post Office address P.O. Box B, Twin Falls, ID, 83303 c/o Scott L. Campbell, Elam & Burke, P.A.
P.O. Box 1539, Boise, ID, 83701
(208) 343-5454

A. PURPOSE OF TRANSFER

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

2. Describe the reason for the proposed changes Applicant desires to re-arrange the place of use.

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
34-00469	11/01/1892	3.20	Irrigation	05/01	to	10/15
34-00471	07/12/1907	0.80	Irrigation	05/01	to	10/15
					to	
					to	

2. Total amount of water being transferred 4.00 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Warm Springs Creek tributary to Big Lost River

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	SE	34	8N	22E	Custer	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	22E	1			40														40
7N	23E	6					42 L-3	41 L-4	5 L-5	5									93
8N	23E	31											40 L-4	40					80

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JUL 13 2000

Total acres 213

T5456

PART 1

6. General Information:

a. Description of diversion system Water is diverted from Fish Hatchery Canal via pump to sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

NESW of Section 31 will not be irrigated.

d. Remarks:

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____.

_____

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JUL 13 2000

3 & 6 PART 2 T5456

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

In Re SRBA	)	**PARTIAL DECREE PURSUANT TO**
	)	**I.R.C.P. 54(b) FOR**
Case No. 39576	)	
	)	**Water Right 34-00469**

NAME & ADDRESS: ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SOURCE: WARM SPRINGS CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 3.2 CFS

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 11/01/1892

POINT OF DIVERSION: T08N R22E S34 SWNESE Within CUSTER County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	05-01 10-15	3.2 CFS
STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T07N R23E S06 Lot 3 (NENW)42 Lot 4 (NWNW)41 Lot 8 (SWNW) 5 SENW 5
T08N R23E S31 NESW 40 Lot 4 (SWSW)40 SESW 40
213 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-00471 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 213 ACRES IN A SINGLE IRRIGATION SEASON.

Place of use for STOCKWATER is same as IRRIGATION

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

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

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

MICROFILMED
JUL 13 2000

4 of 6 PART 2 T5456

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

In Re SRBA	)	**PARTIAL DECREE PURSUANT TO**
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	**Water Right 34-00471**

NAME & ADDRESS: ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SOURCE: WARM SPRINGS CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 0.8 CFS

PRIORITY DATE: 07/12/1907

POINT OF DIVERSION: T08N R22E S34 SWNESE Within CUSTER County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	05-01 10-15	0.8 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T07N R23E S06 Lot 3 (NENW)42 Lot 4 (NWNW)41 Lot 8 (SWNW) 5 SENW 5
T08N R23E S31 NESW 40 Lot 4 (SWSW)40 SESW 40
213 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-00469 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 213 ACRES IN A SINGLE IRRIGATION SEASON.

RULE 54(b) CERTIFICATE

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

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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JUL 13 2000

Transfer No. 5456

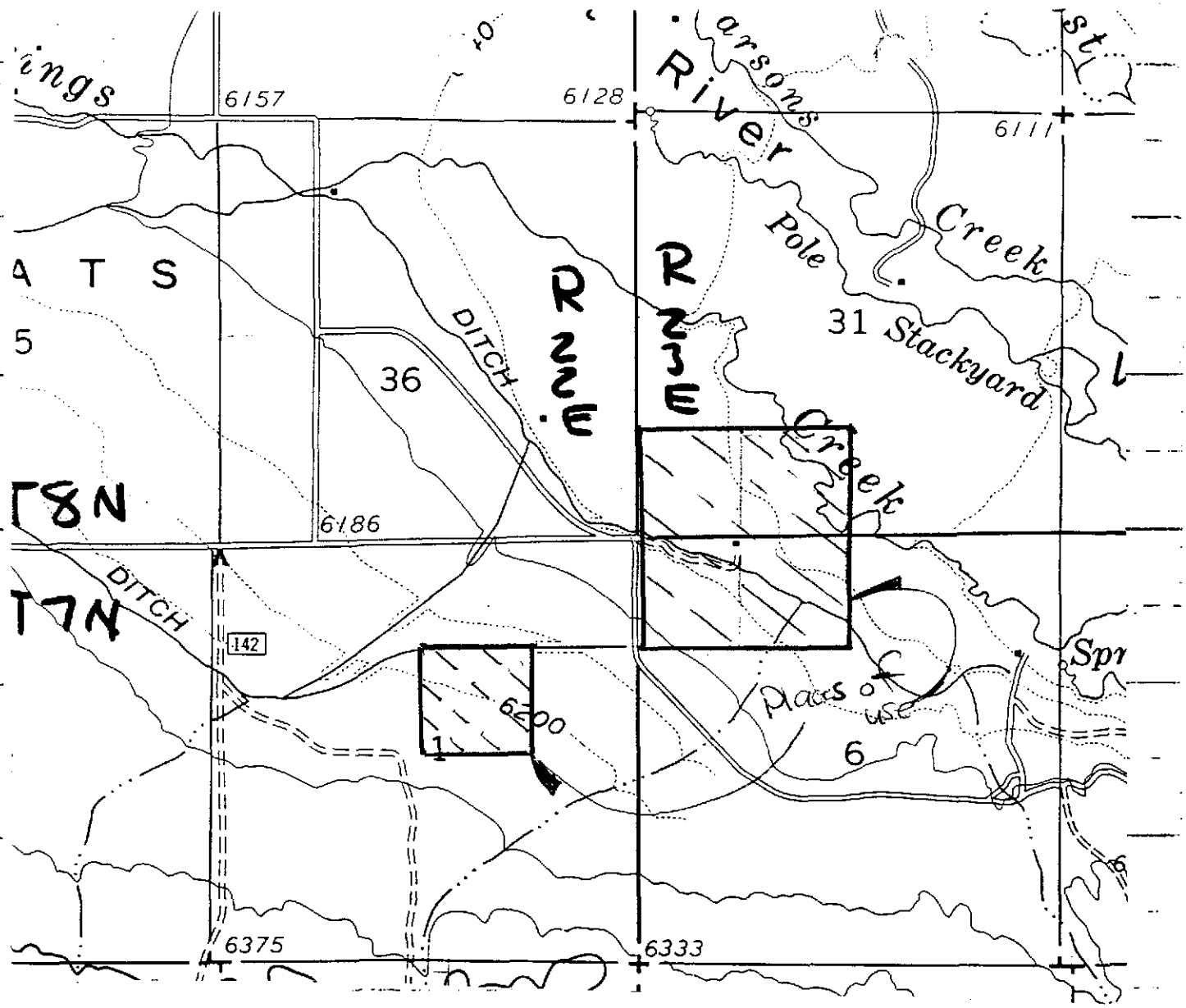
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

See Attachment B



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JUL 13 2000

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

APPENDIX XI-E (cont.)
Transfer No. 54156

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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

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

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 willful misrepresentations made in this application may result in voiding its approval.

Odell Ranches By Steve Wells
(Signature of Applicant)

Subscribed and sworn to before me this 21 day of April, 19 99.

Bonnie Templeman
(Notary Public)

My commission expires 2/12/02

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and ~~0~~ attachments
Received by _____ Date 4-26-99
Prelim. check by _____ Fee #100
Receipted by HWS #E024948 Date 4-26-99
Published in Chaffee Messenger
Pub. dates May 13 & 20, 1999
Watermaster recommendation requested on _____
_____ rec'd. _____
Copy of transfer sent to lien holder _____

Protest filed by Covens Pursley (Lex Ranch)
Mark T Gates
Copies of protest forwarded by _____
Hearing held by _____ Date _____
Recommended for ☑ approval ☐ denial
by RDC

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JUL 13 2009

ATTACHMENT A

Form 1860-c
(January 1988)

209387

Boise County Rec. of
Curtis Conner, Title

3:41 P.M.
8-22 1995
Wanda Murphy
Deputy

The United States of America

To all to whom these presents shall come, Greeting:

IDI-31137

WHEREAS

L & S Partnership, an Idaho Partnership

is entitled to a land patent pursuant to Section 206, Act of October 21, 1976, as amended (43 U.S.C. 1716) for the following described land:

Boise Meridian, Idaho

T.7 N., R. 22 E.,
sec. 1: S½NE¼.

T.7 N., R. 23 E.,
sec. 6, lot 8.

Containing 121.71 acres.

NOW KNOW YE, that there is, therefore, granted by the **UNITED STATES** unto L & S Partnership, the land described above: **TO HAVE AND TO HOLD** the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto L & S Partnership, and its successors and assigns, forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

SUBJECT TO:

1. Those rights for a buried telephone line granted to Mountain States T & T, its successors or assigns, by right-of-way No. IDI 21021, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE¼NE¼ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T. 7 N., R. 23 E.

2. Those rights for an electric line granted to Lost River Electric Cooperative, its successors or assigns, by right-of-way No. IDI 20934, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE¼NE¼ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T.7 N., R. 23 E.

3. Those rights held by Lost River Highway District, its successors or assigns, for an existing road exercised under RS 2477 and noted under Serial No. IDI 23188.

4. The patentee agrees that it takes the real estate subject to the existing grazing use of Lost River Ranch, holder of grazing authorization No. 114360. The rights of Lost River Ranch to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114360 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Lost River Ranch in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

Patent No. 21-95-0014

MICROFILMED
JUL 13 2000

Form 1860-10
(March 1985)

209387

5. The patentee agrees that it takes the real estate subject to the existing grazing use of Terrence V. Donahue, holder of grazing authorization No. 114316. The rights of Terrence V. Donahue to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114316 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Terrence V. Donahue in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

6. The patentee agrees that it takes the real estate subject to the existing grazing use of Bar 13 LTD, holder of grazing authorization No. 114343. The rights of Bar 13 LTD to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114343 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Bar 13 LTD in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

7. The patentee agrees that it takes the real estate subject to the existing grazing use of Dean T. Pence, holder of grazing authorization No. 114350. The rights of Dean T. Pence to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114350 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Dean T. Pence in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

8. The patentee agrees that it takes the real estate subject to the existing grazing use of Bret Zollinger, holder of grazing authorization No. 114375. The rights of Bret Zollinger to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114375 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Bret Zollinger in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

9. The patentee agrees that it takes the real estate subject to the existing trailing use of Scott McAffee, holder of trailing authorization No. 114347. The rights of Scott McAffee to trail domestic livestock on the real estate according to the conditions and terms of authorization No. 114347 will cease on March 29, 1997.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Boise, Idaho, the twenty-second day of August in the year of our Lord one thousand nine hundred and NINETY-FIVE and of the Independence of the United States the two hundred and TWENTIETH.

By _____
Deputy State Director,
Operations Support Team

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 11, 2000

CUSTER SPRINGS LLC
C/O JAMES R BENNETTS
1231 MAIN ST
CHALLIS ID 83226

RE: TRANSFER OF WATER RIGHTS 34-00469/34-00471 (Transfer 5456)

Dear Water Right Holder(s):

Enclosed is the copy of your approved Transfer of Water Rights for the above referenced water rights (Transfer 5456). Please be sure to thoroughly read the Conditions and Remarks listed on the transfer. Also, please be advised that the accompanying transfer approval should be considered and treated as a **preliminary order** of the department issued pursuant to section 67-5243, Idaho Code. Enclosed are instructions for responding to **Preliminary Orders** if you are in disagreement with the approved transfer.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

Pamela S. Skaggs
for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

MICROFILMED
JUL 13 2000

CERTIFICATE OF MAILING

I hereby certify that on the **11th** day of **July, 2000** I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

RE: TRANSFER OF WATER RIGHTS 34-00469/34-00471 (Transfer 5456)

CUSTER SPRINGS LLC
C/O JAMES R BENNETTS
1231 MAIN ST
CHALLIS ID 83226

Kari Lynn Townsend
Secretary

MICROFILMED

JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 11, 2000

DOUG ROSENKRANCE
WATERMASTER
PO BOX 53
MACKAY ID 83251

RE: TRANSFER OF WATER RIGHTS 34-00469/34-00471
(Transfer 5456)

Dear Doug:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water right (Transfer 5456) in the name of Custer Springs, LLC., c/o James R. Bennetts.

If you have any questions, please call me at 208-327-7940.

Sincerely,

Pamela S. Skaggs
for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

MICROFILMED

JUL 13 2000

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying order or approved document is a **"Preliminary Order"** issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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JUL 13 2000

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MICROFILMED
JUL 13 2000

DATE: June 30, 00

FAX TRANSMITTAL

ATTN: PAM SKAGGS

TO: Idaho Dept. of Water Resources

FAX NO. 208 327 7866 PHONE NO. 208 327 7900

FROM: Jim Bennetts

FAX NO. 208 879 4248 PHONE NO. 208 879 4488

NO. OF PAGES

MICROFILMED

JUL 13 2000

Order No. 99009334
This form furnished by
Blaine County Title Associates

CORRECTION
WARRANTY DEED

0221163

For Value Received ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP

the Grantor hereby grants, bargains, sells, conveys and warrants unto CUSTER SPRINGS LLC, AN IDAHO LIMITED LIABILITY COMPANY

the Grantee whose current address is: 24121 SW NEWLAND ROAD, WILSONVILLE, OR 97070

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

THIS DEED IS BEING RECORDED TO CORRECT THE LEGAL DESCRIPTION CONTAINED IN THAT CERTAIN WARRANTY DEED RECORDED AS INSTRUMENT NO. 220020, RECORD OF CUSTER COUNTY, IDAHO.

Custer County Rec. of
Alliance Title
Time 11:15 A M.
6/23 19 2000
Ethel M Peck, Clerk
Deputy
9.00

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: June 01, 2000

ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP
(Partnership Name)

By MARVIN ASLETT

By LARRY ASLETT

By: STEVE ASLETT

State of IDAHO
ss.
County of Twin Falls

On this 15 day of June, 2000, before me, the undersigned, a Notary Public, in and for said State, personally appeared MARVIN ASLETT, LARRY ASLETT AND STEVE ASLETT, known to me, or identified to me on the basis of satisfactory evidence, to be GENERAL PARTNERS of the Partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

(SEAL)

Bonnie Templeman
Notary Public
Residing at: Filer, ID
Commission Expires: 2/12/02

BONNIE TEMPLEMAN NOTARY PUBLIC STATE OF ID

MICROFILMED
JUL 13 2000

EXHIBIT A

PARCEL I:

TOWNSHIP 7 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 1: LOTS 1, 2, 3 AND SE1/4NW1/4.

PARCEL II:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: LOTS 3 AND 4.

TOWNSHIP 8 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 31: LOT 4 AND E1/2SW1/4.

PARCEL III:

TOWNSHIP 8 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 36: S1/2SE1/4 AND SE1/4SW1/4.

EXCEPTING THERFROM A 1/3 INTEREST IN THE FOLLOWING TRACT OF LAND:
TOWNSHIP 8 N., RANGE 22 E., B.M., CUSTER COUNTY, IDAHO.

SECTION 36: A PARCEL OF LAND LOCATED IN THE SE1/4SE1/4, BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NW CORNER OF SAID SE1/4SE1/4;
THENCE DUE EAST 100 FEET;
THENCE DUE SOUTH 100 FEET;
THENCE DUE WEST 100 FEET;
THENCE DUE NORTH 100 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: THAT PORTION OF SE1/4NW1/4 LYING ON THE NORTH SIDE OF THE NOW EXISTING BOUNDARY FENCE RUNNING EAST TO WEST, BETWEEN GRANTOR AND GRANTEE. MORE PARTICULARLY DESCRIBED ON "EXHIBIT B".

PARCEL V:

TOWNSHIP 7 NORTH RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 1: S1/2NE1/4

TOWNSHIP 7 NORTH RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: LOT 6 (FORMERLY KNOWN AS LOT 5)

Together, without warranty any and all appurtenant water rights.

MICROFILMED
JUL 13 2000

Exhibit "B"

A TRACT OF LAND GENERALLY DESCRIBED AS BEING A PORTION OF THE SE1/4 NW1/4 SEC. 6, T. 7 N., R. 23 E., B.M., CUSTER COUNTY, STATE OF IDAHO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A B.L.M. BRASS CAP MONUMENT MARKING THE NORTHWEST CORNER OF THE SE1/4 NW1/4 (THE NW1/16 CORNER) SEC. 6, T. 7 N., R. 23 E., B.M.; FROM WHICH A B.L.M. BRASS CAP MONUMENT MARKING THE SOUTH-WEST CORNER OF THE SE1/4 NW1/4 (THE C - C W1/16 CORNER) SAID SEC. 6 BEARS S 0°33'58" E 1337.91 FEET; THENCE, S 88°59'22" E 1340.46 FEET TO THE NORTHEAST CORNER OF THE SE1/4 NW1/4 (THE C - C N1/16) SEC. 6; THENCE, S 0°13'53" E 137.36 FEET ON OR ALONG THE EAST LINE OF THE SE1/4 NW1/4 SEC. 6 TO A 5/8" REBAR WITH PLASTIC CAP (P.L.S. #3577) LYING ON OR ALONG AN EXISTING FENCE; THENCE, LEAVING SAID EAST LINE S 89°02'40" W 1339.18 FEET ON OR ALONG SAID FENCE TO A 5/8" REBAR WITH PLASTIC CAP (P.L.S. #3577) LYING ON OR ALONG THE WEST LINE OF THE SE1/4 NW1/4 SEC. 6; THENCE, LEAVING SAID FENCE N 0°33'58" W 183.34 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

CONTAINING 4.931 ACRES, MORE OR LESS.

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

May 17, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Custer Springs LLC
C/O James R. Bennetts
Challis, ID 83226

RE: Ownership Documentation for Application for Transfer 5456
Water Rights 34-00469 & 34-00471

Dear Mr. Bennetts:

I have recently received change of ownership documentation from Kathy Seal of Blaine County Title for water rights on parcels of land that have been sold by L & S Partnership to Custer Springs LLC. The rights listed above that are part of Transfer Application 5456 will be updated through approval of the transfer. The change of ownership forms and ownership documentation for the other rights have been forwarded for separate processing.

Review of the documentation, provides ownership of all the original place of use under the transferred rights except for the 5 acres located in Lot 5 (SWNW), Section 6, Township 07N, Range 23E. The county assessor's office provided me with a printout that shows Lot 8 (SWNW) that should be Government Lot 5 according to government plat maps, in the name of L & S Partnership as owner. Unless documentation is provided these 5 acres will not be transferred to the new place of use.

The documentation also does not provide proof of ownership of 40 acres in the SWNE, Section 1, Township 07N, Range 22E that are identified as part of the proposed new place of use. The county assessor again provided me with a printout that reflects L & S Partnership as the current owners of this tract of land. If Custer Springs LLC did not purchase, lease, or have some other authorization to access this property, it cannot be included in the place of use on the transfer approval.

Perhaps since Aslett Ranches was the original applicant, their plan to move these 40 acres to a different quarter-quarter is no longer desired by Custer Springs. The original location of NESW, Section 31, Township 08N, Range 23E has been purchased by Custer Springs according to the documentation you have provided.

Please provide either documentation from L & S Partners that authorize use of the 40 acres in the SWNE, Section 1, T07N, R22E, or identify where the 40 acres should be located on land owned by Custer Springs and provide documentation if not included on the documentation already provided. Any modifications to the application proposal will require a notarized statement from Custer Springs LLC authorized agent. Please note the position with Custer Springs LLC of the party signing the request or provide authorization to act on behalf of Custer Springs in this matter.

I will withhold the application from further processing for 30 days to allow you to respond with the requested information. If you require additional information regarding this matter, please call me directly at (208) 327-7943, e-mail me at pskaggs@idwr.state.id.us or contact me by mail, and I will be happy to assist you.

Sincerely,

Pamela S. Skaggs

Pamela S. Skaggs
Sr. Water Rights Agent

CC: Robert Unger
24121 SW Newland Rd.
Wilsonville, OR 97070

MICROFILMED
JUL 13 2000

p.4 (208)879-4248 James R Bennetts Jul 03 00 09:18a

JAMES R. BENNETTS
ATTORNEY AT LAW
P.O. BOX 36
CHALLIS, IDAHO 83226-0036

TELEPHONE
(208) 879-4488

FAX
(208) 879-4248

RECEIVED
JUN 2
Department of Water Resources

June 20, 2000

Bob Unger
24121 SW Newland Road
Wilsonville, Oregon 97070

RE: Water and Correction Deed

Dear Bob:

I have confirmed that Blaine County Title Company has received the executed correction deed from Asletts and Kathy Seal assured me that it is being recorded. I will send a copy of the recorded deed to IDWR as soon as it has been received in order to correct the water transfer file.

Very truly yours,

James R. Bennetts

JRB:k
cc: Tom Coates
Kathy Seal
Pamela Skaggs

MICROFILMED
JUL 13 2000

RECEIVED
JUN 7 - 2000
Department of Water Resources

Tom Coates Consulting

Telephone (208) 461-7833
Fax (208) 461-7833

4904 E. Lewis Ln.
Nampa, Idaho 83686

June 2, 2000

Pamela S. Skaggs
Senior Water Rights Agent
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

RE: Custer Springs LLC
Water Rights 34-00469 and 34-00471

Dear Pamela:

In regard to the Application for Transfer from Aslett Ranches to Custer Springs of the above noted water rights, I am providing this letter as an update of the disposition of the ownership documentation.

As we have previously discussed, there were three 40 acre parcels left off the legal description during the sale transaction. This omission has been brought to the attention of Blaine County Title who performed the closing. They are in the process of correcting this omission and expect to have documentation recorded sometime during the week of June 5th to 9th. Upon recordation, providing there are no further errors, it appears the water rights transfer may conclude. I expect to be able to proceed during the week of June 19th.

If you have any questions or concerns, please contact me at either my office, 461-7833, or James R. Bennetts at 879-4488.

Very Truly Yours,

Tom Coates

Tom Coates

c: James R. Bennetts

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

May 17, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Custer Springs LLC
C/O James R. Bennetts
Challis, ID 83226

RE: Ownership Documentation for Application for Transfer 5456
Water Rights 34-00469 & 34-00471

Dear Mr. Bennetts:

I have recently received change of ownership documentation from Kathy Seal of Blaine County Title for water rights on parcels of land that have been sold by L & S Partnership to Custer Springs LLC. The rights listed above that are part of Transfer Application 5456 will be updated through approval of the transfer. The change of ownership forms and ownership documentation for the other rights have been forwarded for separate processing.

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Perhaps since Aslett Ranches was the original applicant, their plan to move these 40 acres to a different quarter-quarter is no longer desired by Custer Springs. The original location of NESW, Section 31, Township 08N, Range 23E has been purchased by Custer Springs according to the documentation you have provided.

Please provide either documentation from L & S Partners that authorize use of the 40 acres in the SWNE, Section 1, T07N, R22E, or identify where the 40 acres should be located on land owned by Custer Springs and provide documentation if not included on the documentation already provided. Any modifications to the application proposal will require a notarized statement from Custer Springs LLC authorized agent. Please note the position with Custer Springs LLC of the party signing the request or provide authorization to act on behalf of Custer Springs in this matter.

I will withhold the application from further processing for 30 days to allow you to respond with the requested information. If you require additional information regarding this matter, please call me directly at (208) 327-7943, e-mail me at pskaggs@idwr.state.id.us or contact me by mail, and I will be happy to assist you.

Sincerely,

Pamela S. Skaggs

Pamela S. Skaggs
Sr. Water Rights Agent

CC: Robert Unger
24121 SW Newland Rd.
Wilsonville, OR 97070

MICROFILMED
JUL 13 2000

BLAINE COUNTY TITLE

RECEIVED
MAY 15 2000
Department of Water Resources

DARYL J. FAUTH
PRESIDENT

MELODY MATTSON
VICE PRESIDENT

208 SPRUCE AVENUE NORTH
P.O. BOX 3176 KETCHUM, IDAHO 83340
(208) 726-0700
(208) 726-8406 (FAX)
1-800-346-6879
(OUTSIDE OF IDAHO)

RECEIVED
MAY 15 2000
DEPARTMENT OF WATER RESOURCES

May 12, 2000

IDAHO DEPARTMENT OF WATER RESOURCES
Attn: Ms. Pamela S. Skaggs
Senior Water Rights Agent
P.O. Box 83270
Boise, Idaho 83720-0098

Re: BCT #99009334 ASLETT RANCHES TO CUSTER SRINGS LLC

Dear Ms. Skaggs:

In connection with the above referenced transaction, please find attached the following documents:

Notice of Change of Water Right Ownership - Original signed by R. Unger
Re: Water Right Number(s) 34-07245A, 34-000469, 34-00471
Copy of Warranty Deed and Legal Description attached
Copy of Water Right Decree(s)

Notice of Chagne of Water Right Ownership - Original signed by R. Unger
Re: Water Right Number(s) 34-000467 and 34-000468
Copy of Quitclaim Deed from L&S to Aslett
Copy of Water Right Decree(s)

Please transfer accordingly to Mr. Unger dba CUSTER SPRINGS LLC.
His address for correspondence is indicated on the notice.

Should you have any questions, please feel free to contact me.

Sincerely,

BLAINE COUNTY TITLE

Kathy Seal

cc: J. Bennetts

MICROFILMED
MAY 23 2000

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE OF WATER RIGHT OWNERS

Include copy of ACD from L&S to Rulett

Please print or type. Attach pages with additional information. Instructions are on the back of this form. Incomplete forms will be returned.

1. Water Right Number(s) 34-00467, 34-00468 Together with any and all other rights which are appurtenant to the described lands.
   Adjudication Claim Number(s) _____

2. The following **REQUIRED** information must be submitted with this form.

   A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.

   AND

   B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)

   OR

   C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) L & S Partnership
   P. O. Box 8, Twin Falls, ID 83303

4. New Owner/Claimant(s) Custer Springs, LLC, an Idaho Limited Liability Company
   Name connector (Check one): [ ] AND [ ] OR [ ] AND/OR
   New Mailing Address c/o Robert A. Unger, Manager
   24121 SW Newland Rd
   City, State and ZIP Code Wilsonville OR 97070
   New Telephone Number (503) 638 - 2488

5. Date you acquired the property _____

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

   Number of acres actually irrigated _____ Number and type of stock _____

   Diversion rate in CFS _____ (cubic feet per second) Number of homes _____ Other uses _____

   If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner/Claimant(s) [signature] Managing Partner Date XNov 30, 1999

   _____ Date _____

   (Corporations or other organizations must submit list of directors/officers demonstrating authority to sign form.)

8. For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.

MICROFILMED
JUL 13 2000

Order No. 99009334
This form furnished by
Blaine County Title Associates

QUITCLAIM DEED

0220004

THIS INDENTURE, Made this 22nd day of November

in the year of our Lord one thousand nine hundred and ninety-nine between
L & S PARTNERSHIP, AN IDAHO PARTNERSHIP CONSISTING OF LARRY ASLETT AND STEVEN ASLETT

as Grantor and

ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP

as Grantee

whose current address is P.O. BOX B, TWIN FALLS, IDAHO 83301

WITNESSETH That said Grantor for and in consideration in lawful money of the United States of America, in hand paid by the Grantee, the receipt whereof is hereby acknowledged, does by these premises remise, release and forever QUITCLAIM, unto the said Grantee and to its heirs and assigns all that certain lot, piece or parcel of land, bounded and particularly described as follows, to-wit:

PARCEL I:

TOWNSHIP 7 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 1: LOTS 1, 2, 3 AND SE1/4NW1/4

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the Grantee and to its heirs and assigns forever.

IN WITNESS WHEREOF, The said Grantor has hereunto set its hand and seal the day and year first above written.

#220004
Custer County Req. of
Blaine Co. Title
Time 1:28 P.M.
12/1 1999
Ethel M Peck, Clerk
Janet Langas Deputy
$ 3.00

L & S PARTNERSHIP, AN IDAHO PARTNERSHIP
(Partnership Name)

By _____
LARRY ASLETT

By _____
STEVE ASLETT

State of IDAHO
County of BLAINE ss.

On this 30th day of November, 1999, before me, the undersigned, a Notary Public, in and for said State, personally appeared LARRY ASLETT AND STEVE ASLETT

known to me, or identified to me on the basis of satisfactory satisfactory evidence, to be PARTNERS of the Partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

KATHY SEAL NOTARY PUBLIC (SEAL) STATE OF IDAHO

WITNESS MY HAND AND OFFICIAL SEAL.

Seal.

Notary Public
Residing at: KETCHUM
Commission Expires: July 09, 2005

MICROFILMED
JUL 13 2000

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM	TO	MAXIMUN QUANTITY		BASIS OF CLAIM
	SOURCE: WARM SPRINGS CREEK		TRIBUTARY: BIG LOST RIVER					
34-00467	L & S PARTNERSHIP P.O. BOX B TWIN FALLS ID 83303	05/01/1905	IRRIGATION	05-01	10-15	2.4	CFS	DECREED
			STOCKWATER	10-16	04-30	.02	CFS	
			TOTAL QUANTITY:			2.4	CFS	

NON-IRRIGATION-USES:
STOCKWATER 350 HEAD CATTLE
POINT OF DIVERSION:
T08N R22E S34 SWNESE
PLACE OF USE: IRRIGATION

T07N R22E S01 Lot 1 (NENE)40.0 Lot 2 (NWNE)40.0 Lot 3 (NENW)40.0 SENW 40.0
160.0 ACRES TOTAL
PLACE OF USE: STOCKWATER
SAME AS OTHER USE
REMARKS: THE APPROPRIATOR IS ENTITLED TO THE AMOUNT OF WATER DESCRIBED ABOVE FOR STOCKWATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED ABOVE.
THE PORTION OF THIS RIGHT FOR STOCKWATER PURPOSES MAY BE DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF DIVERSION FOR STOCKWATER PURPOSES DOES NOT CONSTITUTE UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC INTEREST, AS DETERMINED BY THE DIRECTOR.
WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.
USE OF THIS RIGHT WITH RIGHT NO. 34-00468 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 400 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 160 ACRES IN A SINGLE IRRIGATION SEASON.

MICROFILMED
JUL 13 2000

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM	PERIOD OF USE TO	MAXIMUM QUANTITY		BASIS OF CLAIM
	SOURCE: WARM SPRINGS CREEK		TRIBUTARY: BIG LOST RIVER					
34-00468	L & S PARTNERSHIP P.O. BOX B TWIN FALLS ID 83303	03/18/1912	IRRIGATION	05-01	10-15	.8	CFS	DECREED
					TOTAL QUANTITY:	.8	CFS	

POINT OF DIVERSION:
T08N R22E S34 SWNESE
PLACE OF USE: IRRIGATION

T07N R22E S01 Lot 1 (NENE)40.0 Lot 2 (NWNE)40.0 Lot 3 (NENW)40.0 SENW 40.0
160.0 ACRES TOTAL

REMARKS: WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.
USE OF THIS RIGHT WITH RIGHT NO. 34-00467 IS LIMITED TO A
A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 400 AF, AND TO
THE IRRIGATION OF A COMBINED TOTAL OF 160 ACRES IN A SINGLE
IRRIGATION SEASON.

MICROFILMED
JUL 13 2000

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right Number(s) 34-07245A, 34-00469, 34-00471 Together with any and all other rights which are appurtenant to the described lands.
Adjudication Claim Number(s) _____

2. The following **REQUIRED** information must be submitted with this form.

A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.

AND

B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)

OR

C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) Aslett Ranches
P. O. Box 8, Twin Falls, ID 83303

4. New Owner/Claimant(s) Custer Springs, LLC, an Idaho Limited Liability Company
Name connector (Check one): [ ] AND, [ ] OR, [ ] AND/OR
New Mailing Address c/o Robert A. Unger, Manager
24121 SW Newland Rd
City, State and ZIP Code Wilsonville OR 97070
New Telephone Number (503) 638 - 2488

5. Date you acquired the property _____

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

Number of acres actually irrigated _____ Number and type of stock _____

Diversion rate in CFS _____ (cubic feet per second) Number of homes _____ Other uses _____

If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner/Claimant(s) _____ Date Nov 30 1999

_____ Date _____

(Corporations or other organizations must submit list of directors/officers demonstrating authority to sign form.)

8. For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.

MICROFILMED
JUL 13 2000

Order No. 99009334
This form furnished by
Blaine County Title Associates

WARRANTY DEED

For Value Received ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP

the Grantor hereby grants, bargains, sells, conveys and warrants unto CUSTER SPRINGS LLC, AN IDAHO LIMITED LIABILITY COMPANY

the Grantee whose current address is: 24121 SW NEWLAND ROAD, WILSONVILLE, OR 97070

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

0220020
Custer County Req. of
Jim Bennetts
Time 4:45 P.M.
12/1 1999
Ethel M Peck, Clerk
Janet Dangi
Deputy
$ 6.00

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: November 23, 1999

ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP
(Partnership Name)

By _____
MARVIN ASLETT

By _____
LARRY ASLETT

By: _____
STEVE ASLETT

State of IDAHO
ss.
County of BLAINE

On this 30th day of November, 1999, before me, the undersigned, a Notary Public, in and for said State, personally appeared MARVIN ASLETT, LARRY ASLETT AND STEVE ASLETT known to me, or identified to me on the basis of satisfactory evidence, to be GENERAL PARTNERS of the Partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

KATHY SEAL NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at: KETCHUM
Commission Expires: July 09, 2005

MICROFILMED
JUL 13 2000

BCT #99009334

EXHIBIT A

PARCEL I:

TOWNSHIP 7 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 1: LOTS 1, 2, 3 AND SE1/4NW1/4

PARCEL II:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: LOTS 3 AND 4

TOWNSHIP 8 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 31: LOT 4 AND E1/4SW1/4.

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TOWNSHIP 8 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 36: S1/2SE1/4 AND SE1/4SW1/4.

EXCEPTING THEREFROM A 1/3 INTEREST IN THE FOLLOWING TRACT OF LAND:
TOWNSHIP 8 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 36: A PARCEL OF LAND LOCATED IN THE SE1/4SE1/4, BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NW CORNER OF SAID SE1/4SE1/4;
THENCE DUE EAST 100 FEET;
THENCE DUE SOUTH 100 FEET;
THENCE DUE WEST 100 FEET;
THENCE DUE NORTH 100 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: THAT PORTION OF SE1/4NW1/4 LYING ON THE NORTH SIDE OF THE NOW EXISTING BOUNDARY FENCE RUNNING EAST TO WEST, BETWEEN GRANTOR AND GRANTEE.

Together, without warranty any and all appurtenant water rights.

MICROFILMED
JUL 13 2000

160 Acres
Deep well

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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 34-07245A

1997 DEC 16 AM 11:12
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

SOURCE: GROUNDWATER

QUANTITY: 1.74 CFS
402.5 AFY

PRIORITY DATE: 10/28/1980

POINT OF DIVERSION: T08N R22E S36 NWSESE Within CUSTER County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	Irrigation Season	1.74 CFS 402.5 AFY

PLACE OF USE: IRRIGATION Within CUSTER County
T08N R22E S36 SESW 40 SWSE 40 SESE 35
115 ACRES TOTAL

RULE 54(b) CERTIFICATE

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

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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JUL 13 2000

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM	TO	MAXIMUM QUANTITY		BASIS OF CLAIM
	SOURCE: WARM SPRINGS CREEK		TRIBUTARY: BIG LOST RIVER					
34-00471	ASLETT RANCHES P.O. BOX B TWIN FALLS ID 83303	07/12/1907	IRRIGATION	05-01	10-15	.8	CFS	DECREED
			TOTAL QUANTITY:			.8	CFS	

POINT OF DIVERSION:
T08N R22E S34 SWNESE

PLACE OF USE: IRRIGATION

T07N R23E S06 Lot 3 (NENW)42.0 Lot 4 (NWNW)41.0 Lot 5 (SWNW) 5.0 SENW 5.0
T08N R23E S31 NESW 40.0 Lot 4 (SWSW)40.0 SESW 40.0
213.0 ACRES TOTAL

REMARKS: USE OF THIS RIGHT WITH RIGHT NO. 34-00469 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 532.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 213 ACRES IN A SINGLE IRRIGATION SEASON.
WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.

MICROFILMED
JUL 13 2000

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM	PERIOD OF USE TO	MAXIMUM QUANTITY		BASIS OF CLAIM
	SOURCE: WARM SPRINGS CREEK		TRIBUTARY: BIG LOST RIVER					
34-00469	ASLETT RANCHES PO BOX 8 TWIN FALLS ID 83303	11/01/1892	IRRIGATION	05-01	10-15	3.2	CFS	DECREED
			STOCKWATER	10-16	04-30	.02	CFS	
			TOTAL QUANTITY:			3.2	CFS	

NON-IRRIGATION-USES:
STOCKWATER 350 RANGE CATTLE
POINT OF DIVERSION:
T08N R22E S34 SWNESE
PLACE OF USE: IRRIGATION

T07N R23E S06 Lot 3 (NENW)42.0 Lot 4 (NWNW)41.0 Lot 5 (SWNW) 5.0 SENW 5.0
T08N R23E S31 NESW 40.0 Lot 4 (SWSW)40.0 SESW 40.0
213.0 ACRES TOTAL
PLACE OF USE: STOCKWATER
SAME AS OTHER USE
REMARKS: THE APPROPRIATOR IS ENTITLED TO THE AMOUNT OF WATER DESCRIBED ABOVE FOR STOCKWATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED ABOVE.
THE PORTION OF THIS RIGHT FOR STOCKWATER PURPOSES MAY BE DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF DIVERSION FOR STOCKWATER PURPOSES DOES NOT CONSTITUTE UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC INTEREST, AS DETERMINED BY THE DIRECTOR.
USE OF THIS RIGHT WITH RIGHT NO. 34-00471 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 532.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 213 ACRES IN A SINGLE IRRIGATION SEASON.
WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.

MICROFILMED
JUL 13 2000

JAMES R. BENNETTS
ATTORNEY AT LAW
P.O. BOX 36
CHALLIS, IDAHO 83226-0036

TELEPHONE
(208) 879-4488

FAX
(208) 879-4248

RECEIVED
MAY 11 2000
Department of Water Resources

May 9, 2000

Pamela S. Skaggs
Senior Water Rights Agent
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

RE: Custer Springs LLC
Water Rights 34-00469 and 34-00471

Dear Ms. Skaggs:

Thanks for your patience. I am way behind, but I now have some help on this matter. I will get back to you – and again, thanks.

Very truly yours,

James R. Bennetts

JRB:k
cc: Tom Coates
Kathy Seal

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

May 5, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Custer Springs LLC
C/O James R. Bennetts
Challis, ID 83226

RE: Ownership Documentation for Application for Transfer 5456
Water Rights 34-00469 & 34-00471

Dear Mr. Bennetts:

As I told you in our previous two telephone conversations, I have reviewed the above referenced transfer application and require additional information to complete the process. I understand that you have had a personal loss recently and don't intend to pressure you. However, the information that I was able to receive from the Custer County Assessor's office confirms a problem with the proposed place of use.

This transfer application and the property originally were in the name of Aslett Ranches. When the ownership changed, you supplied the department with ownership documentation, a release from Aslett Ranches assigning interest in the transfer application to Custer Springs, and a request to complete the transfer from Mr. Unger. The documentation did not include two of the legal descriptions that were proposed as part of the new place of use. Either the application is in error or the change in ownership also should have modified the proposed place of use.

I am enclosing a copy of the transfer application identifying the two quarter-quarters in question along with the two maps and computer printouts provided by the assessor's office. If you can provide ownership documentation for the transfer as proposed, that will be all that is necessary. If the application is in error somehow, a clear description and corrected map of the proposed place of use, ownership documentation, and a request that the application be amended will need to be provided by Mr. Unger, or yourself as his agent.

I will withhold the application from further processing for another 30 days to allow you to respond with the requested information. If you require additional information regarding this matter, please call me directly at (208) 327-7943, e-mail me at pskaggs@idwr.state.id.us or contact me by mail, and I will be happy to assist you.

Sincerely,

Pamela S. Skaggs

Pamela S. Skaggs
Sr. Water Rights Agent

Enclosures

CC: Robert Unger
24121 SW Newland Rd.
Wilsonville, OR 97070

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JUL 13 2000

PARCEL: RP 07N22E010003 A

F9=MS
F17=DD F23=AG

NAME/ADDRESS

CUSTER SPRINGS LLC
AN IDAHO LIMITED
LIABILITY COMPANY

24121 SW NEWLAND ROAD

WILSONVILLE OR 97070-0015

LEGAL DESCRIPTION

LOTS 1,2,3
SE4NW4
SEC 1 T7N R22E

CODE AREA 4300 OWNER CODE
PARC TYPE AG LOC CODE 332
EFFDATE 1012000 EXPDATE
PREV PARCEL RP07N22E010002T

CAT	RY	QUANTITY	UN	VALUE	HO MRKT	HO EXMP	CB MRKT	OTHER
1	1996	127000	AC					
5	1996	32000	AC					
19	1996	800	AC					
TOTALS		159800						

ENTER NEXT PARCEL NUMBER RP _____ A

FKeys: F2=TX F3=Exit F5=SS F6=NM F7=LG
F8=CT F13=TM F18=HS F20=Srch F22=EU

Post-it® Fax Note	7671	Date 5/5/00	# of pages ▶ 4
To Pam		From Custer County	
Co./Dept. IDWR		Co.	
Phone #		Phone # 879-2325	
Fax # 327-7866		Fax # 879-5244	

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JUL 13 2000

7N, 22E, 01

	2. 40.15	1. 40.19	4. 40.24	3 Custer Springs LLC 2001 / 220080 14657 Lots 4 & NW Road 49.04 3954 #45 T40424 199689 22182 2-25-70 Custer Springs	2. 39.82 220084 Lots Partnership 209387	1.
2						
3						
	2. 40.43	1. 40.44	4. 40.60	3. 40.54	2. 40.47	1. 40.36
11				12		

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JUL 13 2000

PARCEL: RP 07N23E062401 A

F9=MS
F17=DD F23=AG

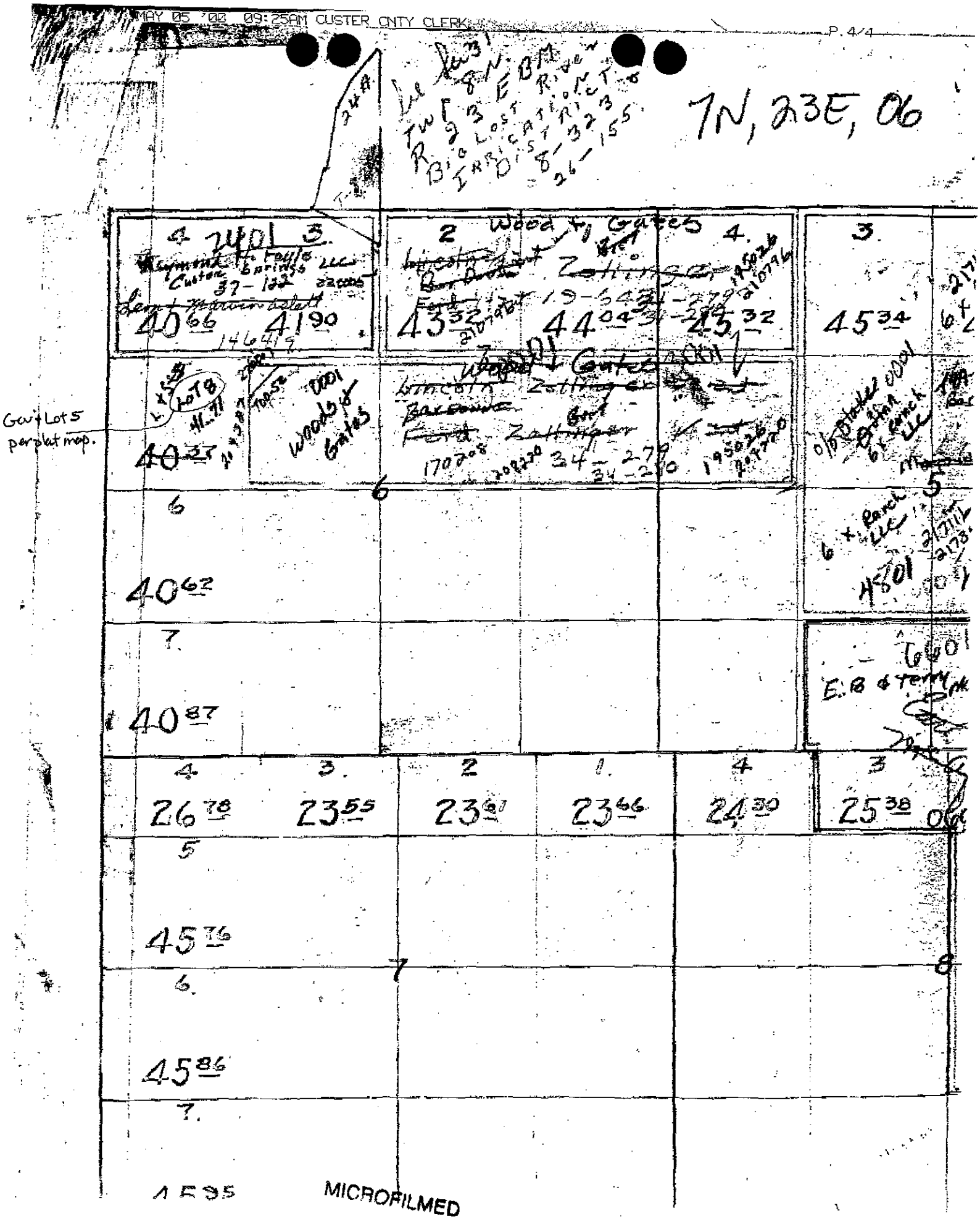
NAME/ADDRESS	LEGAL DESCRIPTION
CUSTER SPRINGS LLC,	LOTS 3,4
AN IDAHO LIMITED	TRACT 00-52
LIABILITY COMPANY	SEC 6 T7N R23E
24121 SW NEWLAND ROAD	CODE AREA 4500 OWNER CODE
	PARC TYPE AG LOC CODE 312
WILSONVILLE OR 97070	EFFDATE 1012000 EXPDATE
	PREV PARCEL RP07N23E062401T

CAT	RY	QUANTITY	UN	VALUE	HO MRKT	HO EXMP	CB MRKT	OTHER
1	1997	69000	AC					
2	1997	20560	AC	4811				
TOTALS		89560		4811				

ENTER NEXT PARCEL NUMBER RP _____ A

FKeys: F2=TX F3=Exit F5=SS F6=NM F7=LG
F8=CT F13=TM F18=HS F20=Srch F22=EU

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TWP 13 N R 23 E BM
BIG LOST IRR DIST
BIG LOST RIVER IRR DIST
7N, 23E, 06
Gov't Lot 5 per plat map.
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JUL 13 2000

TRANSFER REVIEW SHEET

(10-99)

Transfer # 5456 Date Reviewed 03-24-2000 CB

Right(s) 34-00469, 34-00471 } Resubmitted to SRBA Court for Amended Decree

✓ WRQ/Split Summary ✓ SRBA Status (Resubmitted) ____ Run POU Comparison Report

B:Change P/D C:Add P/D (D)Change P/U E:Change Nature of Use
F:Change Period of Use G:Other H:Change P/D & Add P/D
I:Change P/D & P/U J:Add P/D & Change P/U

Land Patent to L+S

Proof of Ownership 98 tax notice for Lot 4, E½SW, S31, 8N, 33E - Aslett Ranches - Transferred QQ NESW
Assignment of interest in transfer from Aslett Ranches to Robert Unger & purchase & sale agreement.

Transfer ✓ All of Right ____ Portion of Right

Resulting Split(s) NONE

Check Transfer Against Recorded Right:

Per "R" 4-20 10-31

Standard Season 4-1 to 10-31 Standard Volume 3.5 / 2.5

(1) ✓ Priority (2) ✓ Use (3) ___ Season (W61) (4) ✓ Rate (5) ___ Volume

(6) ✓ Source (7) ✓ P/D (8) ___ P/U (9) ✓ Proof/Owner (10) ✓ Map

Rec'd. 7-6-00 Corrected Warranty Deed.

(11) 34 Water District (12) Yes Pertinent Conditions (13) NO Expansion

WR Comment Rec'd. 5-18-99 Per SRBA w/limits

(3) Extended Season per "R"
(5) Standard Vol. = 3.5 afa/acre combined Limit 3.5 x 213 = 745.5 afa
(8) Shift 40 Acres from NESW, S31, 8N, 33E to SWNE, S1, 7N, 22E.
Gov't. Lots checked - SWNW, S6, 7N, 23E in Lot 5 not Lot 8 per SRBA

* NEW OWNER
Attorney
Randy ~~Manager~~ @ Chullis James Bennetts - 879 ~~2569~~ 4088 HOME DAYTIME
✓ Need Documentation for 7N 22E Sec 1 SWNE (40) and 7N 23E Sec 6, Lot 5, SWNW (5)
"at the discretion of the WM."

Transfer Remarks Stipulation Condition from Order W62, W61, W35/213 acres + 745.5 afa + stockwater use W57 (P/D)

Conditions R04, R43, R63, T07, T08

Database/Processing Notes ✓ Standard ___ Non-Standard ✓

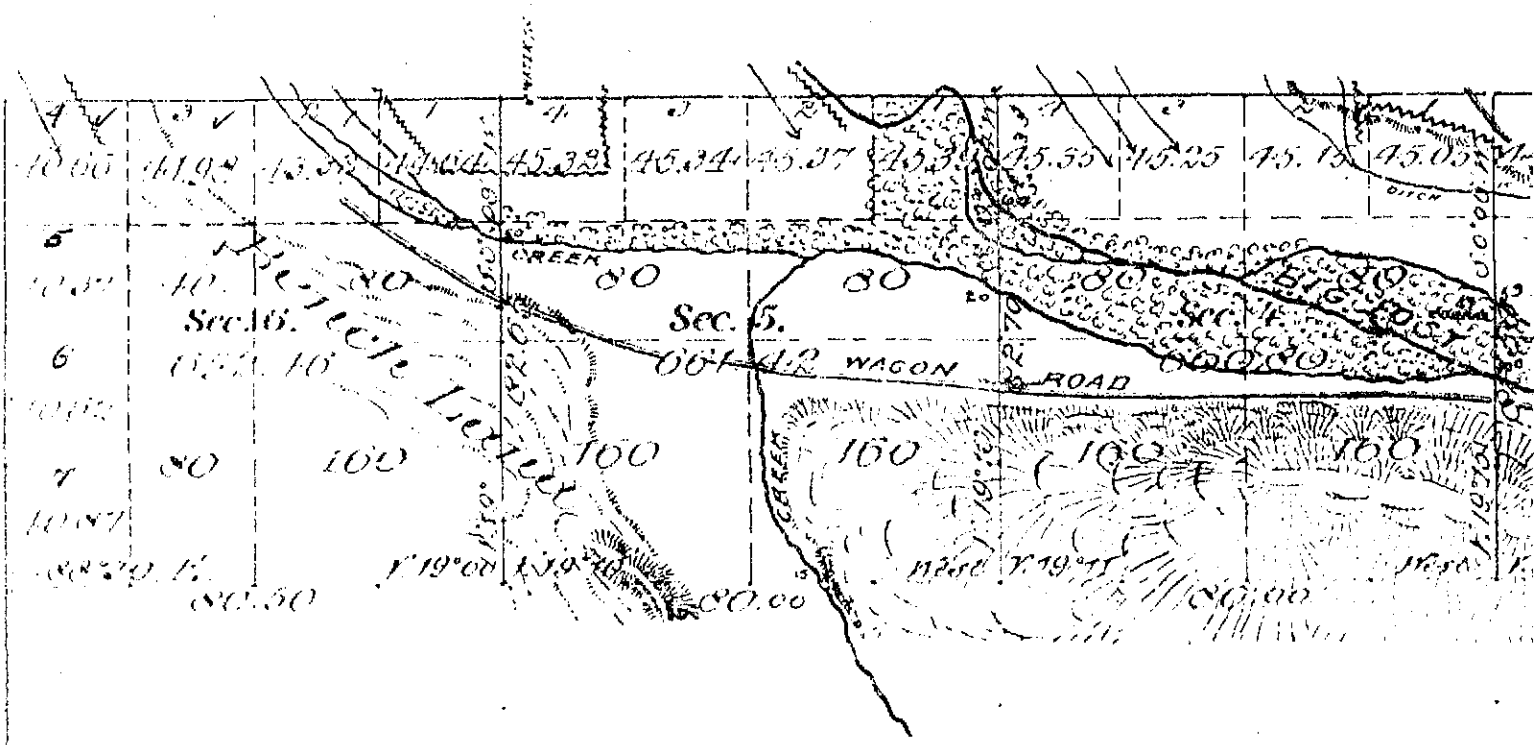
T files copied to "X", delete Ts, Comments to base rts.

"T" Files Update Complete ✓ Approval Form ✓ Transfer Memo ___
Database Updated Following Approval ✓ Memo/Form Files Deleted ✓

Copy of Approval to Robert Unger (new owner/OR address)

07-10-00 CB

Township No 7 North Range No 2 3 East



Sec. 7. Sec. 8. Sec. 9.

T07N R23E

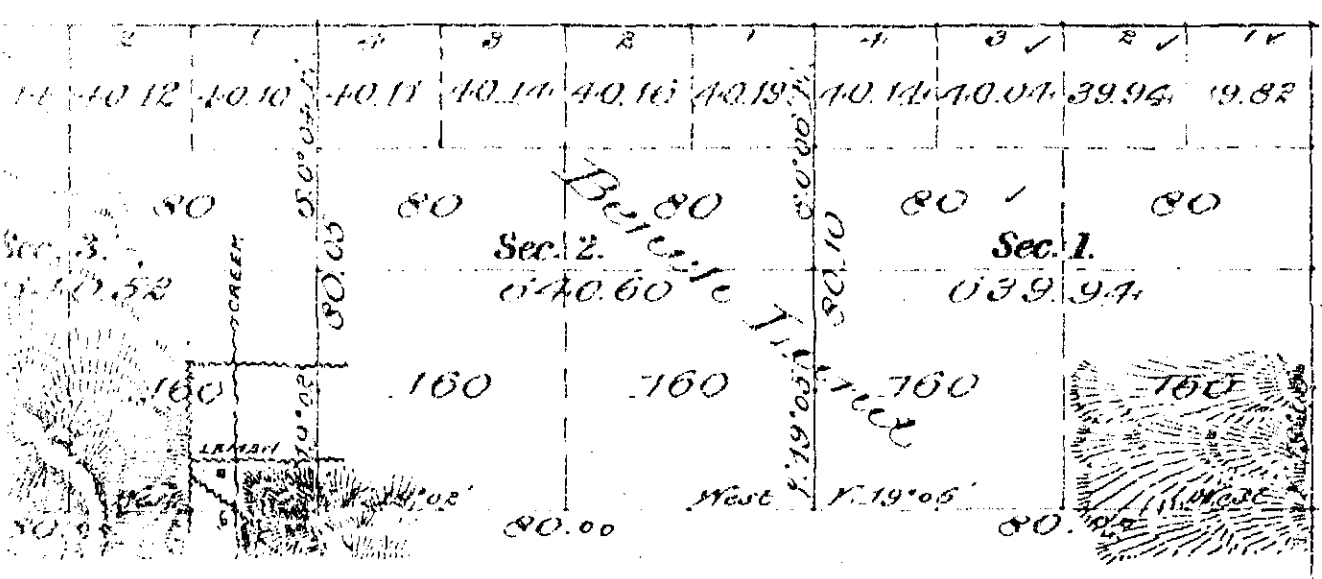
Sec. 18. Sec. 17. Sec. 16.

Lennox

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JUL 13 2000

T5456

Boise Meridian



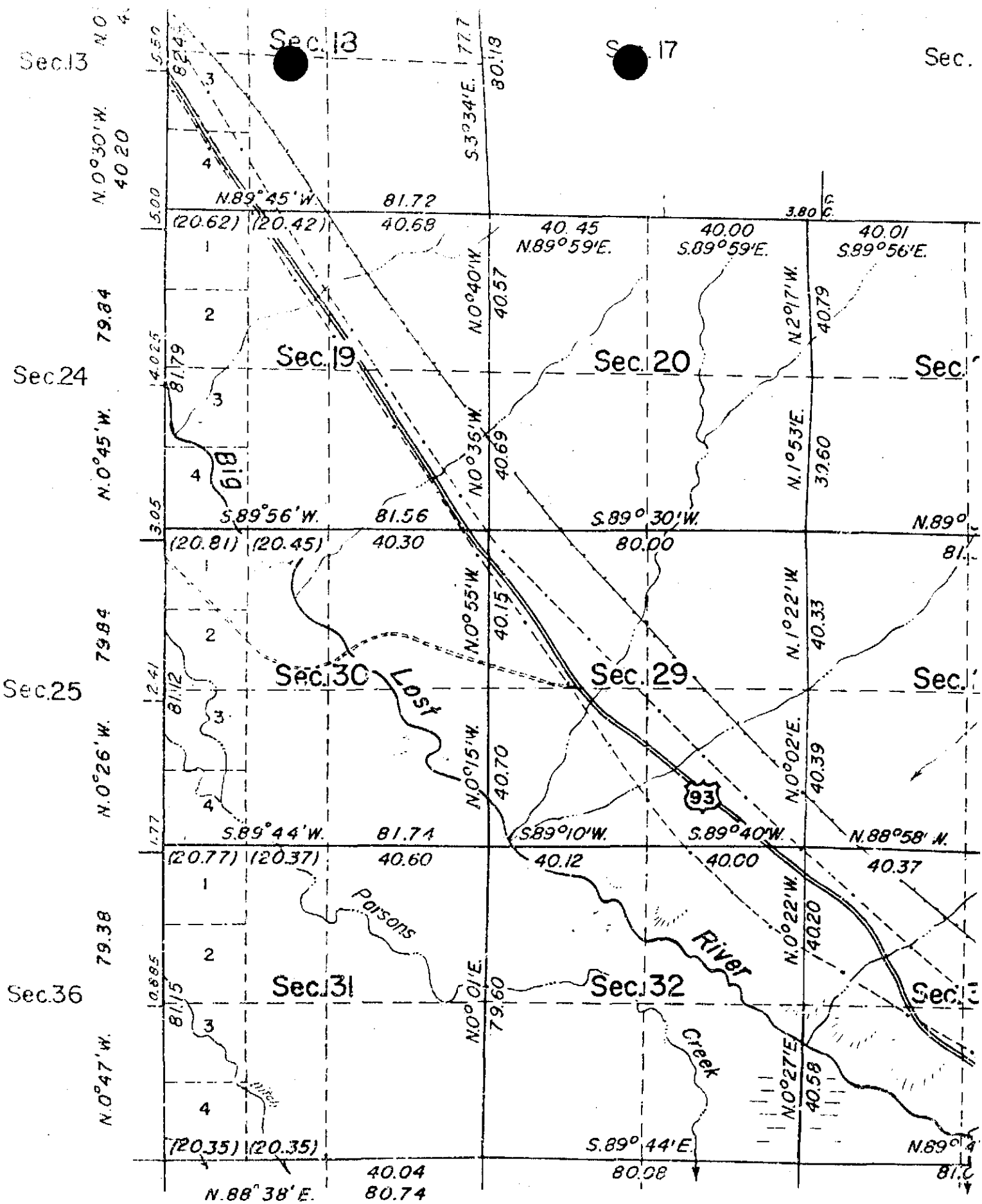
T07N R22E

Sec. 10. Sec. 11. Sec. 12. x

X

Sec. 15. Sec. 14. Sec. 13. w

MICROFILMED
JUL 1 3 2000

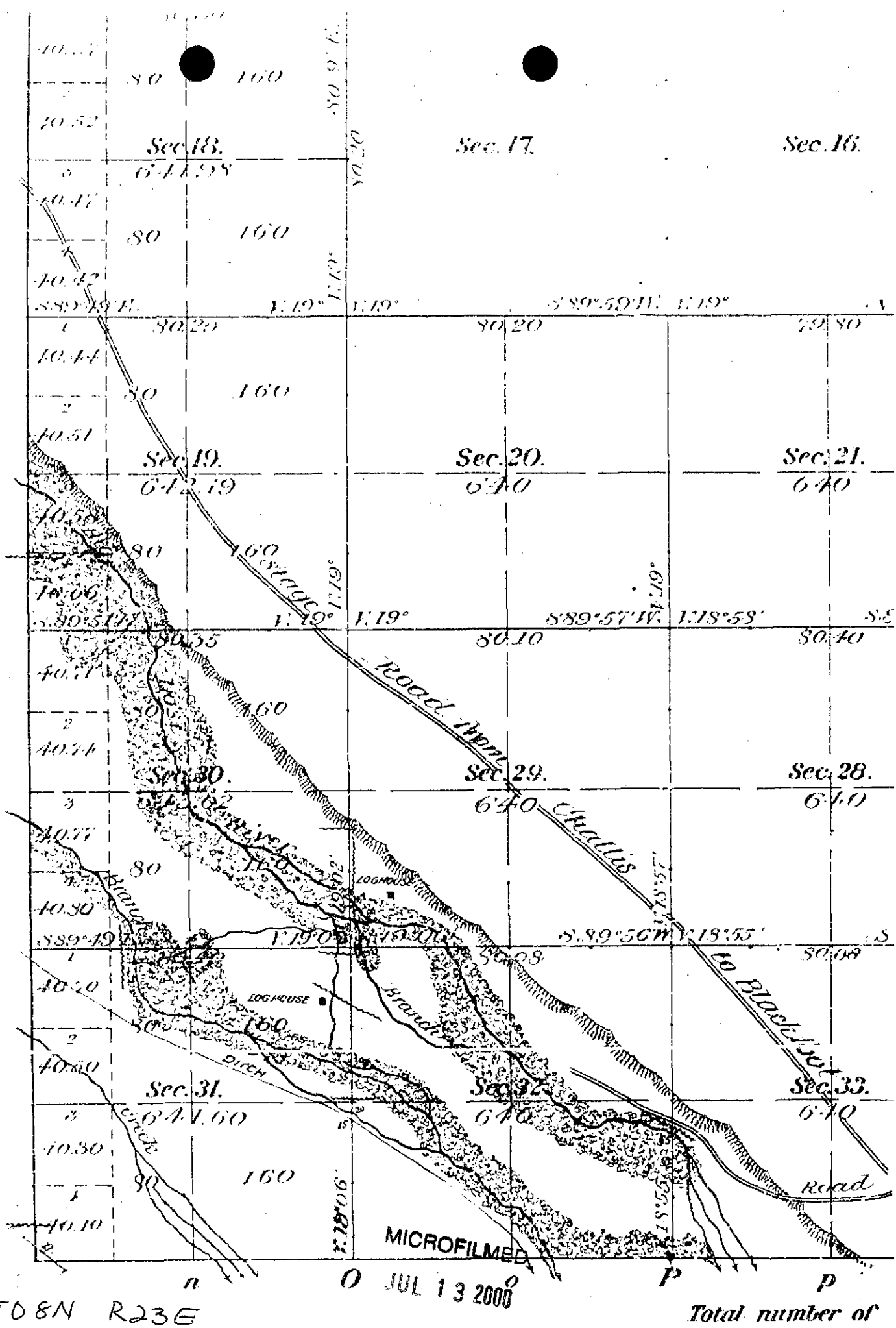


Area resurveyed, 8,328.79 acres.

1956

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JUL 13 2000

T08N R23E



T08N R23E

Total number of

SRBA
SUBCASE SUMMARY REPORT 34-00471

Return to SRBA Home Page

SRBA SUBCASE SUMMARY REPORT HTML12
03-24-2000

SUBCASE: 34-00471 FILE#: 00169
CLAIMANT: ASLETT RANCHES
STATUS: PD ISSUED
WATER SOURCE: WARM SPRINGS CREEK,BIG LOST RIVER
ISSUES: NAME AND ADDRESS DESCRIPTION
SOURCE OF WATER
QUANTITY OF WATER USED
PRIORITY DATE
POINT(S) OF DIVERSION DESCRIPTION
PURPOSE OF USE DESCRIPTION
PERIOD OF YEAR WHEN WATER IS USED
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
WATER RIGHT RECOMMENDATION
GENERAL PROVISIONS

****** PARTIES INVOLVED ******

ASLETT RANCHES	C	PRO SE
USDI BLM	O	ATTY: US DEPARTMENT OF JUSTICE
IDWR		ATTY: CLIVE STRONG

****** ROA ENTRIES ******

02-26-1993	OBJECTION 1 F/B BLM	RF	07-01-1993	0001
06-11-1993	RESPONSE TO OBJ #1 FILED BY IDWR			0001
11-04-1993	ORDER OF REFERENCE APPOINTING BRIGETTE BILYEU SPECIAL MASTER IN REPORTING AREA 34 (B-34)			
02-14-1994	ORDER SETTING HEARING ON MOTION TO INCLUDE ALTERNATIVE DISPUTE RESOLUTION	HS	03-09-1994	0130
03-02-1994	U S NTC:INTENT TO PARTICIPATE IN ADR HEARING			
03-02-1994	U S RESPONSE TO IDWR'S MOTION TO INCLUDE ADR			
03-09-1994	HEARING HELD - MOT ALTERNATIVE DISPUTE RES.	HH	03-09-1994	0130
03-09-1994	MINUTES			
04-19-1994	ORDER STAYING PROCEEDINGS IN SUBCASES IN R.A. 1,2 &3 AND STAYING THE OBJECTION AND PERIOD AS TO THE DIR RPT OF THE U.S. & TRIBAL NONCONSUMPTIVE CLAIMS & THE DIR RPT FOR THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT AND STAYING PROCEEDINGS IN TWIN FALLS COUNTY CASE 39576 (DL13)	OT		
04-27-1994	AMENDED ORDER STAYING PROCEEDINGS IN SUBCASES IN REPORTING AREAS 1, 2 AND 3 & STAYING THE OBJECTION PERIOD OF THE DIR'S RPT OF THE U.S. & TRIBAL NON-CONSUMPTIVE CLAIMS & STAYING PROCEEDINGS IN TWIN FALLS COUNTY CASE NO, 39576 (DL19)			
12-07-1994	ORDER LIFTING STAY IN REPORTING AREAS 1, 2 AND 3; AND TWIN FALLS COUNTY CASE NO. 39576, AND CONTNUING STAY OF DIRECTOR'S	OL		

MICROFILMED
JUL 13 2000

	REPORTS ABSTRACTING FEDERAL RESERVED WATER RIGHTS (DL43)			
12-07-1994	ORDER SETTING SETTLEMENT CONFERENCE	LV	01-25-1995	0100
01-05-1995	STANDARD FORM 5 FILED		01-05-1995	
01-20-1995	ORDER VACATING SETTLEMENT CONF & REQUIRING AMENDED STANDARD FORM 5	ZZ	02-14-1995	
02-14-1995	U.S. MOTION TO STAY SUBCASES & VACATE ORDER REQUIRING AMENDED STANDARD FORM 5	MD	03-14-1995	
03-13-1995	ORDER SETTING HEARING ON MOTION TO STAY	HS	03-14-1995	0430
03-14-1995	HEARING HELD - MOTION FOR STAY	HH	03-14-1995	0430
03-14-1995	MINUTES - MOTION FOR STAY			
03-20-1995	ORDER DENYING IN PART, GRANTING IN PART U.S. MOTION FOR STAY			
	(WRITTEN STATUS REPORT DUE)	ZZ	07-21-1995	
03-20-1995	(STATUS CONFERENCE HEARING)	US	10-02-1995	1000
03-20-1995	(STATUS CONFERENCE HEARING)	UV	10-02-1995	1000
03-20-1995	(STATUS CONFERENCE HEARING)	UV	10-02-1995	1000
09-29-1995	STANDARD FORM 5 FILED		09-29-1995	
09-29-1995	MOTION TO VACATE STATUS CONFERENCE	MG	10-02-1995	
10-02-1995	ORDER VACATING STATUS CONFERENCE AND			
10-02-1995	SETTING HEARING ON STANDARD FORM 5	5S	11-08-1995	0300
11-08-1995	STANDARD FORM 5 HEARING HELD	HH	11-08-1995	0300
11-08-1995	MINUTES			
11-08-1995	AMENDED STANDARD FORM 5 DUE	6B	01-12-1996	0500
02-07-1996	AMENDED STANDARD FORM 5 FILED		02-07-1996	
02-07-1996	AMENDED SF5 FILED (IDWR SIGNED)	6F	02-07-1996	
02-07-1996	ORDER SETTING HEARING ON STANDARD FORM 5	5S	03-15-1996	0300
03-15-1996	HEARING HELD - STANDARD FORM 5	5H	03-15-1996	0300
03-15-1996	MINUTES - STANDARD FORM 5 HEARING			
08-27-1996	PRINTOUT REQUESTED 8/27/96			
10-25-1996	LDGD: PRELIM MASTER REPORT & RECOMMENDATION	MB	11-08-1996	0500
10-25-1996	NOTICE OF ISSUANCE - PRELIMINARY R & R			
10-25-1996	CERTIFICATE OF MAILING - PRELIMINARY R & R			
11-06-1996	NOTICE OF ADMINISTRATIVE PROCEEDING	AZ	11-28-1997	
12-02-1997	NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDING (NO CHANGE)		12-02-1997	
12-19-1997	REPORT & RECOMMENDATION OF MASTER	CB	01-28-1998	
12-19-1997	NOTICE OF ISSUANCE - FINAL R & R			
12-19-1997	CERTIFICATE OF MAILING - FINAL R & R			
01-30-1998	ORDER OF PARTIAL DECREE			
01-30-1998	PARTIAL DECREE FILED		01-30-1998	
01-30-1998	CERTIFICATE OF MAILING - PARTIAL DECREE			
06-24-1999	SUPPLEMENTAL DIRECTOR'S REPORTS, RA 1, BASIN 34, PERIOD OF USE & CONJUNCTIVE MANAGEMENT			

Return to SRBA Home Page

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JUL 13 2000

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
34-00471	LEAVITT, GEORGE R.	C	07/12/1907	D/	WARM SPRINGS CREEK	IRR	WR
T34-00471	ASLETT RANCHES	C	07/12/1907	D/	WARM SPRINGS CREEK	IRR STOCK	WR
34-00471	ASLETT RANCHES	C	07/12/1907	D/	WARM SPRINGS CREEK	P DECR	AJ
34-00471A	ZOLLINGER, BRET L	C	07/12/1907	/W		P DECR	AJ
A34-00471	ASLETT RANCHES	C	07/12/1907	D/	WARM SPRINGS CREEK HAMILTON CREEK	IRR	AJ
A34-00471A	ZOLLINGER, BRET L.	C	07/12/1907	/W	WARM SPRINGS CREEK WITHDRAWN	IRR	AJ
R34-00471	ASLETT RANCHES	C	07/12/1907	D/	WARM SPRINGS CREEK	P DECR	AJ

SRBA
SUBCASE SUMMARY REPORT 34-00469

Return to SRBA Home Page

SRBA SUBCASE SUMMARY REPORT HTML12
03-24-2000

SUBCASE: 34-00469 FILE#: 00170
CLAIMANT: ASLETT RANCHES
STATUS: PD ISSUED
WATER SOURCE: WARM SPRINGS CREEK,BIG LOST RIVER
ISSUES: NAME AND ADDRESS DESCRIPTION
SOURCE OF WATER
QUANTITY OF WATER USED
PRIORITY DATE
POINT(S) OF DIVERSION DESCRIPTION
PURPOSE OF USE DESCRIPTION
PERIOD OF YEAR WHEN WATER IS USED
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
WATER RIGHT RECOMMENDATION
GENERAL PROVISIONS

****** PARTIES INVOLVED ******

ASLETT RANCHES	C PRO SE
USDI BLM	O ATTY: US DEPARTMENT OF JUSTICE
ASLETT RANCHES	O PRO SE

****** ROA ENTRIES ******

02-26-1993	OBJECTION (OBJ 1) FILED BY BLM	RF	07-01-1993	0001
03-01-1993	OBJECTION (OBJ 2) F/B ASLETT RANCHES			0002
06-18-1993	RESPONSE TO OBJ #1 FILED BY IDWR			0001
06-30-1993	RESPONSE TO OBJ #2 FILED BY IDWR			0001
11-04-1993	ORDER OF REFERENCE APPOINTING BRIGETTE BILYEU SPECIAL MASTER IN REPORTING AREA 34 (B-34)			
02-14-1994	ORDER SETTING HEARING ON MOTION TO INCLUDE ALTERNATIVE DISPUTE RESOLUTION	HS	03-09-1994	0130
03-09-1994	HEARING HELD - MOT ALTERNATIVE DISPUTE RES.	HH	03-09-1994	0130
03-09-1994	MINUTES			
04-19-1994	ORDER STAYING PROCEEDINGS IN SUBCASES IN R.A. 1,2 &3 AND STAYING THE OBJECTION AND PERIOD AS TO THE DIR RPT OF THE U.S. & TRIBAL NONCONSUMPTIVE CLAIMS & THE DIR RPT FOR THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT AND STAYING PROCEEDINGS IN TWIN FALLS COUNTY CASE 39576 (DL13)	OT		
04-27-1994	AMENDED ORDER STAYING PROCEEDINGS IN SUBCASES IN REPORTING AREAS 1, 2 AND 3 & STAYING THE OBJECTION PERIOD OF THE DIR'S RPT OF THE U.S. & TRIBAL NON-CONSUMPTIVE CLAIMS & STAYING PROCEEDINGS IN TWIN FALLS COUNTY CASE NO, 39576 (DL19)			
12-07-1994	ORDER LIFTING STAY IN REPORTING AREAS 1, 2 AND 3; AND TWIN FALLS COUNTY CASE NO. 39576, AND CONTNUING STAY OF DIRECTOR'S	OL		

MICROFILMED
JUL 13 2000

	REPORTS ABSTRACTING FEDERAL RESERVED WATER RIGHTS (DL43)			
12-07-1994	ORDER SETTING SETTLEMENT CONFERENCE	LV	01-25-1995	0100
01-05-1995	STANDARD FORM 5 FILED		01-05-1995	
01-19-1995	ORDER VACATING SETTLEMENT CONF & REQUIRING AMENDED STANDARD FORM 5	ZZ	02-14-1995	
02-14-1995	U.S. MOTION TO STAY SUBCASES & VACATE ORDER REQUIRING AMENDED STANDARD FORM 5	MD	03-14-1995	
03-13-1995	ORDER SETTING HEARING ON MOTION TO STAY	HS	03-14-1995	0430
03-14-1995	HEARING HELD - MOTION FOR STAY	HH	03-14-1995	0430
03-14-1995	MINUTES - MOTION FOR STAY			
03-20-1995	ORDER DENYING IN PART, GRANTING IN PART U.S. MOTION FOR STAY (WRITTEN STATUS REPORT DUE)	ZZ	07-21-1995	
03-20-1995	(STATUS CONFERENCE HEARING)	UV	10-02-1995	1000
09-29-1995	STANDARD FORM 5 FILED		09-29-1995	
09-29-1995	MOTION TO VACATE STATUS CONFERENCE	MG	10-02-1995	
10-02-1995	ORDER VACATING STATUS CONFERENCE AND			
10-02-1995	SETTING HEARING ON STANDARD FORM 5	5S	11-08-1995	0300
11-08-1995	STANDARD FORM 5 HEARING HELD	HH	11-08-1995	0300
11-08-1995	MINUTES			
11-08-1995	AMENDED STANDARD FORM 5 DUE	6B	01-12-1996	0500
02-07-1996	AMENDED STANDARD FORM 5 FILED		02-07-1996	
02-07-1996	AMENDED SF5 FILED (IDWR SIGNED)		02-07-1996	
02-07-1996	ORDER SETTING HEARING ON STANDARD FORM 5	5S	03-15-1996	0300
03-15-1996	HEARING HELD - STANDARD FORM 5	5H	03-15-1996	0300
03-15-1996	MINUTES - STANDARD FORM 5 HEARING			
08-27-1996	PRINTOUT REQUESTED 8/27/96			
11-06-1996	NOTICE OF ADMINISTRATIVE PROCEEDING	AZ	11-28-1997	
12-02-1997	NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDING (NO CHANGE)		12-02-1997	
01-08-1998	REPORT & RECOMMENDATION OF MASTER	CB	03-02-1998	
01-08-1998	NOTICE OF ISSUANCE - FINAL R & R			
01-08-1998	CERTIFICATE OF MAILING - FINAL R & R			
03-02-1998	ORDER OF PARTIAL DECREE			
03-02-1998	PARTIAL DECREE FILED		03-02-1998	
03-02-1998	CERTIFICATE OF MAILING - PARTIAL DECREE			
06-24-1999	SUPPLEMENTAL DIRECTOR'S REPORTS, RA 1, BASIN 34, PERIOD OF USE & CONJUNCTIVE MANAGEMENT			
06-24-1999	SUPPLEMENTAL DIRECTOR'S REPORTS, RA 1, BASIN 34, PERIOD OF USE & CONJUNCTIVE MANAGEMENT			

Return to SRBA Home Page

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
34-00469	LEAVITT, GEORGE R.	C	11/01/1892	D/	WARM SPRINGS CREEK	IRR	WR
T34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK	IRR STOCK	WR
34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK	P DECR	AJ
34-00469A	ZOLLINGER, BRET L	C	11/01/1892	/W		P DECR	AJ
A34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK HAMILTON CREEK	IRR STOCK	AJ
A34-00469A	ZOLLINGER, BRET L.	C	11/01/1892	/W	WARM SPRINGS CREEK WITHDRAWN	IRR	AJ
R34-00469	ASLETT RANCHES	C	11/01/1892	D/	WARM SPRINGS CREEK	P DECR	AJ

Form 222a
6/78

T5456
4-28-99

RECEIVED
1 - 3 2000
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: AWJ

1. Right number 34-00469 & 00471 Applicant Aslett Ranches
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.
5. Amount of land &/or water transferred:
   a. ☑ 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).*
   c. ☑ Check description of point(s) of diversion.
   d. ☑ Check description of place of use.
   e. ☑ Check map (shows p.d. and p.u. after transfer).
   f. ☑ Check for correct signature, notarization, and fee.
   g. ☑ Check proof of ownership of right &/or land from which water is transferred.
   h. ☑ Check for expansion in use of right. Comments NA
   i. ☑ Check for existing water rights from same source, on land water is being transferred to.
      Right number(s) NA
   j. ☐ Is use within a Watermaster District? ☑ Yes ☐ No
      If yes, what district? WD 34 Big Lost River

* Ranch Sold to Custer Springs LLC Requested 4-28-99

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

1. ☑ Approve
2. ☐ Deny
3. Conditions* watermaster control
4. By RDC Date 1/28/00

* *All uses within Watermaster Districts require special conditions.*

T5456

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 31, 2000

ASLETT RANCHES
C/O SCOTT L CAMPBELL
ELAM & BURKE
PO BOX 1539
BOISE ID 83701

RE: Withdrawal of protest on Application for Transfer No. 5456

Dear Sir:

This Department has received a withdrawal of protest from all protestants.

Our office will continue to process your application.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

MICROFILMED
JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 31, 2000

MICHAEL C CREAMER
%GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

RE: Withdrawal of protest on Application for Transfer No.: 5456

Dear Protestants:

This Department has received your withdrawal of protest against the application of Aslett Ranches.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

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JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 31, 2000

NORMAN M SEMANKO
%ROSHOLT, ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

RE: Withdrawal of protest on Application for Transfer No.: 5456

Dear Protestants:

This Department has received your withdrawal of protest against the application of Aslett Ranches.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

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JUL 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 31, 2000

JAMES P SPECK
%SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

RE: Withdrawal of protest on Application for Transfer No.: 5456

Dear Protestants:

This Department has received your withdrawal of protest against the application of Aslett Ranches.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

MICROFILMED

JUL 13 2000



Aslett
Ranches
P.O. Box "B"
Twin Falls, ID 83301
(208) 734-5533



January 10, 2000

Harold Jones
Department of Water Resources

Dear Harold:

Aslett Ranches sold the Mackay Ranch to Robert Unger. I have attached a copy of the Real Estate Purchase and Sale Agreement.

Aslett Ranches gives Robert Unger permission to continue the application for transfer of permit #5456.

If you have any questions please give me a call.

Sincerely,

Steve Aslett

MICROFILMED
JUL 13 2000

Real Estate Purchase and Sale Agreement

Buyer: Robert Unger and or assigns
Property Address: Zollinger Road
Legal Description: See Attached Exhibit 'A'

City: NA County: Custer State: Idaho
Buyer hereby agrees to buy, and Seller agrees to sell, the property on the following terms and conditions:

Earnest Money $ 50,000 Fifty Thousand &no/100 ---------- Dollars

Evidenced By:
- [X] Personal Check
- [ ] Cashier's Check
- [ ] Promissory Note

To Be Held By:
- [ ] Listing Broker
- [ ] Selling Broker
- [X] Title Company

Other Remarks:

Earnest Money to be deposited in trust account upon acceptance of this agreement by all parties.

Offer Expires On Date: November 14, 1999 Time: 5:00 PM

Closing Date November 30, 9 **Possession Date:** [ ] On the closing date [X] March 1, 2000

Inspections N/A [ ]

This offer is contingent upon Buyer's inspection of the premises and acceptance of the condition of the premises. Buyer shall have the right to conduct inspections, tests, surveys and other studies ("inspections") at Buyer's sole cost. Seller shall provide reasonable access for such inspections. Buyer shall indemnify Seller and hold Seller harmless from all injury, loss or liability regarding such inspections. If Buyer has not waived or satisfied this contingency in writing on or before
then this Agreement shall terminate and the earnest money shall be refunded to Buyer (less any expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement), **unless** on Buyer's request Seller extends the deadline in writing prior to expiration of the above deadline, in which case the new deadline shall control this contingency.

Financing This Agreement is contingent upon Buyer securing the following financing: N/A [X]

Buyer agrees to make a best effort to obtain such financing and to make written application within business days after acceptance of this agreement by both parties. If Buyer has not waived or satisfied this contingency in writing on or before

this Agreement shall terminate and the earnest money shall be refunded to Buyer (less any expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement), **unless** on Buyer's request Seller extends the deadline in writing prior to expiration of the above deadline, in which case the new deadline shall control this contingency.

New Loan [ ]
Assume Existing [ ]
Total Points ____
Amount ____
Maximum % Rate ____
Years ____

Type of Loan:
- Conv. [ ]
- FHA [ ]
- VA [ ]
- Fixed Rate [ ]
- Adj. Rate [ ]

Other Terms: Seller will require an IRS Section #1031 tax-deferred exchange At closing at escrow with No cost or tax liability to Buyer

MICROFILMED

Document # 22184 **Date** November 12, 1999

JUL 13 2000

COMMITMENT FOR TITLE INSURANCE

Order No: 307990085C-G

SCHEDULE A

1. **Effective date: 11/16/1999 at 7:30 A.M.**

2. **Policy or Policies to be issued:**

(a) **ALTA Owner's Policy** [X] **Standard Coverage** [ ] **Extended Coverage**
Amount: $1,850,000.00
Premium: $4,480.00

Proposed Insured:

Robert Unger

(b) **ALTA Loan Policy** [ ] **Standard Coverage** [ ] **Extended Coverage**
Amount: $
Premium: $

(c) **Endorsements: Amount: $**

Proposed Insured:

3. The estate or interest in the land described or referred to in this commitment and covered herein is:
Fee Simple

4. Title to the estate or interest in said land is at the effective date hereof vested in:

Parcel I: L & S Partnership, an Idaho Partnership consisting of Larry Aslett and Steven Aslett

Parcel II: Leon Aslett and marvin Aslett doing business as Aslett Ranches, a partnership

Parcel III: Aslett Ranches

Parcel IV: Ward W. Woods and Priscilla B. Woods and Mark T. Gates and Elizabeth W. Gates, Trustees of the Mark T. Gates and Elizabeth W. Gates Living Trust Agreement dated September 10, 1993

5. The land referred to in this Commitment is described as follows:

PARCEL I:

TOWNSHIP 7 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 1: LOTS 1, 2, 3 AND SE1/4NW1/4

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JUL 13 2000

PARCEL II:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: LOTS 3 AND 4.

TOWNSHIP 8 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 31: LOT 4 AND E1/2SW1/4.

PARCEL III:

TOWNSHIP 8 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 36: S1/2SE1/4 AND SE1/4SW1/4.
EXCEPTING THEREFROM A 1/3 INTEREST IN THE FOLLOWING TRACT OF LAND:
TOWNSHIP 8 N., RANGE 22 E., B.M., CUSTER COUNTY, IDAHO.

SECTION 36: A PARCEL OF LAND LOCATED IN THE SE1/4SE1/4, BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NW CORNER OF SAID SE1/4SE1/4;
THENCE DUE EAST 100 FEET;
THENCE DUE SOUTH 100 FEET;
THENCE DUE WEST 100 FEET;
THENCE DUE NORTH 100 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: THAT PORTION OF SE1/4NW1/4 LYING ON THE NORTH SIDE OF THE NOW EXISTING BOUNDARY FENCE RUNNING EAST TO WEST, BETWEEN GRANTOR AND GRANTEE

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JUL 13 2000

January 7, 2000

Harold Jones
State of Idaho
Department of Water Resources
Idaho Falls, ID

Dear Harold:

As successor in interest, I would like to firm my desire to continue with transfer # 5456. Thank you for your expediency in this matter.

Sincerely,

Robert A. Unger
Custer Springs LLC

Enc: Articles of Organization Custer Springs LLC

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JUL 13 2000

251

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

(Instructions on back of application)

1. The name of the limited liability company is: CUSTER SPRINGS, LLC, an Idaho Limited Liability Company

2. The address of the initial registered office is: 1231 Main Street (not a PO Box) Challis, Idaho 83226 and the name of the initial registered agent at that address is: James R. Bennetts (Attorney (208) 879-4488)

   Signature of registered agent: _____

3. Is management of the limited liability company vested in a manager or managers?
   ☒ Yes ☐ No (check appropriate box)

4. If management is vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is vested in the members, list the name(s) and address(es) of at least one initial member.

Name:	Address:
Robert A. Unger	24121 SW Newland Rd
	Wilsonville OR 97070

5. Signature of at least one person listed in #4 above:

Secretary of State use only

Articles of LLC (1).pdf Revised 8/97

MICROFILMED
JUL 13 2000

COLUMBIA MANAGEMENT COMPANY

Phone: (800) 547-1037
Fax: (503) 243-2928

Fax

To: Harold Jones	**From:** Rober Unger
Fax: 208-525-7177	**Date:** January 7, 2000
Phone:	**Pages:** 3
Re:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please call (503) 973-6687 if there are any problems with transmission.

1300 S.W. Sixth Avenue P.O. Box 1350 Portland, Oregon 97207

MICROFILMED
JUL 13 2000