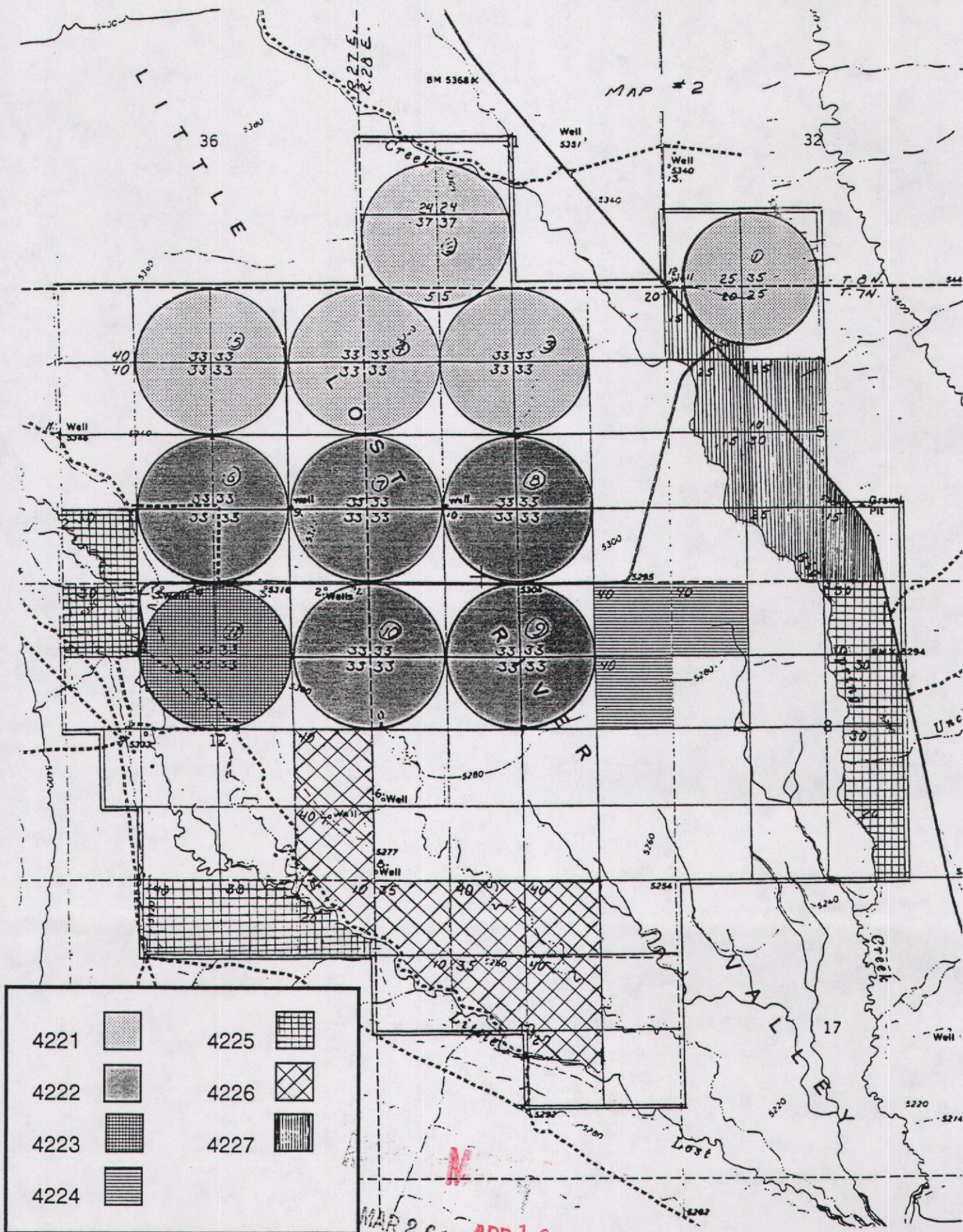
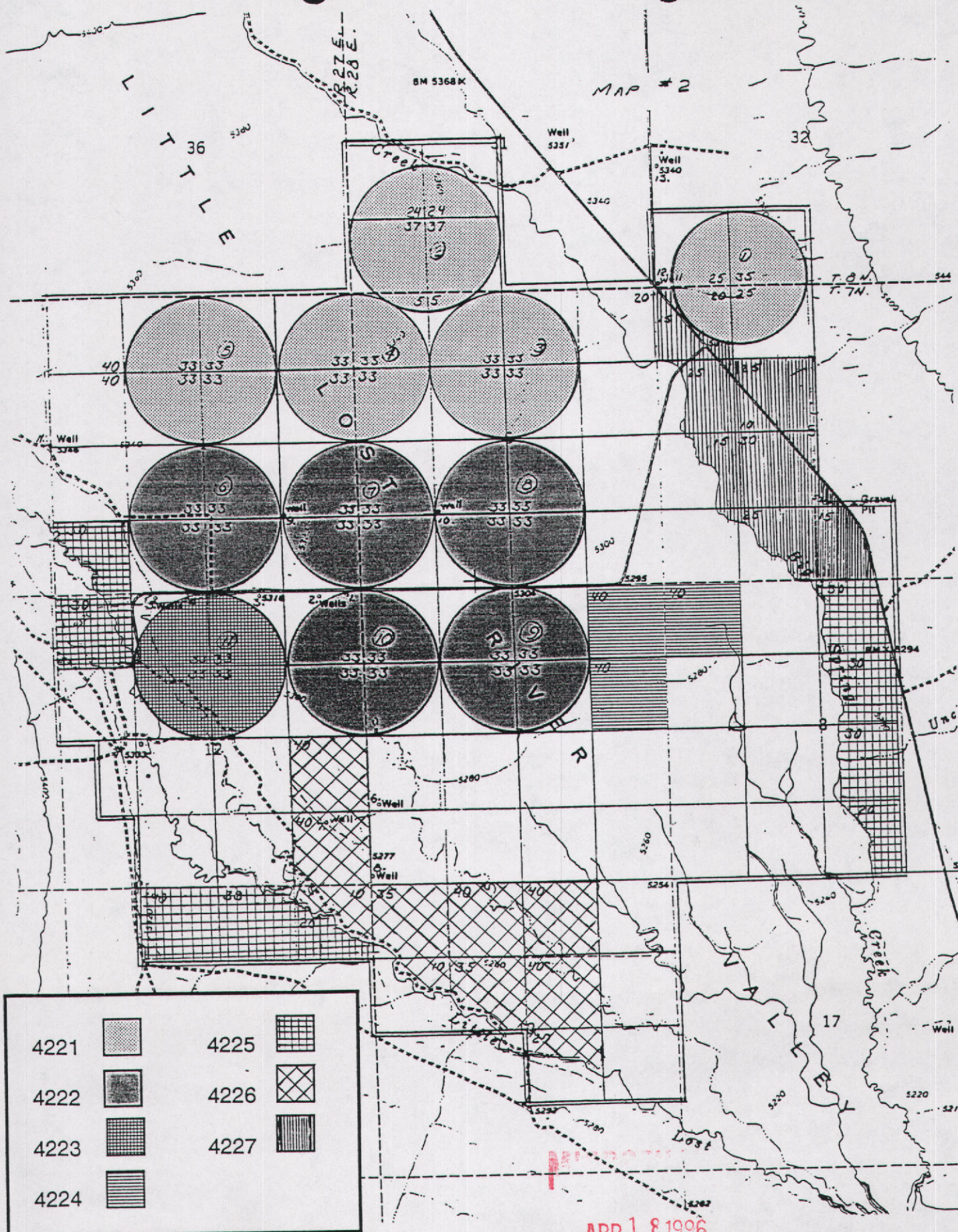






ATTACHMENT No. 1

Re: R-833

May 16, 1962

Re: L. R. Hawley

Don C. Archibald, Ass't. Vice Pres.
Utah Mortgage Loan Corporation
357 "F" Street
Idaho Falls, Idaho

Dear Mr. Archibald:

April 12th we sent you abstracts of water rights in the name of L. R. Hawley.

We find errors in the second paragraph of the letter in the storage water right, winter irrigation, which should have been as follows:

License No. R-833 was issued to L. R. Hawley for 2960 acre feet of water to irrigate 1480 acres in SW¹/₄SW¹/₄, Sec. 5; S¹/₂NE¹/₄, S¹/₂NW¹/₄, S¹/₂, Sec. 7; SW¹/₄NE¹/₄, NE¹/₄NW¹/₄, S¹/₂NW¹/₄, SW¹/₄, W¹/₂SE¹/₄, Sec. 8; SW¹/₄SW¹/₄, Sec. 17; S¹/₂NE¹/₄, SE¹/₄NW¹/₄, N¹/₂SE¹/₄, Sec. 18, all in T. 7 N., R. 28 E.; S¹/₂NE¹/₄, SE¹/₄NW¹/₄, NE¹/₄SW¹/₄, SE¹/₄, Sec. 12; NE¹/₄NE¹/₄, Sec. 13, T. 7 N., R. 27 E. Water to be diverted equally from Upper Springs Creek and Little Lost River. The engineer's report shows that other lands were being irrigated, however they were not included in the permit so were excluded from the Water License.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer

By:

RALPH W. THOMAS, Deputy
State Reclamation Engineer

RT:ew

L-833

May 15, 1962

Re: License No. 21362
Permit No. R-883 - L. R. Hawley

833

Don C. Archibald, Ass't. Vice-Pres.
Utah Mortgage Loan Corporation
357 "F" Street
Idaho Falls, Idaho

Dear Mr. Archibald:

Enclosed is departmental receipt No. 31056,
in the amount of \$2.75, covering fees for the abstracts mailed to
you on April 12th on the above numbered permits.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer

By:

(Mrs.) Edna P. Rule
Chief Clerk

EPR:cw

Enc. receipt

L-833

April 12, 1962

RE: L. R. Hawley

Don C. Archibald, Assistant Vice President
Utah Mortgage Loan Corporation
357 "F" Street
Idaho Falls, Idaho

Dear Mr. Archibald:

Enclosed are eight sheets, abstract of decreed water rights from Little Lost River and tributaries. You will note that there have been a number of transfers of water right where the decreed amount of water is enclosed () and balance is shown, if any, to the land where the water was originally decreed. The rights you are interested in probably start on page 6.

Permit No. R-883⁸³³ was issued to L. R. Hawley for 1480 acre-feet of soil root zone storage in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5; S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$, Sec. 7; W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW, S $\frac{1}{2}$ NW, SW $\frac{1}{4}$, Sec. 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17; S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 18, T. 7 N., R. 26 E., B.M.; S $\frac{1}{2}$ NE, SE $\frac{1}{4}$ NW, S $\frac{1}{2}$ NE, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 12; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 13, T. 7 N., R. 27 E., B.M. from Upper Springs Creek and Little Lost River. ^{2960 A.C.F.}

License No. 21362 was issued to Lawrence R. Hawley for 24.0 c.f.s. priority February 1, 1950, from wells in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 12; SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 7, T. 7 N., R. 27 E., B.M. to irrigate 1483 acres in S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 1; NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 13, T. 7 N., R. 27 E., B.M.; N $\frac{1}{2}$, Sec. 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17; W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 18; T. 7 N., R. 28 E., B.M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 34, T. 8 N., R. 27 E., B.M.

License No. G-27052 was issued to Lawrence R. Hawley for 5.0 c.f.s., priority August 23, 1957 from the same wells to the same lands as License No. 21362.

Fees for the abstract sheets and above rights total \$2.75 which you may remit to this office.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer
By

Ralph W. Thomas
Deputy State Reclamation Engineer

RWT:mr
Enc. abstract

R-833

Diversion in Farm yard
 10' headgate to East
 12' " " South
 5' high
 concrete floor in each
 16' long
 takes 2" planks

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

L. R. Hawley
 Howe, Idaho

Permit No. R-833

Examination for Completion of Works and Beneficial Use

County Butte

7N. 27E. + 28E.
 8N. 27E.

$Q = 4640$ acre feet. $\frac{5}{928}$
 in Soil root zone.

1 wing
 S. Little Lost R. &
 Upper Spring Cr.

P.D. = SW NW S5, 7N, 28E
 NE SE S27, 8N, 27E
 NE SE S2, 7N, 27E

Cont = 2 acre ft per a.
 winter wing.

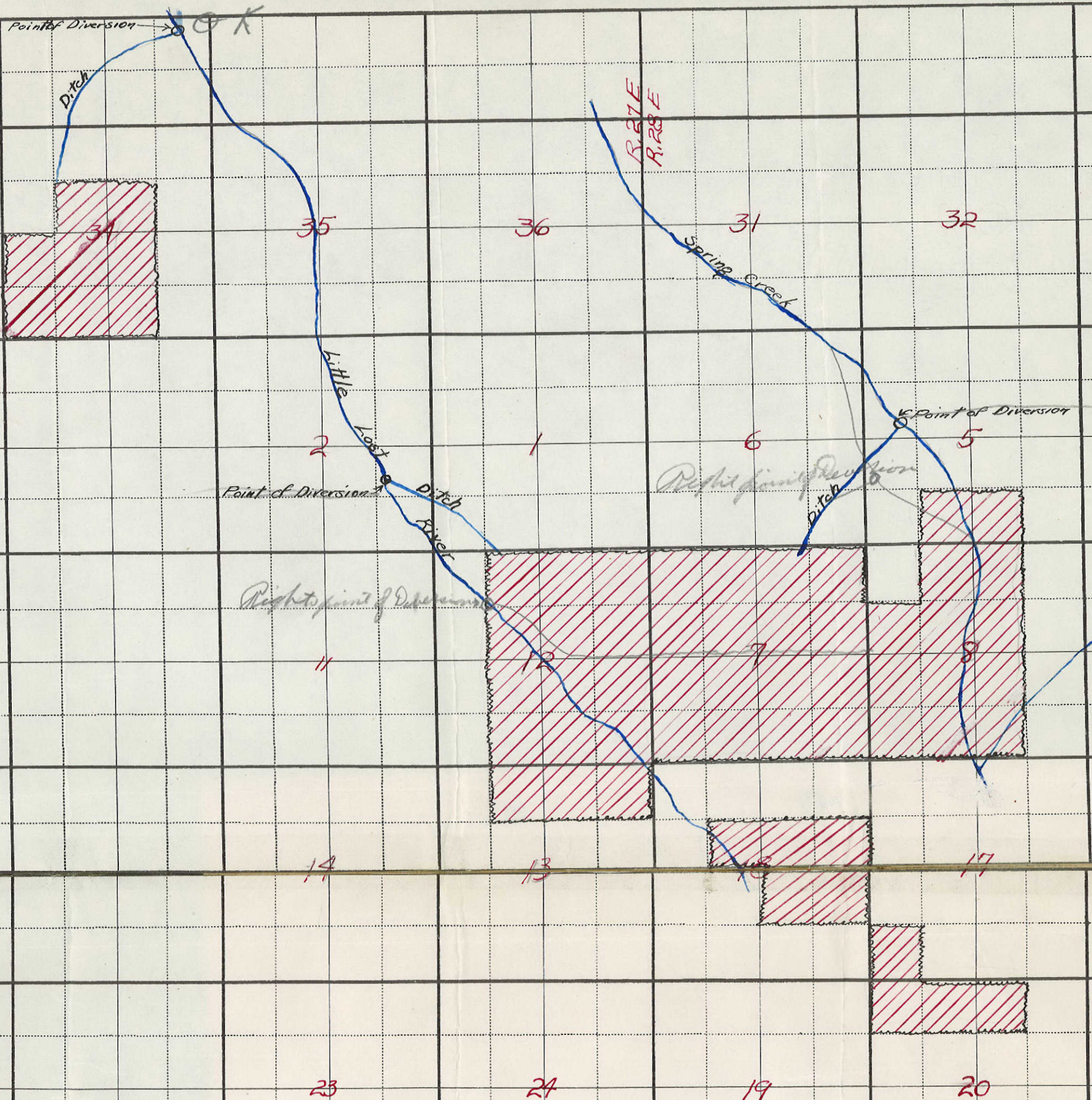
Priority = Jy 22, 49
 Compl. due Jy 15-54
 B. U. due Jy 15-60

Concrete Headgate
 10" walls. approx. 10' going
 Headgate on East into
 canal 4' w. in bottom
 spills onto a cement floor.
 Built when Nolan's owned
 ranch. Wing wall parallel
 to stream on each side
 h = approx 4'
 ditch on west carries
 water under this permit
 takes out upstream approx.
 30' for dam. Canal is 6' w.
 in bottom.

$185^{\text{th}} = 4$
 $128^{\text{th}} = 3$

L. P. Hawley

FORM No. NAME OF APPLICANT



L. P. Hawn

FORM No. NAME OF APPLICANT

NAME OF APPLICANT

Right of Point of Debarment

11

12

7

8

14

13

15

17

23

24

19

20

Permit Map No. R-833
As Approved
JUL 15 1948
MARK R. KOLF
State Reclamation Engineer

R-833

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK.

Affidavit of Publication

I, John J. LePorte, foreman 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 four consecutive weeks, commencing with the issue dated June 29, 1951 and ending with the issue dated July 20, 1951.

John J. LePorte

Subscribed and sworn to before me this 28th

day of July, 1951

Mark R. Kulp
Notary Public:

Residence. Arco, Idaho.

My commission expires Dec. 20, 1952.

Legal Notice

NOTICE OF PROOF OF COMPLETION OF WORKS and APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 28th day of July, 1951, at Arco, County of Butte, State of Idaho, before C. A. Bottolfsen, Notary Public, proof will be submitted of the completion of works for the soil root zone storage of 4,640 acre feet per annum of the waters of Little Lost River and Upper Spring Creek and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. R-833 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit are L. R. Hawley, Howe, Idaho.

2. Said works will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use, in accordance with the plans accompanying the application for such permit, is 4,640 acre feet per annum.

3. The use to which said water has been applied is ground storage during winter months for winter irrigation, and the amount applied to beneficial use is 4,640 acre feet per annum.

4. The place where said water is used is SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$, SE $\frac{1}{4}$ Sec. 8, SW 1/4 SW $\frac{1}{4}$ Section 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34, Township 8 North, Range 27 East, B. M.

The date of priority which said user is prepared to establish is June 22, 1949.

MARK R. KULP,
State Reclamation Engineer.
(Pub June 29, July 6, 13, 20, 1951)

2-833

Affidavit of Publication

I, James W. Martin 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 four consecutive weeks,
commencing with the issue dated June 29, 1951
and ending with the issue dated July 20, 1951

James W. Martin

Subscribed and sworn to before me this 1st

day of July 1951

C. V. Boyatt

Notary Public:

Residence. Arco, Idaho.

My commission expires 8-30, 1954

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JUL 9 1951

Department of Reclamation

LEGAL NOTICE

NOTICE OF PROOF OF COMPLETION OF WORKS

and APPLICATION OF WATER TO BENEFICIAL USE

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1. The name and postoffice address of the person or corporation holding said permit are L. R. Haw-

ley, Howe, Idaho.

2. Said works will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use, in accordance with the plans accompanying the application for such permit, is 4,640 acre feet per annum.

3. The use to which said water has been applied is ground storage during winter months for winter irrigation, and the amount applied to beneficial use is 4,640 acre feet per annum.

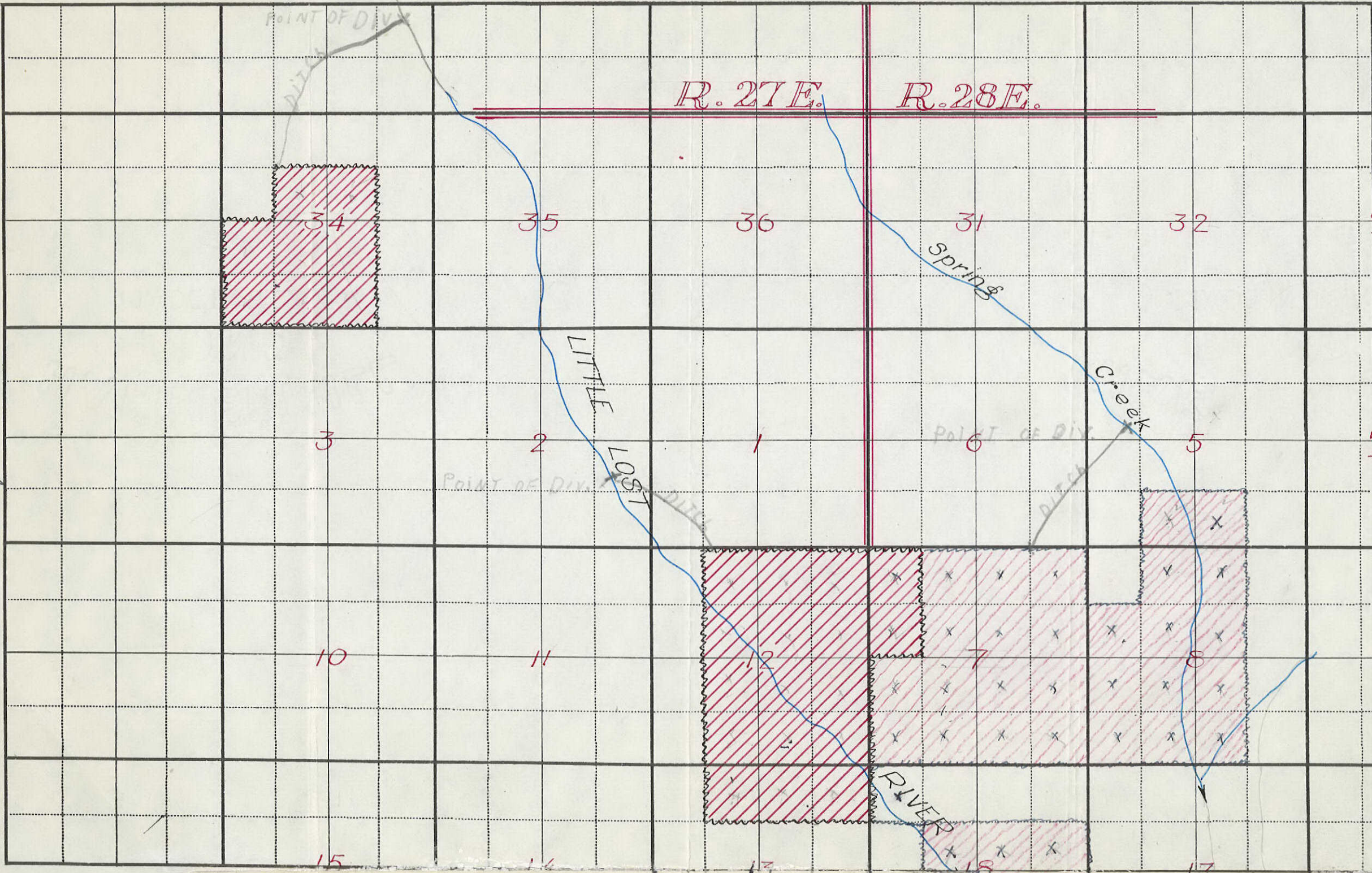
4. The place where said water is used is SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$, SE $\frac{1}{4}$ Sec. 8, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34, Township 8 North, Range 27 East, B. M.

The date of priority which said user is prepared to establish is June 22, 1949.

MARK R. KULP,
State Reclamation Engineer.
(Pub June 29, July 6, 13, 20, 1951)

R-833

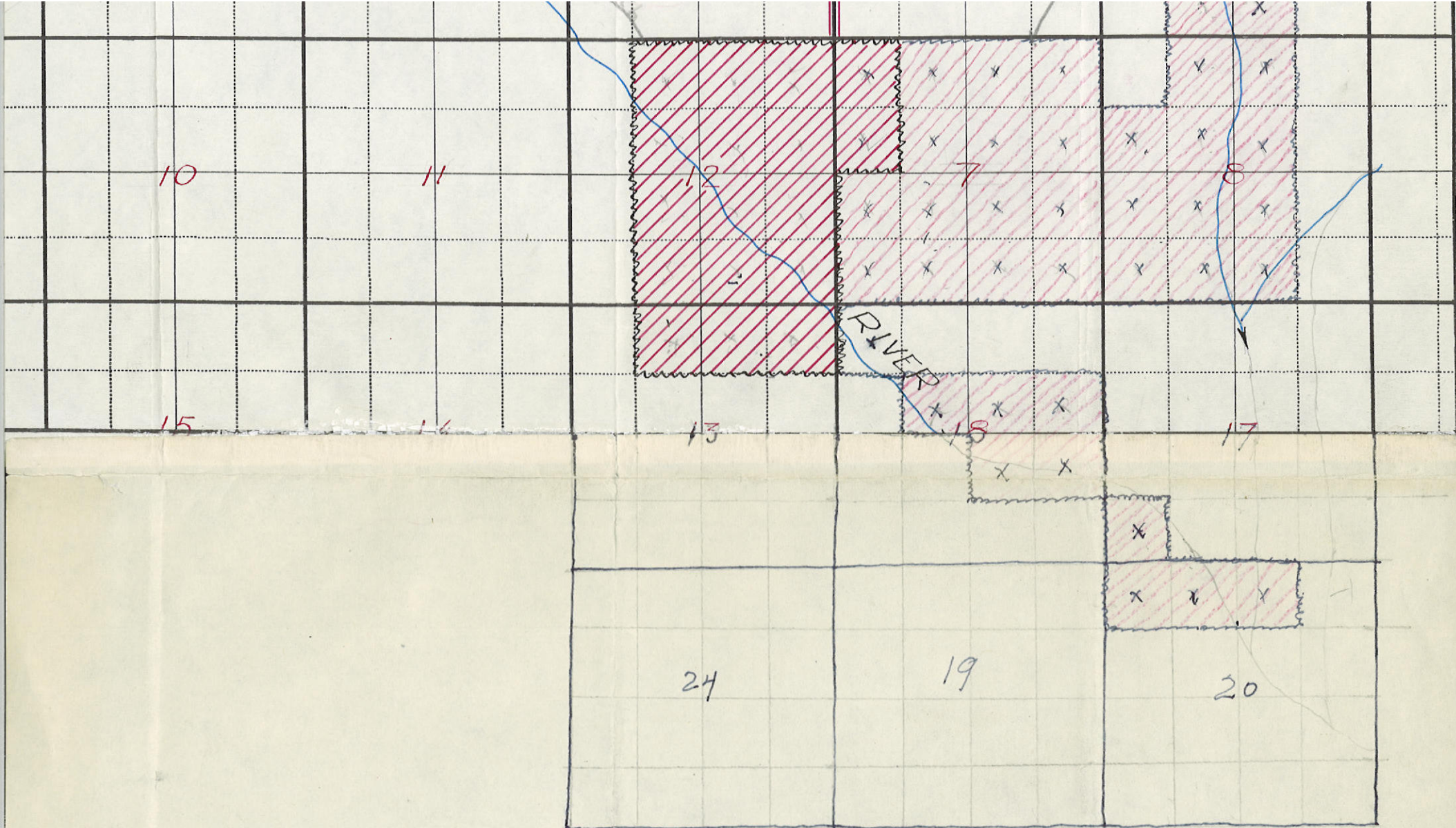
L. R. Hawley



T7N.

T8N.

2-833



Permit Map No. R- 833
As Approved
JUL 15 1949
MARK R. KULP
State Reclamation Engineer

R-833

The East half ($E\frac{1}{2}$), the East half of the West Half ($E\frac{1}{2}W\frac{1}{2}$) and Lots One (1) (38.40 acres), Two (2) (38.60 acres), Three (3) (38.85 acres), and Four (4) (39 acres) of Section Seven (7); the West Half ($W\frac{1}{2}$), the West Half of the East Half ($W\frac{1}{2}E\frac{1}{2}$) of Section Eight (8); the Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$), and the Southwest Quarter of the Southeast Quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of Section Five (5); the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$) of Section Seventeen (17); the Northeast Quarter ($NE\frac{1}{4}$), the East Half of the Northwest Quarter ($E\frac{1}{2}NW\frac{1}{4}$), the North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$) of Section Eighteen (18), Lot One (1) (39.30 acres) and Lot Two (2) (39.53 acres) of Section Eighteen (18); the North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$), and the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$) of Section Twenty (20); all in Township Seven (7) North, Range Twenty-eight (28) East of the Boise Meridian.

Also, the Southwest Quarter ($SW\frac{1}{4}$), the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4}NE\frac{1}{4}$), the West half of the Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$), Section Thirty-four (34), Township Eight (8) North, Range Twenty-seven (27) East of the Boise Meridian.

Also, the South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$), Section One (1); the North Half ($N\frac{1}{2}$), the Southeast Quarter ($SE\frac{1}{4}$), the East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$), Section Twelve (12); the North Half of the Northeast Quarter ($N\frac{1}{2}NE\frac{1}{4}$), the Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$), Section Thirteen (13), all in Township Seven (7) North, Range Twenty-seven (27) East of the Boise Meridian.

The above described land containing in all 2840 acres, more or less.

R-833

WATER RIGHT
NUMBER

NAME

CFS

33-02133

Split into 33-02133A/B/C by Trans. Nos. 4224, 4225, and 4226.

33-02133A SAGEWILLOW INC

33-02133B SAGEWILLOW INC

33-02133C SAGEWILLOW INC

MICROFILMED

APR 18 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NOS. 4221, 4222, 4223, 4224,) **FINAL ORDER**
4225, 4226 AND 4227 IN THE NAME OF)
SAGE WILLOW, INC.)
_____)

INTRODUCTION

Sage Willow, Inc. (Sage Willow) filed seven applications for transfer with the Idaho Department of Water Resources (Department). The applications propose changing the place of use for several surface and ground water rights. The multiple applications were filed to define portions of various ground water and surface water rights that would be appurtenant to each of seven independent delivery systems. A map depicting the system described by each application is attached at the end of this decision. Some of the applications were protested by the Blaine County Canal Co. (the Canal Co.), James Mays, Mays Land and Livestock Co. (collectively referred to as "Mays") and Simplot Land and Development Co. Simplot Land and Development Co. subsequently withdrew its protest.

After expiration of the protest period Mays discovered they had not protested all of the applications for transfer filed by Sage Willow. Mays filed a motion to amend the protest to include protests opposing all of the applications for transfer and to add issues of forfeiture and enlargement to the issues raised by the original protests. The motion to amend was granted prior to the hearing.

On January 18, 1995, the Canal Co. filed a motion to amend its protests. The hearing officer initially denied the motion to amend from the Canal Co. because it was untimely. At the hearing, however, the hearing officer revoked the order denying the motion to amend and granted the motion to amend. The Canal Co. and Mays participated as full parties in all the proceedings. A hearing regarding the protest was conducted on January 31 and February 1, 1995.

A recommended order was issued on May 22, 1995. Counsel for Sage Willow timely filed a petition for reconsideration that the hearing officer granted. The order granting reconsideration limited reconsideration to two (2) issues:

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APR 26 1996

1. Whether use of water pursuant to water right no. 33-02091, although previously transferred/abandoned, should be recognized because of the approval of transfer no. 3785, which was approved in 1992.

2. Whether the number of acres authorized for irrigation pursuant to rights nos. 33-02086 and 33-07018 should have been reduced solely on the basis of Terry Scanlan's testimony.

Briefs were to be filed regarding the petition for reconsideration on or before July 14, 1995.

Sage Willow requested a transcript of the record, and after issuance of the order granting reconsideration, the parties agreed to delay briefing until the transcript was prepared. The parties both filed briefs on or about September 1, 1995.

An amended recommended order (ARO) was issued on November 7, 1995. Sage Willow filed a second petition for reconsideration which was denied.

Sage Willow filed exceptions to the amended recommended order, and Mays filed a brief in response to the exceptions. The exceptions will be discussed in the following analysis portion of the decision. Findings of fact, conclusions of law and the order will follow the analysis section.

ANALYSIS

Sage Willow filed exceptions to the amended recommended order as follows:

- (1) The ARO misinterprets the resumption of use doctrine and its application to any portion of the water rights that may have been unused for a period of five or more years, but have since been resumed;
- (2) The ARO improperly concludes that transfer number 3785 can, and should, be voided; and
- (3) The ARO improperly concludes that only 230 acres have historically been irrigated on the Frew Place, rather than 260.

Resumption of Use

Sage Willow alleges several elements must be satisfied before a resumption of use after forfeiture can be defeated:

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APR 26 1996
APR 18 1996

1. A new water right must be established by appropriation that will prevent a resumption of use.

2. A new water right established by appropriation to prevent a resumption of use must be established after the five (5) year forfeiture period has run. Water rights perfected with dates of priority between the priority of the alleged forfeited right and the date when forfeiture occurred cannot prevent a resumption of use.

3. Use of water must be by adverse possession. There must be open and notorious use, and the notice must be directed toward the original owner.

4. A person wanting to appropriate the forfeited water cannot simply sit by and wait, holding a water right in the ladder of priority. He is required to do something affirmative once the right in question has been forfeited.

5. A forfeited water right can be resumed until it is declared forfeited by a competent authority.

There must be an appropriation of water with an intervening priority date that will be injured by the resumption to prevent a resumption of use. All of the other criteria proposed by Sage Willow are inconsistent with the prior appropriation doctrine.

If a new appropriation is required, a water user holding a water right with a date of priority between the priority of the alleged forfeited right and the date of forfeiture who wanted to improve his water supply would be required to file another application for appropriation. If the new appropriation assumes its place in the order of priority, water users with earlier in time priority water rights would receive the excess water. This result would require that a water user would be required to file for a new appropriation simply as a matter of form to receive water which he would have received pursuant to the priority system anyway. This is promoting form over substance.

Idaho Code § 42-222(2) states that when a water right is forfeited the water right reverts back to the state and is subject to appropriation. If the water reverts back to the state upon forfeiture, and is subject to appropriation, the original owner has no title to a water right that can be acquired through adverse possession. To allow a person to gain ownership of a water right after it has been forfeited is inconsistent with the doctrine of prior appropriation.

Sage Willow argues that the owner of an existing water right with a date of priority later than the alleged forfeited right cannot sit and wait to defeat a resumption of use, but must act affirmatively as described above. This theory would require a water right holder on a stream to continuously monitor the uses of water of all the users up and down a river, hoping to improve his

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MAR 26 1996
APR 18 1996

water supply. When continuous monitoring reveals a forfeited right, he must file an application for a new appropriation of water, in addition to somehow taking the water of another person openly and notoriously, even though he may be diverting that water several miles upstream or downstream from the point of diversion for the water right alleged to be forfeited. This kind of requirement is outside of the law. A water user who has forfeited his water rights should not be allowed to resume the right where junior users have come to rely on the water made available as a result of the forfeiture.

Finally, Sage Willow argues that a resumption of use cannot be defeated unless forfeiture is declared prior to the time the resumption occurs. Recognition of this theory would result in a race for declaration of forfeiture prior to any resumption.

Sage Willow analyzes the Idaho cases on resumption of use along with cases from other jurisdictions. Sage Willow argues convincingly that Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952) recognizes resumption of use for a right diverted from a fully appropriated stream long after the forfeiture period had expired. In Boyer, the protestants produced evidence that the water rights allegedly forfeited had not been used for several decades. The evidence also showed that use of water under the right had been resumed only a short time period prior to consideration of the application for transfer by the State Reclamation Department (predecessor to the Department of Water Resources). Sage Willow argues that the hearing officer misinterpreted the case and its finding by implying that the right may never have been forfeited because the water was used on a different place of use. Sage Willow argues that the right was forfeited, but resumed, even though there were intervening water rights.

The Boyer case leaves some questions about when a forfeited right can be resumed and whether some of the earlier requirements raised by Sage Willow, such as adverse possession, must be proven. Rather than argue about the interpretation of the language and whether the water right was forfeited and resumed or was never forfeited, the better analysis is that Boyer never addressed any issues of injury to other water rights because of the resumption of use. Boyer did discuss the injury to other water users that might occur as a result of Boyer not being required to pay assessments once the water right was moved out of the Big Lost Irrigation District canal system.

The issue of injury is central to the considerations of the Department in reviewing an application for transfer. There was uncontroverted evidence presented at the hearing that Sage Willow's resumption of use would enlarge the traditional use of water on the lands now owned by Sage Willow, would deplete stream flows in the Little Lost River, and would make further demands on the ground water resources of the basin. The Department will not ignore the injurious effects on other water users that will be caused by Sage Willow's diversion and use of water beyond the traditional use of water on the lands acquired by Sage Willow. The original holding regarding the resumption of use in the amended recommended order will not be changed.

APR 18 1996

MAR 26 1996

Voiding of Transfer No. 3785

The ARO held that transfer no. 3785, previously approved by the Department in 1992, should be voided. The transfer approved moving the point of diversion and place of use for water right no. 33-02091. At the hearing on the applications for transfer now pending, evidence was presented to show that water right no. 33-02091 was forfeited prior to the approval of transfer no. 3785.

The ARO recognized administrative *res judicata*. The Department should not entertain duplicative "claims" or "issues" except under extraordinary circumstances. The purpose for *res judicata* before administrative agencies is similar to the purpose before the courts: (1) to prevent litigation of the same matter with inconsistent results; (2) to avoid repetitious litigation; and (3) to avoid the harassment of repetitive claims. The Department should exercise restraint in disturbing a prior decision. Nonetheless, the Department of Water Resources is charged not only with deciding what should be done where there are disputed proposals for use of water before the Department, but also with general oversight of the water resources of the state of Idaho. Because of its oversight responsibility, the Department should have wider latitude in setting aside a prior decision.

Sage Willow asserts that the ARO did not sufficiently analyze *res judicata*, and its component parts. The Idaho Supreme Court has adopted the Restatement (Second) Judgments (1982). *Res judicata* is divided into two component parts, claim preclusion and issue preclusion. Claim preclusion prevents a party from pursuing other remedies "with respect to all or any part of the transaction . . . out of which the action arose." Aldape v. Akins, 105 Idaho 254, 259, 668 P.2d 130 (1983). Issue preclusion, or collateral estoppel, "bars the relitigation of issues actually adjudicated and essential to the judgment in a prior litigation between the parties." Aldape at 256.

The most compelling reason for voiding transfer no. 3785 and reviewing water right no. 33-02091 against the test of forfeiture is set forth in Section 28 of the Restatement:

Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

- (5) There is a clear and convincing need for a new determination of the issue
(a) because of the potential adverse impact of the determination on the public interest or the interest of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issues would arise in the context of a subsequent action, or (c) because the parties

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sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Restatement (Second) of Judgments § 28.

At the hearing for the now pending transfers, the evidence showed that there would be adverse impacts to the public interest and interests of water users not parties to the initial action if the approval of transfer no. 3785 is not reconsidered.

Sage Willow criticizes the Department for discussing some equitable reasons why transfer no. 3785 should be reconsidered. These reasons included a short time period since the approval of transfer no. 3785, the expenditure of money by Sage Willow prior to approval of transfer no. 3785, the attempt in the pending transfers to correct a misdescription of the place of use in the approval of transfer no. 3785, and the omissions regarding questions of forfeiture on the application for transfer form. Sage Willow alleges these facts should not be considered by the Department.

Sage Willow supplemented its submittal of legal authority on January 2, 1996. In the supplemental brief, Sage Willow quotes Keller v. Magic Water Co., 92 Idaho 276, 441 P.2d 725 (1968). The Keller court states that principles of equity should be applied in determining whether issues before the Department should be reconsidered. It raises three of those equitable issues: (1) the long period of time which had expired since the permit approval, (2) the substantial sums of money which had been expended by the permit holder in reliance on the approval, and (3) the issue of whether other water users were damaged by the omission of the financial information. Two of the three equitable issues raised by the Keller court, the injury issue and the expiration of time issue, are resolved in Mays' favor. Only the expenditure of money by Sage Willow is a consideration in its favor, and Sage Willow's expenditure occurred prior to the transfer approval. Furthermore, there are other equitable reasons briefly discussed above why this reconsideration does not impose an unreasonable hardship on Sage Willow. Issue preclusion does not prohibit the Department from voiding transfer no. 3785 and reconsidering the issue of forfeiture.

Whether the Department of Water Resources characterizes the issues before it as claim preclusion or issue preclusion, the result is the same. The Department should not be barred from reconsidering a prior decision which is inconsistent with the general statutory scheme of protecting other water users. It also should not be barred from reconsidering a prior decision where there are extraordinary reasons for the reconsideration.

Sage Willow also argues that the Department is prohibited from voiding or reconsidering transfer no. 3785 because of equitable estoppel. Both parties agree that equitable estoppel can apply to government agencies acting in their sovereign capacity under extraordinary

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circumstances. In addition to applying only in extraordinary circumstances, the proponent of equitable estoppel must establish that the Department either concealed or falsely represented facts with actual or constructive knowledge of the truth. Sage Willow did not prove that the Department concealed or falsely represented the facts. Equitable estoppel does not apply to the Department in this case.

Finally, Idaho Code § 42-350 states:

If the director of the department of water resources finds, on the basis of available information *at any time after a license is issued*, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years . . . then the director of the department of water resources may issue . . . an order to show cause before the director of the department . . . why the director of the department should not revoke said license (Emphasis added).

While this statute directs a specific administrative process and does not discuss the effect of a transfer approval, it supports a holding that the director can review forfeiture issues, even after a transfer approval has been granted.

Forfeiture of a Portion of the Frew Place of Use

In the ARO, the hearing officer held that the place of use for water right nos. 33-02086 and 33-07018 should be limited to 230 acres because of the testimony of Terry Scanlan (Scanlan) and corroborating evidence by Charles Brockway (Brockway), the expert for Sage Willow. Sage Willow states that Brockway's testimony and exhibits do not corroborate Scanlan's testimony. Sage Willow recites facts regarding the purchase of the water rights and the land by Sage Willow which were not introduced into evidence at the hearing and were not available to the hearing officer in reaching his decision. The number of acres in the Frew Place, authorized by water right nos. 33-02086 and 33-07018, will be limited to 230 acres.

Based on the above analysis, the Director issues the following Findings of Fact, Conclusions of Law and Order.

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FINDINGS OF FACT

1. In 1989, Sage Willow acquired a ranch, located near the confluence of the Little Lost River and Spring Creek, commonly known as the Knollin Ranch. At the same time, Sage Willow also acquired other parcels contiguous to or nearby the Knollin Ranch.

2. One of the other parcels is located approximately 1½ miles northwest of the Knollin Ranch. The parcel is divided into two pieces by the east 16th line of Sec. 35, T27N, R28E, B.M. The property located on the west side of the 16th line is commonly known as the Bird Ranch. The property located east of the 16th line is commonly known as the Homestead Place.

3. Another parcel is located on the north side of an east-west county road, which was the northern boundary of the original Knollin Ranch, and will herein be referred to as the "North of Road Place."

4. In 1993, Sage Willow acquired additional land contiguous to and northeast of the Knollin Ranch from David and Terry Hawley (the Frew Place).

5. The Knollin Ranch was originally owned by A.J. Knollin. Several surface water rights were appurtenant to the Knollin Ranch. Because of financial difficulties, A.J. Knollin conveyed his interest in the Knollin Ranch to the first mortgage holder in 1942. In the same year, the Canal Co. purchased the Knollin Ranch from the mortgage holder. During the late 1940's, the Canal Co. sold the ranch land to L.R. "Slim" Hawley (Hawley). The earliest priority water rights appurtenant to the Knollin Ranch were not conveyed to Hawley, however, but were retained by the Canal Co. and later transferred to downstream lands. The Canal Co. rights are some of the earliest water rights diverted from the Little Lost River, bearing priority dates of 1879 to 1891.

6. Several late priority surface water rights remained appurtenant to or were developed for use on the Knollin Ranch. These later rights are described below:

Irrigation Rights

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-00069	3.2	06/01/1908	Little Lost River
33-00070	2.8	10/01/1906	Spring Creek
33-00071	3.2	03/15/1909	Spring Creek
33-00072	.8	05/01/1908	Little Lost River
33-00073	6.4	04/01/1912	Spring Creek
33-00074	1.6	08/06/1913	Little Lost River
33-00076	6.8	04/01/1913	Little Lost River
33-00078	3.2	10/15/1913	Little Lost River
33-00079	1.6	04/01/1912	Little Lost River
33-00080	.8	05/01/1908	Spring Creek
33-00081	.8	05/01/1908	Spring Creek
33-00082	.8	05/01/1908	Spring Creek
33-02007	2.9	02/15/1909	Little Lost River
33-02008	<u>6.4</u>	06/12/1909	Spring Creek
	41.3		

Soil Root Zone Storage Right

<u>Water Right No.</u>	<u>Acre-Feet</u>	<u>Priority</u>	<u>Source</u>
33-02133	2,960	06/02/1949	Little Lost River Spring Creek

7. The late priority surface water rights listed in Finding 6 could only be delivered to Hawley during high water flows, however, and there was insufficient surface water to irrigate the Knollin Ranch. Hawley subsequently obtained two licenses to irrigate the Knollin and Bird Ranches with ground water, numbered 33-02057 and 33-02083. The ground water rights for the Knollin and Bird Ranches are described as follows:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02057	24.0	02/01/1950	8 wells # 1-8
33-02083	5.0	08/23/1957	8 wells #1-8

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8. In addition, ground water rights were also perfected for the Frew Place, which Sage Willow acquired from David and Terry Hawley. The Frew Place water rights are listed below:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02086	4.1	01/12/1959	well # 13
33-07018	3.26	09/12/1972	well # 12

9. Finally, Hawley and some of his contemporary relatives obtained patents for two parcels of federal property pursuant to the Desert Land Entry Act. Two licenses to appropriate ground water were issued by the Department for these parcels. License no. 33-02091 was perfected for irrigation of the Homestead Place. License no. 33-02090 was perfected for irrigation of the North of Road Place. The following describes components of these rights:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02090	5.93	12/21/1959	well # 11
33-02091	4.36	01/22/1960	well on Bird Ranch

10. The places of use and points of diversion prior to Sage Willow's acquisition of the water rights described in the preceding paragraphs are depicted on the map labeled as applicant's exhibit no. 1 "a".

11. Sage Willow filed application for transfer nos. 4221, 4222, 4223, 4224, 4225, 4226 & 4227, proposing to change the place of use for all of the rights listed in the preceding paragraphs. The multiple applications for transfer were filed to define portions of the water rights that would be appurtenant to each of seven independent delivery systems. Application nos. 4221, 4222 and 4223 propose the irrigation of land primarily north of the original Knollin Ranch with pressurized circular pivots. Application nos. 4224, 4225, 4226 and 4227 propose gravity irrigation of other land. The proposed places of use are depicted on a map labeled as applicant's exhibit no. 1 "b". For further clarity, a map depicting the system (or place of use) described by each of the applications is attached. The original and proposed places of use described in the applications are not restated in this decision because of their size and complexity.

12. A geologic formation near the confluence of the Little Lost River and Spring Creek impedes the southward flow of ground water in the underlying aquifer, causing the ground water and surface water to merge in the southern half of the Knollin Ranch. The Little Lost River loses water to the underground aquifer above the Knollin Ranch, but as the ground water and surface water merge, the Little Lost River and Spring Creek gain water as they flow through the

Knollin Ranch. The Little Lost River continues to gain water downstream several miles to the Canal Co. diversion.

13. The Little Lost River and the aquifer underlying the Little Lost River Basin downstream of the Knollin Ranch are dependent on water flows which pass the Knollin Ranch, either on the surface or underground.

14. The Hawley wells were drilled into the shallow portion of the aquifer which is hydrologically connected to the surface water. There is a direct hydrologic connection between the water pumped by the Hawley wells and the surface water that flows downstream into the Little Lost River below the Knollin Ranch.

15. Vance Hawley, a son of Slim Hawley, grew up in the Little Lost Valley and helped farm the Knollin and Bird Ranches as a youth, although he did not reside on the Knollin Ranch. After attending college, Vance Hawley returned and assisted in farming the property from 1970 through 1978. During these eight (8) years, he did not manage the farm but resided on the Knollin Ranch. From 1978 through 1980, he leased the Knollin Ranch property. After the lease expired, he was acquainted with the operation of the farms until 1989, when the Knollin Ranch was sold to Sage Willow.

16. Vance Hawley was also aware of the operation of the Bird Ranch, the Homestead Place, the North of Road Place, and other surrounding lands.

17. Vance Hawley testified about the extent of beneficial use of water on the properties now owned by Sage Willow. He testified that the total number of acres irrigated on the Bird Ranch did not exceed 297 acres. He also testified that irrigation of individual parcels on the Knollin Ranch totaled 879 acres.

18. Vance Hawley testified that the Homestead Place, located just east of the Bird Ranch, was irrigated with water pursuant to license no. 33-02091 in the early 1960's until a patent of ownership was issued by the federal government. He testified that the land was converted back to early season dry range land and was never irrigated in the late 1960's, all of the 1970's, and the 1980's until Sage Willow bought the property.

19. Vance Hawley also stated that the North of Road Place, patented by his aunt and uncle and located north of the main east-west access road into the Knollin Ranch, was irrigated with water pursuant to license no. 33-02090 in the early 1960's until a patent of ownership was issued by the federal government. He testified that after the patent was issued, the property was converted back to early season dry rangeland. He testified that water had not been applied to the lands pursuant to license no. 33-02090 during the late 1960's, all of the 1970's, and the 1980's until the property was purchased by Sage Willow.

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20. James Mays, a lifelong resident of the Little Lost River Valley, testified he was familiar with both the Homestead Place and the North of Road Place and had not observed any irrigation on the Homestead Place or North of Road Place, at least until Sage Willow acquired the parcels.

21. Vance Hawley drew the boundaries of the various parcels comprising the Sage Willow property as depicted on protestant's exhibit no. 3 and estimated the number of acres irrigated during his acquaintance with the property. The estimate includes lands irrigated with both surface water and ground water. He estimated that no more than 1,176 acres were irrigated within the boundaries of the Knollin Ranch and Bird Ranch.

22. The testimony of Vance Hawley is the most credible evidence regarding the traditional use of water on the entire Sage Willow land holdings before 1989.

23. Terry Scanlan (Scanlan), an engineer and geologist hired by Mays, consulted aerial photographs and estimated that approximately 230 acres were irrigated in the Frew Place. This estimate is consistent with the irrigated acreage estimates prepared by Dr. Charles E. Brockway, P.E. (Brockway), a consultant hired by Sage Willow.

24. Scanlan also estimated that 1,182 acres were irrigated in the Knollin Ranch and the Bird Ranch, six more acres than estimated by Vance Hawley. Adding the 230 acres irrigated in the Frew Place, Scanlan estimated the total acreage irrigated prior to 1989 was 1,412 acres. Because of the six acre discrepancy between Vance Hawley's estimate and Scanlan's estimate, the difference will be resolved in favor of Sage Willow. A total of 1,412 acres were irrigated prior to 1989.

25. In 1989, Sage Willow purchased the Knollin Ranch, the Bird Ranch, the Homestead Place, and the North of Road Place. Jerry Pancheri was hired as the manager of the ranch and was instructed to apply the water to the land as efficiently as possible and to recommend changes to the system to more efficiently use the water.

26. Pancheri testified about his attempts to use the water and identified land irrigated during the years he managed the farm. Pancheri identified on protestant's exhibit no. 21 the lands which were irrigated in various years. He approximated the areas irrigated in several individual parcels, and the parties summed his estimates in their briefs as set forth below:

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Total Number of Acres Irrigated

<u>Year</u>	<u>Sage Willow's Estimate</u>	<u>Mays' Estimate</u>
1989	1,300	1,400
1990	1,560	1,740
1991	2,000	2,004
1992	2,130	2,100
1993	2,390	-----

27. During 1990 and 1991, Pancheri determined that several preexisting ponds located on the Knollin property should be repaired and filled with water. These ponds, when filled with water, contribute significant sub-water to the shallow aquifer and sub-irrigate some of the lower elevation pastures located on the Knollin Ranch.

28. Pancheri also determined that the lands within the Bird Ranch and the Homestead Place were the poorest agricultural lands of the Sage Willow holdings and recommended that the water rights appurtenant to the Bird Ranch and Homestead Place be transferred to other lands located north of the Knollin Ranch. These lands north of the Knollin Ranch were acquired by Jerry Pancheri, and subsequently by Sage Willow, through an exchange of lands with the Bureau of Land Management.

29. In October, 1990, Sage Willow, through its president Edmund Dumke, applied to transfer license no. 33-02091 (transfer no. 3785) from the Homestead Place to land located in the SE¼ of Section 1, T7N, R27E, and the SW¼ and SE¼ of Section 6, T7N, R28E, B. M. The transfer application was signed by Dumke as president of Sage Willow. Part 1 of the transfer application requests the applicant to "[d]escribe the effect on the land now irrigated if the place of use is changed pursuant to this transfer." Dumke responded that "[w]e will dry farm this old place of use." There was no response to question 10 in part 2 of the application which asks "To your knowledge, has any portion of this water right undergone a period of five (5) or more consecutive years of non-use?" By signing the application, Dumke asserted that "no one will be injured by such change and that the change does not constitute an enlargement in use of the original right."

30. Dumke testified at the hearing that he had no personal knowledge regarding license no. 33-02091. He did not personally know whether a well was located at the licensed point of diversion or if any irrigation had occurred pursuant to license no. 33-02091 on the licensed place of use. Dumke stated that he relied entirely on others to prepare the application.

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31. Harold Jones, an employee in the Department's Eastern Regional Office, testified that the Department relied on the representations made in the transfer application for a licensed right because no protests are filed. In reviewing the Sage Willow application for transfer no. 3785, the Department did not independently investigate the existence of a well and pump at the licensed point of diversion or diversion for beneficial use on the licensed place of use for license no. 33-02091.

32. Transfer no. 3785 was approved and allowed a change in the place of use for license no. 33-02091 from the Homestead Place to part of the North of Road Place. The transfer resulted in an overlap of license no. 33-02091 on the place of use for license no. 33-02090. One of the purposes of the pending transfers is to correct transfer no. 3785 by moving license no. 33-02091 to lands not already described as a place of use by license no. 33-02090.

33. In 1991, two new pivots (pivots 6 and 7) were installed on the lands in Sections 1 and 6, and irrigation commenced that same year. (See protestant's exhibit no. 13, 1991 Landsat Image, and testimony of Mr. Pancheri and Mr. Scanlan). Although the pivots were installed and operated in 1991, the record indicates transfer no. 3785, which authorized license no. 33-02091 to be used in Sections 1 and 6, was not approved until October of 1992.

34. Vance Hawley testified that lands owned by Hawley were flood irrigated, and many of the fields were only irrigated once during the season. When hay was harvested from these lands, only one half to one ton per acre of hay was harvested, compared to a full average harvest of approximately three tons per acre for the Little Lost River Valley.

35. Brockway was hired by Sage Willow in 1989 to conduct various studies regarding the Little Lost River Basin and its hydrologic and hydrogeologic characteristics, particularly with reference to the Sage Willow holdings. In preparation for the hearing, Brockway walked the Sage Willow property, noted existing ditches and the location of abandoned ditches thereon, and consulted aerial photography to determine the number of acres that could have been irrigated on the Sage Willow property. Brockway prepared applicant's exhibit no. 7 which lists the acreage owned by Sage Willow and estimates consumptive use prior to the Sage Willow purchase of the property. The consumptive use calculated represents consumption by crops irrigated by both sprinkler and flood applications and also includes consumption by bottom land and rangeland vegetation. Lands which showed some evidence of past irrigation, even though not irrigated at the time Sage Willow acquired the property, were assigned irrigation consumptive use values.

36. Brockway concluded that the consumptive use prior to the Sage Willow purchase was 10,192 acre-feet. He also testified that consumptive use increased approximately 760 acre-feet between 1989 and 1992, and will increase another 137 acre-feet if the applications for transfer are approved.

37. Brockway also testified that the additional 137 acre-feet consumptive use would be a depletion, reducing stream flows to the Little Lost River by 0.20 cfs, but that the effect on the aquifer levels would not be detectable.

38. Scanlan combined Vance Hawley's recollection of water use with information derived from aerial photography and determined the total number of acres traditionally irrigated in the Knollin, Bird and Frew properties. For purposes of comparison, in protestant's exhibit no. 15 Scanlan grouped lands by the same classifications as Brockway and applied the same consumptive use values to estimate a consumptive use prior to Sage Willow acquisition. Scanlan estimated a consumptive use of the 9,077 acre-feet. Based on allegations of nonuse on the Homestead Place (license no. 33-02091) and the North of Road Place (license no. 33-02090), Scanlan concluded the approval of these transfers would increase consumptive use by 1,504 acre-feet annually from the pre-1989 consumptive use values.

39. In protestant's exhibit no. 20, Scanlan disagreed with the consumptive values for crops irrigated with surface water used by Brockway in applicant's exhibit no. 7 and reduced the initial consumptive use values by 20 percent to account for the testimony of Vance Hawley regarding reduced crop harvest. He calculated a pre-1989 consumptive use of 8,273 acre-feet. He estimated consumptive use would increase by 1,809 acre-feet after the transfer is approved.

40. The assumptions by Scanlan are supported by direct evidence and testimony presented by Vance Hawley and are consistent with a careful review of aerial photography. These factors provide a more credible estimate of the acres historically irrigated and the historical total consumptive use.

41. Protestant's exhibit no. 18 proposes pro rata reductions in flow rates and acreage irrigated for each of the applications based on a ratio between the licensed places of use and the historical places of use as established by Vance Hawley. Despite detailed consumptive use calculations by two expert witnesses, Mays' proposal is based solely on irrigated acreage comparisons, not consumptive use comparisons.

42. Don Isham, a prior officer of the Canal Co., testified that to his knowledge, the later in time surface water rights alleged to be owned and proposed for transfer by Sage Willow have been delivered to the Canal Co. for decades. He testified that although the application for transfer that moved the water from the Knollin Ranch to the Canal Co. only included the early in time rights, the Canal Co. was entitled to the rights claimed by Sage Willow because of the long history of delivery.

43. The watermaster for the Little Lost River testified that in 1993, he delivered some of the surface water rights claimed by Sage Willow to Sage Willow.

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CONCLUSIONS OF LAW

1. The parties agree about most of the facts pertaining to the traditional use prior to Sage Willow's acquisition of the property and the expanded use of Sage Willow following its acquisition. There is some disagreement regarding the consumptive use calculations of the expert witnesses and which consumptive use numbers are most accurate. Both parties admit, however, that Sage Willow's proposal will increase the consumptive use on the Sage Willow property.

2. The first issue to be resolved is whether all or portions of the original water rights were lost by abandonment or forfeiture. License nos. 33-02090 and 33-02091 were forfeited because of non-use for over 20 years. Forfeiture was established by clear and convincing evidence.

3. One of the most difficult issues is the status of transfer no. 3785. The application for transfer was incomplete and contained representations that were not correct. Dumke explicitly represented, by signing the affidavit, that the right had not been forfeited and that there would be no injury or enlargement as a result of the transfer. An integral portion of the application, asking whether the applicant knew of any continuous five year period of non-use, was left blank. The Department did not independently investigate the possibility of forfeiture. In addition, the applications for transfer now pending were filed to revise what was previously approved.

4. There is no evidence that Dumke or Sage Willow fraudulently misled the Department, or that the transfer is void because of fraud. Because the pending applications for transfer attempt to correct previously approved transfer no. 3785, and because there were misrepresentations and omissions of fact in the filing of application for transfer no. 3785, transfer no. 3785 should be voided. Furthermore, although there has been some development pursuant to transfer no. 3785, Sage Willow constructed two of the pivots prior to approval of transfer no. 3785.

5. Because of the reasons set forth above, the finding of forfeiture should supersede the prior approval of transfer no. 3785.

6. The combined testimony of Vance Hawley and Terry Scanlan regarding the total place of use for the remainder of the Bird Ranch, the Knollin Ranch, and the Frew Place, establishes a historically irrigated acreage of 1,412 acres during a period of at least two decades.

7. The total number of acres authorized for irrigation pursuant to license nos. 33-02086 and 33-07018 is 230 acres. The total number of acres authorized for irrigation pursuant to license nos. 33-02057 and 33-02083 is 1,182 acres. Combined surface water and ground water irrigation should not exceed 1,412 acres, except for sub-irrigation. The total number of acres that

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can be irrigated by applying water (surface water and ground water) directly to the land is 1,412 acres. The right to irrigate any additional lands described by ground water and surface water rights in excess of 1,412 acres has been forfeited, except for benefits derived by subwater.

8. Applicants do not admit forfeiture, but emphasize the doctrine of resumption of use as a defense against forfeiture. Several Idaho court cases generally mention the resumption of use defense to forfeiture. Only two of the decisions find that there may have been a forfeiture and that resumption of use might resurrect the water right.

9. Wagoner v. Jeffrey, 66 Idaho 455, 162 P.2d 400 (1945) was a dispute between a water right holder who had perfected rights in wells located on federal property and another settler who subsequently obtained a patent to the property where the wells were located. More than five years of non-use elapsed. When the water right holder unsuccessfully attempted to resume his use, the subsequent settler, even though he had no water rights in the wells, attempted to block the resumption by alleging forfeiture. In Wagoner, there were no junior water right holders claiming a right to the water which was being diverted out of the wells. The resumption doctrine was applied because there was no intervening claim to the water.

10. In Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), a water user attempted to transfer water rights diverted from the Big Lost River approximately 20 miles downstream. The protestants alleged the rights were forfeited. Unrefuted evidence established that the water right had not been applied to the original place of use for several decades, but the evidence also established that at least for a portion of that period, water was delivered to the proposed place of use and assessments for the delivery of the water had been paid. In its holding, the Idaho Supreme Court said:

Thus, bills were rendered and payments made by respondent for water delivered by the District. The District showed no water was delivered to [the old place of use], so the water must have been, and two of the exhibits show the water was, delivered to the [proposed place of use].

73 Idaho at 159.

11. The court seemed to be concluding that the water right was not forfeited because it was delivered to other lands. Nevertheless, the court subsequently stated, quoting Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944):

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Although statutory abandonment of a water right has occurred, forfeiture is not effective if after five-year period original owner or appropriator resumes the use of the water prior to claim of right by a third party.

73 Idaho at 160.

12. The court explained the quotation with two statements, the first implying the right had been forfeited but resumed, and the second implying the right had never been forfeited:

No one claims this particular decreed water by adverse possession and clearly, so far as this proceeding is concerned, it was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited.

The trial court was justified in holding that water had been so used by respondent that he had not abandoned or forfeited his water rights

73 Idaho at 160.

13. More importantly, the court did not consider or discuss injury to other water rights that might be caused by the resumption of use.

14. Other cases discuss the resumption defense, but decide that the right was not forfeited. Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944) (held not abandoned and was not a resumption case); Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937) (held burden of proof on the party alleging forfeiture not satisfied). Another case, Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), held that the right was forfeited but proof was not offered regarding the resumption of use defense.

15. The law does not require that a claim of ownership to the specific water delivered by a specific water right must be filed prior to resumption of use to prevent the resumption. Language in Zezi that the use must be resumed prior to other appropriations and the discussion of movement up the priority ladder by junior right holders in Jenkins narrowly limits when a water right can be resumed after it is forfeited.

16. Recognition of the resumption of use defense would frustrate the doctrine of prior appropriation in streams where: (1) junior appropriators have established water rights and have relied on water not diverted by a senior user; or (2) in this case, where senior surface water users and other water right holders have relied on related ground water not diverted by Sage Willow's predecessor. While the prior appropriation doctrine is crafted to protect water users by delivering in order of priority, its requirement of beneficial use of water prevents a water right holder from

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retaining unused water rights for a long period of time and then reasserting the right to the detriment of other right holders.

17. Other users are not required to assert a specific claim to the water rights or water represented by rights held by the user attempting to resume his use. The existence or establishment of a junior water right is sufficient claim to the water. The resumption doctrine cannot restore portions of water rights forfeited by Sage Willow's predecessor in interest to the detriment of other water right holders.

18. Detailed consumptive use comparisons by both parties implicitly invite the Department to microscopically look at the application of water upon the place of use and restrict the future consumptive use based on an estimated consumptive use. Nevertheless, protestant's exhibit no. 18 proposes to reduce water use proposed by the applications for transfer based solely on historical acres irrigated, not based on consumptive use. The Department declines, in this case, to limit the total diversion based on increased consumptive use which may result from improved efficiency of water application. Total diversion volumes and consumptive uses values will be assigned according to Department standards. Flow rates will be reduced to a rate of 0.02 cfs per acre unless Sage Willow can demonstrate the need for additional diversion rate.

19. These applications for transfer can only be approved if the applicant identifies 1,412 acres to which water will be physically diverted and applied by some means other than subirrigation. Annual volume for physical diversion, delivery, and application should be limited to 4,942 acre feet. Annual consumptive volume will be limited to 3,530 acre feet. The diversion rate will be limited to 28.24 cfs.

20. A plan identifying 1,412 acres that will be irrigated together with the individual water rights that will be appurtenant to the acreage must be submitted to the Department. The Department will then allocate volumes and diversion rates to each right.

21. As part of the proposal, the applicant may continue to derive the benefits of subirrigation from ponds and return flows to the Little Lost River, provided the ponds or the return channels are not reconstructed to increase subirrigation beyond the acreage historically subirrigated. Water shall not be diverted from ground water for the sole purpose of filling ponds or subirrigating. Surface water can only be diverted for root zone storage (presumably subirrigation) pursuant to license no. 33-02133 when all prior surface water rights are being satisfied.

22. Water rights cannot be obtained by adverse possession if the rights are being delivered by a watermaster in a water district. Idaho Code § 42-607.

23. The Canal Co. is not entitled to ownership of water rights owned by Sage Willow.

ORDER

IT IS HEREBY ORDERED that transfer no. 3785 is VOIDED.

IT IS FURTHER ORDERED that license no. 33-02090 and license no. 33-02091 and portions of all other rights diverted and directly applied to lands in excess of 1,412 acres are FORFEITED.

IT IS FURTHER ORDERED that application for transfer Nos. 4221, 4222, 4223, 4224, 4225, 4226 and 4227 are **CONDITIONALLY APPROVED** provided the applicant does not irrigate more than 1,412 acres within the place of use proposed by the applications, and the applicant complies with the following:

1. A plan must be submitted to the Department of Water Resources within 56 days of the final disposition of this dispute or after any final appeal period has run identifying 1,412 acres that will be irrigated together with the individual water rights that will be appurtenant to the acreage. The plan must also be provided to the Protestants for review and comment. Comments from the Protestants must be submitted to the Department and to the Applicant one month following submittal of the plan. A hearing may be requested by either party within sixty (60) days of submittal of the plan.
2. Failure to submit the plan is cause for the Department to revoke its conditional approval of the application for transfer.

IT IS FURTHER ORDERED that the Department will issue another recommended decision if additional testimony is required following submittal of the plan.

DATED this 12 day of March, 1996.



KARL J. DREHER, Director

Attachment

MAR 26 1996 APR 18 1996

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of March 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

Kent Foster
HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
GIVENS PURSLEY & HUNTLEY
P.O. Box 2720
Boise, ID 83701

J. Evan Robertson
Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906


Deborah Drew-Ellis
Legal Secretary

MAR 26 1996
APR 1 8 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 4225APPLICATION FOR TRANSFER OF WATER RIGHT RECEIVED
PART 1
SEP 20 1993

Department of Water Resources

Name of applicant Sagewillow, Inc. Phone (208) 523-0620Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls ID 83405

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes To make more effective use of existing water rights.

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

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|---|-------------------|-----------------------|-------------------|------------------------------|
| <u>33-02057E</u> | <u>02/01/1950</u> | <u>4.34 cfs</u> | <u>Irrigation</u> | <u>04/01</u> to <u>11/01</u> |
| <u>33-02083E</u> | <u>08/23/1957</u> | <u>.90 cfs</u> | <u>Irrigation</u> | <u>04/01</u> to <u>11/01</u> |
| <u>SEE ATTACHMENT #1 TO PAGE 1 FOR REST OF RIGHTS</u> | | | | to _____ |
| | | | | to _____ |
2. Total amount of water being transferred 20.92 cubic feet per second and 1125 acre-feet per annum.
3. Source of water groundwater, Little Lost River tributary to Big Spring Creek is tributary to Little Lost River which sinks
4. Point(s) of Diversion: _____

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7N	27E	1											30						30
		12						30											30
		13	20	38			40												98
7N	28E	8		30	30											30	20		110

APR 18 1996

Total acres 268

PART 1**6. General Information:**

- a. Description of diversion system Wells with electric pumps pump directly into ditch which discharges into Little Lost River for exchange. Water is diverted from the river and from Big Spring Creek into ditches through concrete headgates. During highwater periods when there is water available from the river and Big Spring Creek, to the extent it is available, is used in place of pumping the wells and is, in that sense, supplemental.
- 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:
We anticipate no significant effects because the water has been used essentially in the described manner for many years.
- d. ~~Remarks:~~ The ditch from the wells discharges into the Little Lost River in the NWNW S.12, T.7N, R.27E and water is rediverted from 2 ditches (heading on either side of a diversion structure in the river in the SWNE S.2, T.7N, R.27E), and from a headgate on Big Spring Creek in the NWSW S.5, T.7N, R.28E on an exchange basis. Or, if water is available under the surface water rights, pumping from the wells is reduced or stopped to the extent any such surface water is available.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. *see below

And said application is hereby conditionally approved, subject to the following limitations and conditions:
Water Right Nos.:

33-02057E, -02083E, -00069B, -00070B,
-00071B, -00072B, -00073B, -00074B,
-00076B, -00078B, -00079B, -00080B,
-00081B, -00082B, -02007B, -02008B,
& -02133B.

Pursuant to Final Order.

Witness my hand this 12th day of March, 19 96


Karl J. Dreher, Director

RECORDED

APR 18 1996

MAR 26 1996

Page 1 of 38STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 4226APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1RECEIVED
SEP 20 1993

Department of Water Resources

Name of applicant Sagewillow, Inc. Phone (208) 523-0620Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls ID 83405

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes To make more effective use of the existing water rights

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

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|---|-------------------|-----------------------|-------------------|------------------------------|
| <u>33-02057F</u> | <u>02/01/1950</u> | <u>5.03 cfs</u> | <u>Irrigation</u> | <u>04/01</u> to <u>11/01</u> |
| <u>33-02083F</u> | <u>08/23/1957</u> | <u>1.03 cfs</u> | <u>Irrigation</u> | <u>04/01</u> to <u>11/01</u> |
| <u>SEE ATTACHMENT #1 TO PAGE 1 FOR REST OF RIGHTS</u> | | | | to _____ |
| | | | | to _____ |
2. Total amount of water being transferred 24.65 cubic feet per second and 1332 acre-feet per annum.
3. Source of water groundwater, Little Lost River tributary to Big Spring Creek is tributary to Little Lost River which sinks
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7N	27E	12				W									40	W	W	W	80
		13	10																10
		18		W	W											20			220
7N	28E	7										W	W	W	W				

Total acres 310

PART 1

6. General Information:

- a. Description of diversion system 6 wells and pumps are connected by a ditch system which also feeds 16 ponds. When there is highwater available during spring runoff, and to the extent it is available, water is diverted under such rights directly into the same ditch system through three existing headgates.
- 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:
There will be no significant effects; this is essentially the practice that has been in effect for many years.
- d. Remarks:
The groundwater rights are the primary rights. When, and to the extent, surface water is available under the late priority surface water rights, it is used to reduce or replace the water pumped from the wells. In that sense, the surface water rights are supplemental.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. *see below

And said application is hereby conditionally approved, subject to the following limitations and conditions:
Pursuant to Final Order.

Water Right Nos.:

33-02057F, -02083F, -00069C, -00070C,

-00071C, -00072C, -00073C, -00074C,

-00076C, -00078C, -00079C, -00080C,

-00081C, -00082C, -02007C, -02008C,

& -02133C.

Witness my hand this 12th day of March, 1996


Karl J. Dreher, Director

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MAR 26 1996

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SEP 20 1993

Page 1 of 38STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDepartment of Water Resources
Transfer No. 4224APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Sagewillow, Inc. Phone (208) 523-0620
Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls ID 83405

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes To make more effective use of the water rights.

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 |
|--|------------|-----------------------|------------------|----------------|
| 33-02057D | 02/01/1950 | 1.94 cfs | Irrigation | 04/01 to 11/01 |
| 33-02083D | 08/23/1957 | .41 cfs | Irrigation | 04/01 to 11/01 |
| SEE ATTACHMENT #1 TO PAGE 1 FOR REST OF RIGHTS | | | | |
2. Total amount of water being transferred 9.38 cubic feet per second and 503 acre-feet per annum.
3. Source of water groundwater, Little Lost River tributary to Big Spring Creek is tributary to Little Lost River which sinks
4. Point(s) of Diversion: & Big Spring Creek

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	NW	NE	12	7N	27E	Butte	2 Well No. 3
	SW	SW	NE	2	7N	27E	Butte	1 Knollin Headgate
	NE	SW	NW	12	7N	27E	Butte	3 Lake Headgate
	NE	NW	SW	5	7N	28E	Butte	4 Big Spring Creek Headgate

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7N	28E	7	40			40													80
		8					40												40

Total acres 120

PART 1

6. General Information:

- a. Description of diversion system Well and electric pump will discharge water into existing ditch system which conveys water east to the place of use. During highwater periods, the headgates on Little Lost River and one on Big Spring Creek divert water into the same ditch system.
- 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:
There will be no effect except to better organize the existing rights.

d. Remarks:

The groundwater rights are the primary rights. The surface rights have such late priorities, water is only available sometimes during the spring runoff. When and to the extent water is available, it is used in place of, and to save expense of operating, the well. In that regard, the surface water supplies are supplemental to the groundwater supplies.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. *see below

And said application is hereby conditonally approved subject to the following limitations and conditions:

Pursuant to Final Order.

*Water right Nos.:

33-02057D, -02083D, -00069A, 00070A, -00071A,
-00072A, -00073A, -00074A, -00076A, -00078A,
-00079A, -00080A, 00081A, -00082A, -02007A,
-02008A & 02133A.

Witness my hand this 12th day of March

Karl J. Dreher
Karl J. Dreher, Director

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MAR 26 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR TRANSFER NOS. 4221, 4222,)
4223, 4224, 4225, 4226, AND)
4227, IN THE NAME OF)
SAGE WILLOW, INC.)
_____)

ORDER DENYING PETITION
FOR RECONSIDERATION

The hearing officer has considered the issues raised in the applicant's petition for reconsideration of the amended recommended order, and finds that they were raised in the initial petition for reconsideration. The issues can be raised again before the Director as exceptions.

ORDER

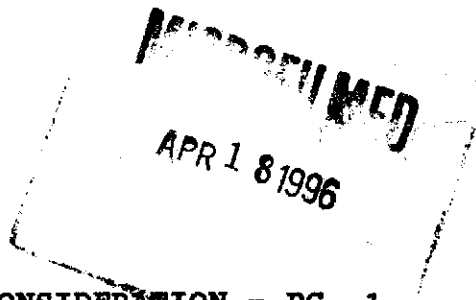
IT IS HEREBY ORDERED that the applicants petition for reconsideration of the amended order is DENIED.

IT IS FURTHER ORDERED that any exceptions must be filed with the Director within twenty-one (21) days of the date of this order.

Dated this 5th day of December, 1995.



Gary Spackman
Hearing Officer


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CERTIFICATE OF MAILING

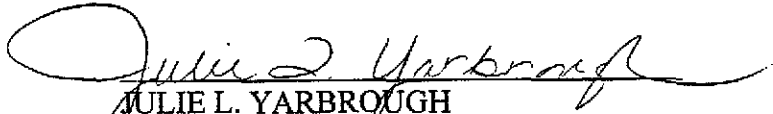
I HEREBY CERTIFY that on this 5th day of December, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER DENYING PETITION FOR RECONSIDERATION** to the following:

Kent Foster
HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
GIVENS PURSLEY & HUNTLEY
P.O. Box 2720
Boise, ID 83701

J. Evan Robertson
Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906


JULIE L. YARBROUGH
Senior Secretary

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APR 18 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NOS. 4221, 4222, 4223, 4224,
4225, 4226 AND 4227 IN THE NAME OF
SAGE WILLOW, INC.

AMENDED RECOMMENDED
ORDER

INTRODUCTION

Sage Willow, Inc. (Sage Willow) filed seven applications for transfer with the Idaho Department of Water Resources (Department). Some of the applications were protested by the Blaine County Canal Co. (the Canal Co.), James Mays, Mays Land and Livestock Co. (collectively referred to as "Mays") and Simplot Land and Development. Simplot Land and Development Co. subsequently withdrew its protest.

After expiration of the protest period Mays discovered they had not protested all of the applications for transfer filed by Sage Willow. Mays filed a motion to amend the protest to include protests opposing all of the applications for transfer, and to add issues of forfeiture and enlargement to the issues raised by the original protests. The motion to amend was granted prior to the hearing.

On January 18, 1995, the Canal Co. filed a motion to amend its protests. The hearing officer initially denied the motion to amend from the Canal Co. because it was untimely. At the hearing, however, the hearing officer revoked the order denying the motion to amend, and granted the motion to amend. The Canal Co. and Mays participated as full parties in all the proceedings. A hearing regarding the protest was conducted on January 31 and February 1, 1995.

A Recommended Order was issued on May 22, 1995. Council for Sage Willow timely filed a motion for reconsideration which the hearing officer granted. The order granting reconsideration limited reconsideration to two (2) issues:

1. Whether use of water pursuant to water right no. 33-02091, although previously transferred/abandoned, should be recognized because of the approval of transfer no. 3785, which was approved in 1992?

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2. Whether the number of acres authorized for irrigation pursuant to rights nos. 33-02086 and 33-07018 should have been reduced solely on the basis of Terry Scanlan's testimony?

Briefs were to be filed regarding the petition for reconsideration on or before July 14, 1995.

Sage Willow requested a transcript of the record, and after issuance of the order granting reconsideration, the parties agreed to delay briefing until the transcript was prepared. The parties both filed briefs on or about September 1, 1995.

The issues allowed for reconsideration will be discussed in the following Analysis section, and the FINDINGS OF FACT, CONCLUSIONS OF LAW and RECOMMENDED ORDER follow the Analysis.

ANALYSIS

Approval of Transfer No. 3785

The order granting reconsideration stated:

Sage Willow should be able to rely on the Department's decision in proceeding with the project. Perhaps there should be some application of res judicata with respect to administrative matters. Or perhaps the resumption of use doctrine should be evoked if the Department approved the transfer, and the water user resumed the use prior to an objection."

Sage Willow argued that the Department's review of a prior transfer is a collateral attack, instead of an issue of res judicata. Because similar factual and legal issues are before the same jurisdictional body (the Department), and the issue of forfeiture could have been decided in the previous proceeding, the circumstances appear more closely related to res judicata. I will refer to the issue as res judicata throughout this decision.

Elements that trigger res judicata are: (1) a prior proceeding resulting in a final judgement on the merits, (2) between the same parties or their privies, (3) on the same claim. The "same claim" element broadly encompasses any claim that arose out of the same set of facts, or as more commonly stated, the same transaction or occurrence as the original claim. *Aldape v. Akins*, 105 Idaho 254, 668 P.2d 130 (Ct. App. 1983); Restatement (Second) of Judgments § 24 (1982). An administrative approval of an application for transfer, even if it is not contested, should be considered a final judgment on the merits. Finally, the same claims are being asserted before the Department that were raised, or could have been raised in the prior proceeding.

In University of Tennessee v. Elliott, 478 U.S. 788 (1986) the court explained:

Where an administrative forum has the essential procedural characteristic of a court, . . . its determinations should be accorded the same finality that is accorded the judgment of the court. The importance in bringing a legal controversy to conclusion is generally no less when the tribunal is an administrative tribunal than when it is a court.

478 U.S. at 798.

Section 83 of the Restatement (Second) of Judgments states that res judicata generally applies to an agency decision only if the decision was the result of an adjudication. For an adjudication to occur, the following essential elements must be present:

1. Adequate notice to parties who are to be bound by the proceeding;
2. The right of parties to present and rebut evidence and advance legal arguments;
3. An application of law to specific parties regarding a specific transaction;
4. A final agency decision;
5. Additional procedural elements that may be necessary to provide a sufficient means to conclusively determine the matter in question.

The approval of a transfer invokes res judicata because the procedures required for an application for transfer entail all the essential elements of an adjudication. Notice of the proposal is published for prospective parties to review. An applicant has the right to contest the Department's decision. If protests are filed, a contested hearing is granted to the parties. Furthermore, principles of res judicata apply not only to issues which were raised, but issues which could have been raised but were not raised.

Res judicata is subject to a public interest exception. Under this exception, res judicata should not be applied where the "benefits of finality are outweighed by adverse impact on public interest." Dana's Housekeeping, Inc. v. Department of Labor & Industr., 886 P.2d 1147, 154 (Ct. App. Wash. 1995); Second Restatement § 28(5)(a). See also Tipler v. E.I. duPont deNemours & Co. 443 F.2d 125, 128 (6th Cir. 1971) (preclusion doctrines "are qualified or rejected when their application would contravene an overriding public policy or result in manifest injustice.). As a general rule, administrative res judicata should not be woodenly applied. Martin v. Donovan, 731 F.2d 1415, 1416 (9th Cir. 1984).

In addition, Idaho Code § 42-350 states:

If the director of the department of water resources finds, on the basis of available information *at any time after a license is issued*, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years . . . then the director of the department of water resources may issue . . . an order to show cause before the director of the department . . . why the director of the department should

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not revoke said license . . . (Emphasis added).

While this statute directs a specific administrative process, and does not discuss the effect of a transfer approval, it supports a holding that the director can review forfeiture issues, even after a transfer approval has been granted.

The cases cited suggest some equitable balancing. There are reasons in this case why res judicata should not apply. Sage Willow did not rely on a decision of the Department in purchasing its irrigation equipment. It was purchased and installed prior to any approval by the Department. The approved transfer moved water onto land that was already identified as a place of use by another water right. Despite the characterization by Sage Willow that it was simply attempting to transfer what the Department had already approved, the net effect of the latest application for transfer is to correct an overlap which was erroneously caused by error identifying the place of use in the first transfer. The issue of forfeiture was avoided in the first proceeding, and the applicant did not respond to the question of forfeiture on the original application. While the Department should have identified this defect, the Department's own error should not be the focal point of whether a clear forfeiture/abandonment should be ignored because of the approved transfer. Despite Sage Willow's statement in its brief supporting reconsideration that the transfer had been approved for many years, the last transfer was approved in 1992.

The Department's review must extend beyond the prior approval and any hardship it might cause Sage Willow. Blind adherence to a previous approval without considering its impact on other water users is not in the public interest. The adverse impact on public interest outweighs the benefits of finality particularly in light of the clear and uncontraverted evidence of forfeiture, and would contravene an overriding public policy of protecting other water users. As a result, the recommended decision will continue to hold that license nos. 33-02090 and 33-02091 are forfeited.

Estoppel cannot be applied to the Department of Water Resources in this case. Consideration of an application for transfer is part of the sovereign responsibility of the Department, and is not a proprietary action. Furthermore, the resumption of use doctrine should not be applied as a crutch to justify continued use by Sage Willow. The decision hinges solely on whether res judicata prohibits the Department from determining if license no. 33-02091 was forfeited. In this case res judicata does not bar reconsideration.

Irrigated Acreage in the Frew Place

The order granting reconsideration recognized that Vance Hawley did not add corroborating testimony to the 230 acre place of use estimate proposed by Terry Scanlan for the Frew Place. The clear and convincing evidence standard is the evidentiary standard by which the Department should review forfeiture issues. The Department should review the historical use of the water to determine the extent of beneficial use for purposes of forfeiture. Despite Sage Willow's argument that a place of use of 260 acres should be recognized, applicant's exhibit no. 7, prepared by C.E. Brockway, a consultant retained by Sage Willow, agrees with the estimates of a 230 acre place of use.

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Applicant's exhibit 1"a" is a map depicting the places of use for license nos. 33-02086 and 33-07018. The total number of acres authorized for irrigation by these overlapping licenses appurtenant to the Frew Place is 261 acres. The second column in the table below lists the places of use described by the water rights. The third column lists Brockway's estimate of irrigated acreage for the Frew Place that corresponds to the water right place of use. The fourth column adds additional bottomland acres not irrigated, but perhaps deriving some benefit from irrigation water.

FREW PLACE OF USE SUMMARY

Description	Water Right Place of Use	Brockway's Irrigated Place of Use	Brockway's Irrigated Pof U & Bottomland
T7N R28E Sec. 5	NENW - 35 ac. NWNW - 38 ac. SWNW - 33 ac. <u>SEnw - 36 ac.</u> 142 acres	NW¼ - 115 ac. <u>115 acres</u>	NW¼ - 120 ac. <u>120 acres</u>
T7N R28E Sec. 5	NESW - 32 ac. <u>(SESW - 40 ac.)*</u> 32 acres	SW¼ - 85 ac. <u>45 acres**</u>	100 ac. <u>45 acres**</u>
T8N R28E Sec. 32	NWSW - 31 ac. SWSW - 39 ac. <u>SESW - 17 ac.</u> 87 acres	SW¼ - 65 acres <u>65 acres</u>	65 ac. <u>65 acres</u>
Total	<u>261 acres</u>	<u>225 acres</u>	<u>230 acres</u>

* This 40 acre parcel was not described as a place of use for license nos. 33-02086 & 33-07018 but was described as a place of use by license no. 33-02133 and is not part of the Frew place. It is included in the table only to show where the 85 acres estimated by Brockway to be irrigated are located.

** License nos. 33-02086 & 33-07018 describe 32 acres as the place of use for the NE¼SW¼ of Section 5, T07N, R28E. Brockway found a total of 85 acres irrigated in the SW¼ of Section 5. Assuming that only 40 acres are irrigated in the SE¼SW¼ of Section 5, the remaining 45 acres are liberally attributed to the NE¼SW¼ of Section 5.

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Sage Willow cannot argue that the Department should recognize 260 acres of irrigation in the Frew Place when its own expert does not identify, even in a liberal interpretation, more than 230 actual irrigated acres. This decision will recognize 230 acres irrigated in the Frew Place.

Abandonment

Sage Willow argued that the finding of abandonment is not supported by the evidence. After reading the testimony of Vance Hawley, I find that his statements about the use of water on the Homestead Place and the North of Road Place were much less convincing than I remembered. When asked why water was not used on the Homestead Place after issuance of a patent, Vance Hawley stated that he would "venture a guess" about why water was not used following issuance of the patent from the federal government. A ventured guess is not sufficient evidence of intent to abandon. The evidence clearly establishes that water authorized for diversion pursuant to license nos. 33-02090 and 33-02091 was not beneficially used for more than twenty years, but it does not clearly establish that license nos. 33-02090 and 33-02091 were abandoned.

The hearing officer recommends the following amended Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. In 1989, Sage Willow, Inc. (Sage Willow) acquired a ranch, located near the confluence of the Little Lost River and Spring Creek, commonly known as the Knollin Ranch. At the same time Sage Willow also acquired other parcels contiguous to or nearby the Knollin Ranch.

2. One parcel is located approximately 1½ miles northwest of the Knollin place. The parcel is divided into two pieces by the east 16th line of Sec. 35, T27N, R28E, B.M. The property located on the west side of the 16th line is commonly known as the Bird Ranch. The property located east of the 16th line is commonly known as the Homestead Place.

3. Another parcel is located on the north side of an east-west county road, which was the northern boundary of the original Knollin Ranch, and will hereafter be referred to as the "North of Road Place."

4. In 1993, Sage Willow acquired additional land contiguous to and northeast of the Knollin Ranch from David and Terry Hawley (the Frew Place).

5. The Knollin Ranch was originally owned by A.J. Knollin. Several surface water rights were appurtenant to the Knollin Ranch. Because of financial difficulties, A.J. Knollin conveyed his interest in the Knollin Ranch to the first mortgage holder in 1942. In the same year, the Canal Co. purchased the Knollin Ranch from the mortgage holder. During the late 1940's, the Canal Co. sold the ranch land to L.R. "Slim" Hawley (Hawley). The earliest priority water rights appurtenant to the Knollin Ranch were not conveyed to Hawley, however, but were retained by the Canal Co., and later transferred to downstream lands. The

Canal Co. rights are some of the earliest water rights diverted from the Little Lost River, bearing priority dates of 1879 to 1891.

6. Several late priority surface water rights remained appurtenant to or were developed for use on the Knollin Ranch. The rights are described below:

Irrigation Rights

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-00069	3.2	06/01/1908	Little Lost River
33-00070	2.8	10/01/1906	Spring Creek
33-00071	3.2	03/15/1909	Spring Creek
33-00072	.8	05/01/1908	Little Lost River
33-00073	6.4	04/01/1912	Spring Creek
33-00074	1.6	08/06/1913	Little Lost River
33-00076	6.8	04/01/1913	Little Lost River
33-00078	3.2	10/15/1913	Little Lost River
33-00079	1.6	04/01/1912	Little Lost River
33-00080	.8	05/01/1908	Spring Creek
33-00081	.8	05/01/1908	Spring Creek
33-00082	.8	05/01/1908	Spring Creek
33-02007	2.9	02/15/1909	Little Lost River
33-02008	<u>6.4</u>	06/12/1909	Spring Creek
	41.3		

Soil Root Zone Storage Right.

<u>Water Right No.</u>	<u>Acre Feet</u>	<u>Priority</u>	<u>Source</u>
33-02133	2,960	06/02/1949	Little Lost River Spring Creek

7. The surface water rights could only be delivered to Hawley during high water flows, however, and there was insufficient surface water to irrigate the Knollin Ranch. Hawley obtained two licenses to irrigate the Knollin and Bird Ranches with ground water, numbered 33-02057 and 33-02083.

The ground water rights for the Knollin and Bird Ranches are described as follows:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02057	24.0	02/01/1950	8 wells # 1-8
33-02083	5.0	08/23/1957	8 wells #1-8

8. In addition, ground water rights were also perfected for the Frew Place, which Sage Willow acquired from David and Terry Hawley. The Frew Place rights are listed below:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02086	4.1	01/12/1959	well # 13
33-07018	3.26	09/12/1972	well # 12

9. Finally, Hawley and some of his contemporary relatives obtained patents for two parcels of federal property pursuant to the Desert Land Entry Act. Two licenses to appropriate ground water were issued by the Department for these parcels. License no. 33-02091 was perfected for irrigation of the Homestead Place. License no. 33-02090 was perfected for irrigation of the North of Road Place. The following describes components of these rights:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02090	5.93	12/21/1959	well # 11
33-02091	4.36	01/22/1960	well on Bird Ranch

10. The places of use and points of diversion prior to Sage Willow's acquisition of the water rights described in the preceding paragraphs are depicted on the map labeled as applicant's exhibit no. 1"a."

11. Sage Willow filed application for transfer nos. 4221, 4222, 4223, 4224, 4225, 4226 & 4227, proposing to change the place of use for all of the rights listed above. The multiple applications for transfer were filed to define portions of the water rights that would be appurtenant to each of seven independent delivery systems. Application nos. 4221, 4222 and 4223 propose the irrigation of land primarily north of the original Knollin Ranch with pressurized circular pivots. Application nos. 4224, 4225, 4226 and 4227 propose gravity irrigation of other land. The proposed places of use are depicted on a map labeled as applicant's exhibit no. 1"b." For further clarity, a map depicting the system (or place of use) described by each of the applications is attached. The original and proposed places of use described in the applications are not restated in this decision because of their size and complexity.

12. A geologic formation near the confluence of the Little Lost River and Spring Creek retards

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the southward flow of ground water in the underlying aquifer, causing the ground water and surface water to merge in the southern half of the Knollin Ranch. The Little Lost River loses water to the underground aquifer above the Knollin Ranch, but as the ground water and surface water merge, the Little Lost River and Spring Creek gain water as they flow through the Knollin Ranch. The merger of the ground water and surface water continues downstream several miles to the Canal Co. diversion.

13. The Little Lost River and the aquifer underlying the Little Lost River Basin below the Knollin Ranch are dependent on water flows which pass the Knollin Ranch, either on the surface, or underground.

14. The Hawley wells were drilled into the shallow aquifer connected to the surface water. There is a direct hydrologic connection between the water pumped by the Hawley wells and the surface water that flows downstream into the Little Lost River below the Knollin Ranch.

15. Vance Hawley, a son of Slim Hawley, grew up in the Little Lost Valley, and helped farm the Knollin and Bird Ranches as a youth, although he did not reside on the Knollin Ranch. After attending college, Vance Hawley returned and assisted in farming the property from 1970 through 1978. During these eight (8) years, he did not manage the farm, but resided on the Knollin Ranch. From 1978 through 1980 he leased the Knollin Ranch property. After the lease expired, he was acquainted with the operation of the farms until 1989, when the Knollin Ranch was sold to Sage Willow.

16. Vance Hawley was also aware of the operation of the Bird Ranch, the Homestead Place, the North of Road Ranch, and other surrounding lands.

17. Vance Hawley testified about the extent of beneficial use of water on the properties now owned by Sage Willow. He testified that the total number of acres irrigated on the Bird Ranch did not exceed 297 acres. He also testified that irrigation of individual parcels on the Knollin Ranch totaled 879 acres.

18. Vance Hawley testified that the Homestead Place, located just east of the Bird Ranch, was irrigated with water pursuant to license no. 33-02091 in the early 1960's until a patent of ownership was issued by the federal government. He testified that the land was converted back to early season dry range land and was never irrigated in the late 1960's, all of the 1970's and the 1980's until Sage Willow bought the property.

19. Vance Hawley also stated that the North of Road Place, patented by his aunt and uncle, located north of the main east-west access road into the Knollin Ranch, was irrigated with water pursuant to license no. 33-02090 in the early 1960's until a patent of ownership was issued by the federal government. He testified that after the patent was issued the property was converted back to early season dry rangeland. He testified that water had not been applied to the lands pursuant to license no. 33-02090 during the late 1960's, all of the 1970's, and the 1980's until the property was purchased by Sage Willow.

20. James Mays, a lifelong resident of the Little Lost River Valley, testified he was familiar with both the Homestead Place and the North of Road Place, and had not observed any irrigation on the

Homestead Place or North of Road Place, at least until Sage Willow acquired the parcels.

21. Vance Hawley drew the boundaries of and estimated the number of acres irrigated during his acquaintance with the property. This land is depicted on protestant's exhibit no. 3. The estimate includes lands irrigated with both surface water and ground water. He estimated that no more than 1176 acres were irrigated within the boundaries of the Knollin Ranch and Bird Ranch.

22. The testimony of Vance Hawley is the most credible evidence regarding the traditional use of water on the entire Sage Willow land holdings until 1989.

23. Terry Scanlan (Scanlan), an engineer and geologist hired by Mays, consulted aerial photographs, and estimated that approximately 230 acres were irrigated in the Frew Place. This estimate is supported by the irrigated acreage estimates prepared by Dr. Charles E. Brockway, P.E. (Brockway), a consultant hired by Sage Willow.

24. Scanlan also estimated that 1182 acres were irrigated in the Knollin Place and the Bird Place, six more acres than estimated by Vance Hawley. Adding the 230 acres irrigated in the Frew Place, Scanlan estimated the total acreage irrigated prior to 1989 was 1412 acres. Because of the six acre discrepancy between Vance Hawley's estimate and Scanlan's estimate, the difference will be resolved in favor of Sage Willow. A total of 1412 acres were irrigated prior to 1989.

25. In 1989, Sage Willow purchased the Knollin Ranch, the Bird Ranch, the Homestead Place and the North of Road Place. Jerry Pancheri was hired as the manager of the ranch, and was instructed to apply the water to the land as efficiently as possible and to recommend changes to the system to more efficiently use the water.

26. Pancheri testified about his attempts to use the water and identified land irrigated during the years he managed the farm. Pancheri identified on protestant's exhibit no. 21 the lands which were irrigated in various years. He approximated the areas irrigated in several individual parcels, and the parties summed his estimates in their briefs, as set forth below:

<u>Year</u>	<u>Total Number of Acres Irrigated Sage Willow's Estimate</u>	<u>Mays' Estimate</u>
1989	1300	1400
1990	1560	1740
1991	2000	2004
1992	2130	2100
1993	2390	-----

27. During 1990 and 1991, Pancheri determined that several preexisting ponds located on the Knollin property should be repaired and filled with water. These ponds, when filled with water, contribute significant sub-water to the shallow aquifer and sub-irrigate some of the lower elevation pastures located

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on the Knollin Ranch.

28. Pancheri also determined that the lands within the Bird Ranch and the Homestead Place were the poorest agricultural lands of the Sage Willow holdings and recommended that the water rights appurtenant to the Bird and Homestead Place be transferred to other lands located north of the Knollin Ranch. These lands north of the Knollin Ranch were acquired by Jerry Pancheri, and subsequently by Sage Willow, through an exchange of lands with the Bureau of Land Management.

29. In October, 1990, Sage Willow, through its president, Edmund Dumke, applied to transfer license no. 33-02091 (transfer no. 3785) from the Homestead Place to land located in the SE $\frac{1}{4}$ of Section 1, T7N, R27E, and the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 6, T7N, R28E. The transfer application was signed by Dumke as president of Sage Willow. Part 1 of the transfer application requests the applicant to "[d]escribe the effect on the land now irrigated if the place of use is changed pursuant to this transfer." Dumke responded that "[w]e will dry farm this old place of use." There was no response to question 10 in part 2 of the application which asks "To your knowledge, has any portion of this water right undergone a period of five (5) or more consecutive years of non-use?" By signing the application, Dumke asserted that "no one will be injured by such change and that the change does not constitute an enlargement in use of the original right."

30. Dumke testified at the hearing that he had no personal knowledge regarding license no. 33-02091. He did not personally know whether a well was located at the licensed point of diversion or if any irrigation had occurred pursuant to license no. 33-02091 on the licensed place of use. Dumke stated that he relied entirely on others to prepare the application.

31. Harold Jones, an employee in the Department's Eastern Regional Office, testified that the Department's current policy is to rely on the representations made in the transfer application for a licensed right if no protests are filed. In reviewing the Sage Willow application for transfer no. 3785, the Department did not independently investigate the existence of a well and pump at the licensed point of diversion, or diversion for beneficial use on the licensed place of use for license no. 33-02091.

32. Transfer no. 3785 approved a change in the place of use for license no. 33-02091 from the Homestead Place to part of the North of Road Place. The transfer resulted in an overlap of license no. 33-02091 on the place of use for license no. 33-02090. One of the purposes of the pending transfers is to correct transfer no. 3785 by moving license no. 33-02091 to lands not already described as a place of use by license no. 33-02090.

33. In 1991, two new pivots (pivots 6 and 7) were installed on the lands in Sections 1 and 6, and irrigation commenced that same year. (See protestant's exhibit no.13, 1991 Landsat Image and testimony of Mr. Pancheri and Mr. Scanlan.) Although the pivots were installed and operated in 1991, the record indicates transfer no. 3785, which authorized license no. 33-02091 to be used in Sections 1 and 6, was not approved until October of 1992.

34. Vance Hawley testified that lands owned by Hawley were flood irrigated, and many of the fields were only irrigated once during the season. When hay was harvested from these lands, only one half

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to one ton per acre of hay was harvested, compared to a full average harvest of approximately three tons per acre for the Little Lost River Valley.

35. Dr. Charles Brockway, P.E., was hired by Sage Willow in 1989 to conduct various studies regarding the Little Lost River Drainage and its hydrologic and hydrogeologic characteristics, particularly with reference to the Sage Willow holdings. In preparation for the hearing, Brockway walked the Sage Willow property, noted existing ditches and the location of abandoned ditches thereon, and consulted aerial photography to determine the number of acres that could have been irrigated on the Sage Willow property. Brockway prepared applicant's exhibit no. 7 which lists the acreage owned by Sage Willow and estimates consumptive use prior to the Sage Willow purchase of the property. The consumptive use calculated represents consumption by crops irrigated by both sprinkler and flood applications, and also includes consumption by bottom land and rangeland vegetation. Lands which showed some evidence of past irrigation, even though not irrigated at the time Sage Willow acquired the property, were assigned irrigation consumptive use values.

36. Brockway concluded that the consumptive use prior to the Sage Willow purchase was 10,192 acre feet. He also testified that consumptive use increased approximately 760 acre feet between 1989 and 1992, and will increase another 137 acre feet if the applications for transfer are approved.

37. Brockway also testified that the additional 137 acre foot depletion would reduce stream flows to the Little Lost River by 0.20 cfs, and the effect on the aquifer levels would not be detectable.

38. Scanlan combined Vance Hawley's recollection of water use with information derived from aerial photography, and determined the total number of acres traditionally irrigated in the Knollin, Bird and Frew properties. For purposes of comparison, in protestant's exhibit no. 15 Scanlan grouped lands by the same classifications as Brockway, and applied the same consumptive use values to estimated a consumptive use prior to Sage Willow acquisition. Scanlan estimated a consumptive use of the 9,077 acre feet. Based upon allegations of non use on the Homestead Place (license no. 33-02091), and the North of Road Place (license no. 33-02090), Scanlan concluded the approval of these transfers would increase consumptive use by 1504 acre feet annually from the pre-1989 consumptive use values.

39. In protestant's exhibit no. 20, Scanlan disagreed with the consumptive values for crops irrigated with surface water used by Brockway in applicant's exhibit no. 7, and reduced the initial consumptive use values by 20 percent to account for the testimony of Vance Hawley regarding reduced crop harvest. He calculated a pre-1989 consumptive use of 8,273 acre feet. He estimated consumptive use would increase by 1,809 acre feet after the transfer is approved.

40. The assumptions by Scanlan are supported by direct evidence and testimony presented by Vance Hawley and are coupled with a careful review of aerial photography. These factors provide a more credible estimate of the acres historically irrigated and the historical total consumptive use.

41. Protestant's exhibit no. 18 proposes prorata reductions in flow rates and acreage irrigated for each of the applications based on a ratio between the licensed places of use and the historical places of use as established by Vance Hawley. Despite detailed consumptive use calculations by two expert

witnesses, Mays' proposal is based solely on irrigated acreage comparisons, not consumptive use comparisons.

42. Don Isham, a prior officer of the Canal Co. testified that, to his knowledge, the later in time surface water rights, alleged to be owned and proposed for transfer by Sage Willow, have been delivered to the Canal Co. for decades. He testified that, although the application for transfer that moved the water from the Knollin Ranch to the Canal Co. only included the early in time rights, the Canal Co. was entitled to the rights claimed by Sage Willow because of the long history of delivery.

43. The watermaster for the Little Lost River testified that in 1993, he delivered some of the surface water rights claimed by Sage Willow to Sage Willow.

CONCLUSIONS OF LAW

1. The parties agree about most of the facts pertaining to the traditional use prior to Sage Willow's acquisition of the property, and the expanded use of Sage Willow following its acquisition. There is some disagreement regarding the consumptive use calculations of the expert witnesses and which consumptive use numbers are most accurate. Both parties admit, however, that Sage Willow's proposal will increase the consumptive use on the Sage Willow property.

2. The first issue to be resolved is whether all or portions of the original water rights were lost by abandonment or forfeiture. License nos. 33-02090 and 33-02091 were forfeited because of non-use for over 20 years. Forfeiture was established by clear and convincing evidence.

3. One of the most difficult issues raised is the status of transfer no. 3785. The application for transfer was incomplete and contained representations that were not correct. Dumke explicitly represented, by signing the affidavit, that the right had not been forfeited, and that there would be no injury or enlargement as a result of the application. An integral portion of the application, asking whether the applicant knew of any continuous, five year period of non-use, was left blank. The Department did not independently investigate the possibility of forfeiture. In addition, the applications for transfer now pending were filed to revise what was previously approved.

4. There is no evidence that Dumke or Sage Willow fraudulently misled the Department, or that the transfer is void because of fraud. Because the pending applications for transfer attempt to correct previously approved transfer no. 3785, and because there were misrepresentations and omissions of fact in the filing of application for transfer no. 3785, transfer no. 3785 is voided, and the Department is not bound by the previous approval. Furthermore, although there has been some development pursuant to transfer no. 3785, Sage Willow constructed two of the pivots prior to approval of the transfer 3785.

5. Because of the reasons set forth above, the finding of forfeiture supersedes the prior approval of transfer no. 3785.

6. The combined testimony of Vance Hawley and Terry Scanlan regarding the total place of

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use for the remainder of the Bird Ranch, the Knollin Ranch, and the Frew Place establishes a historically irrigated acreage of 1,412 acres during a period of at least two decades.

7. The total number of acres authorized for irrigation pursuant to license nos. 33-02086 and 33-07018 is 230 acres. The total number of acres authorized for irrigation pursuant to license nos. 33-02057 and 33-02083 is 1,182 acres. Combined surface water and ground water irrigation should not exceed 1,412 acres, except for sub-irrigation. The total number of acres which can be irrigated by applying water (surface water and ground water) directly to the land is 1,412 acres. The right to irrigate any additional lands described by ground water and surface water rights in excess of 1,412 acres has been forfeited, except for benefits derived by subwater which will be discussed later.

8. Applicants do not admit forfeiture, but emphasize the doctrine of resumption of use as a defense against forfeiture. Several Idaho court cases generally mention the resumption of use defense to forfeiture. Only two of the decisions find that there may have been a forfeiture, and that resumption of use might resurrect the water right.

9. Wagoner v. Jeffrey, 66 Idaho 455, 162 P.2d 400 (1945) was a dispute between a water right holder who had perfected rights in wells located on federal property, and another settler who subsequently obtained a patent to the property where the wells were located. More than five years of non use elapsed. When the water right holder unsuccessfully attempted to resume his use, the subsequent settler, even though he had no water rights in the wells, attempted to block the resumption by alleging forfeiture. In Wagoner, there was no junior water right holder claiming a right to the water which was being diverted out of the wells. The resumption doctrine was applied because there was no intervening claim to the water.

10. In Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), a water user attempted to transfer water rights diverted from the Big Lost River approximately 20 miles downstream. The protestants alleged the rights were forfeited. Unrefuted evidence established that the water right had not been applied to the original place of use for several decades, but the evidence also established that, at least for a portion of that period, water was delivered to the proposed place of use, and assessments for the delivery of the water had been paid. In its holding, the Idaho Supreme Court said:

Thus, bills were rendered and payments made by respondent for water delivered by the District. The District showed no water was deliver to [the old place of use], so the water must have been, and two of the exhibits show the water was, delivered to the [proposed place of use].

73 Idaho at 159.

11. The court seemed to be concluding that the water right was not forfeited because it was delivered to other lands. Nevertheless, the court subsequently stated, quoting Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944):

Although statutory abandonment of a water right has occurred, forfeiture is not effective if

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after five-year period original owner or appropriator resumes the use of the water prior to claim of right by a third party.

73 Idaho at 160.

12. The court explained the quotation with two inconsistent statements, the first sounding as if the right had been forfeited but resumed, and the second sounding as if the right had never been forfeited:

No one claims this particular decreed water by adverse possession and clearly, so far as this proceeding is concerned, it was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited.

The trial court was justified in holding that water had been so used by respondent that he had not abandoned or forfeited his water rights . . .

73 Idaho at 160.

13. Other cases discuss the resumption defense, but decide that the right was not forfeited. Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944) (held not abandoned, and was not a resumption case); Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937) (held burden of proof on the party alleging forfeiture not satisfied). Another case, Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), held that the right was forfeited, but proof was not offered regarding the resumption of use defense.

14. The law does not require that a claim of ownership to the specific water delivered by a specific water right must be filed prior to resumption of use to prevent the resumption. Language in Zezi that the use must be resumed prior to other appropriations, and the discussion of movement up the priority ladder by junior right holders in Jenkins narrowly limits when a water right can be resumed after it is forfeited.

15. Recognition of the resumption of use defense would frustrate the doctrine of prior appropriation in streams where (1) junior appropriators have established water rights and have relied on water not diverted by a senior user, or (2) in this case, where senior surface water users and other water right holders have relied on related ground water not diverted by Sage Willow's predecessor. While the prior appropriation doctrine is crafted to protect water users, by delivering in order of priority, its requirement of beneficial use of water prevents a water right holder from retaining unused water rights for a long period of time, and then reasserting the right to the detriment of other right holders.

16. Other users are not required to assert a specific claim to the water rights or water represented by rights held by the user attempting to resume his use. The establishment of a water right is sufficient claim to the water. The resumption doctrine cannot restore portions of water rights forfeited by Sage Willow's predecessor in interest to the detriment of other water right holders.

17. Detailed consumptive use comparisons by both parties implicitly invite the Department to

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microscopically look at the application of water upon the place of use and restrict the future consumptive use based on an estimated consumptive use. Although consumptive use was not defined by the initial water rights which were licensed or decreed, each water right is implicitly limited by the consumptive use inherent to the beneficial use authorized. Within the limitation of the maximum consumptive use value, the water right holder should be able to plant more or less consumptive crops depending on his needs. If there is a pattern of rotation within the farming operation, a portion of a right should not be lost because a water right holder's crops did not consume the maximum consumptive use value.

18. If the Department evaluated the consumptive use microscopically, the Department would be required to:

- a. Determine the traditional acres irrigated;
- b. Determine how much water was traditionally consumed by crops grown on those acres;
- c. (i) evaluate how much more efficient the proposed method of irrigation is or,
(ii) evaluate how much more water will be consumed by the anticipated crop use;
- d. (i) further reduce the acres irrigated to prevent increased consumption, or
(ii) further reduce the volume and flow diverted to prevent increased consumption.

19. Because the protestant proposes restrictions based on historical acres irrigated, not based on consumptive use, the Department declines, in this case, to limit the total diversion based on increased consumptive use which may result from improved efficiency of water application. Total diversion volumes and consumptive uses values will be assigned according to Department standards. Flow rates will be reduced to a rate of 0.02 cfs per acre unless Sage Willow can demonstrate the need for additional volume or diversion rate.

20. These applications for transfer can only be approved if the applicant identifies 1,412 acres to which water will be physically diverted and applied by some means other than subirrigation. Annual volume for physical diversion, delivery and application should be limited to 4,942 acre feet. Annual consumptive volume will be limited to 3,530 acre feet. The diversion rate will be limited to 28.24 cfs.

21. A proposal identifying 1412 acres, and the individual rights that will be appurtenant to the lands, must be submitted to the Department. The Department will allocate volumes and diversion rates to each right.

22. As part of the proposal, the applicant may continue to derive the benefits of subirrigation from ponds and return flows to the Little Lost River, provided the ponds or the return channels are not reconstructed to increase the subirrigation beyond the acreage traditionally subirrigated. Water shall not be diverted from ground water for the sole purpose of filling ponds or subirrigating. Surface water can only be diverted for root zone storage (presumably subirrigation) pursuant to license no. 33-02133 when all prior surface water rights are being satisfied.

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23. Water rights cannot be obtained by adverse possession if the rights are being delivered by a watermaster in a water district. Idaho Code § 42-607.

24. The Canal Co. is not entitled to ownership of water rights alleged to be owned by Sage Willow.

ORDER

IT IS HEREBY ORDERED that transfer no. 3785 is VOIDED.

IT IS FURTHER ORDERED that license no. 33-02090 and license no. 33-02091 and portions of all other rights diverted and directly applied to lands in excess of 1412 acres are FORFEITED.

IT IS FURTHER ORDERED that application for transfer nos. 4221, 4222, 4223, 4224, 4225, 4226 and 4227 are **CONDITIONALLY APPROVED** provided the applicant not irrigate more than 1,412 acres within the place of use proposed by the applications, and the applicant complies with the following:

1. A proposal must be submitted to the Department of Water Resources within 56 days of the final disposition of this dispute or after any final appeal period has run. The plan must be submitted to the protestants for review and comment. Comments must be submitted to the Department and to the applicant one month following submittal of the plan. A hearing may be requested by either party within sixty (60) days of submittal of the plan.
2. Failure to submit the plan is cause for the department to revoke its conditional approval of the application for transfer.

IT IS FURTHER ORDERED that the Department will issue another recommended decision if additional testimony is required following submittal of the plan.

DATED this 7th day of November, 1995.



GARY SPACKMAN, Hearing Officer

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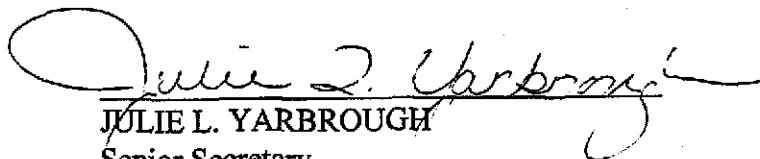
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of November, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **AMENDED RECOMMENDED ORDER** to the following:

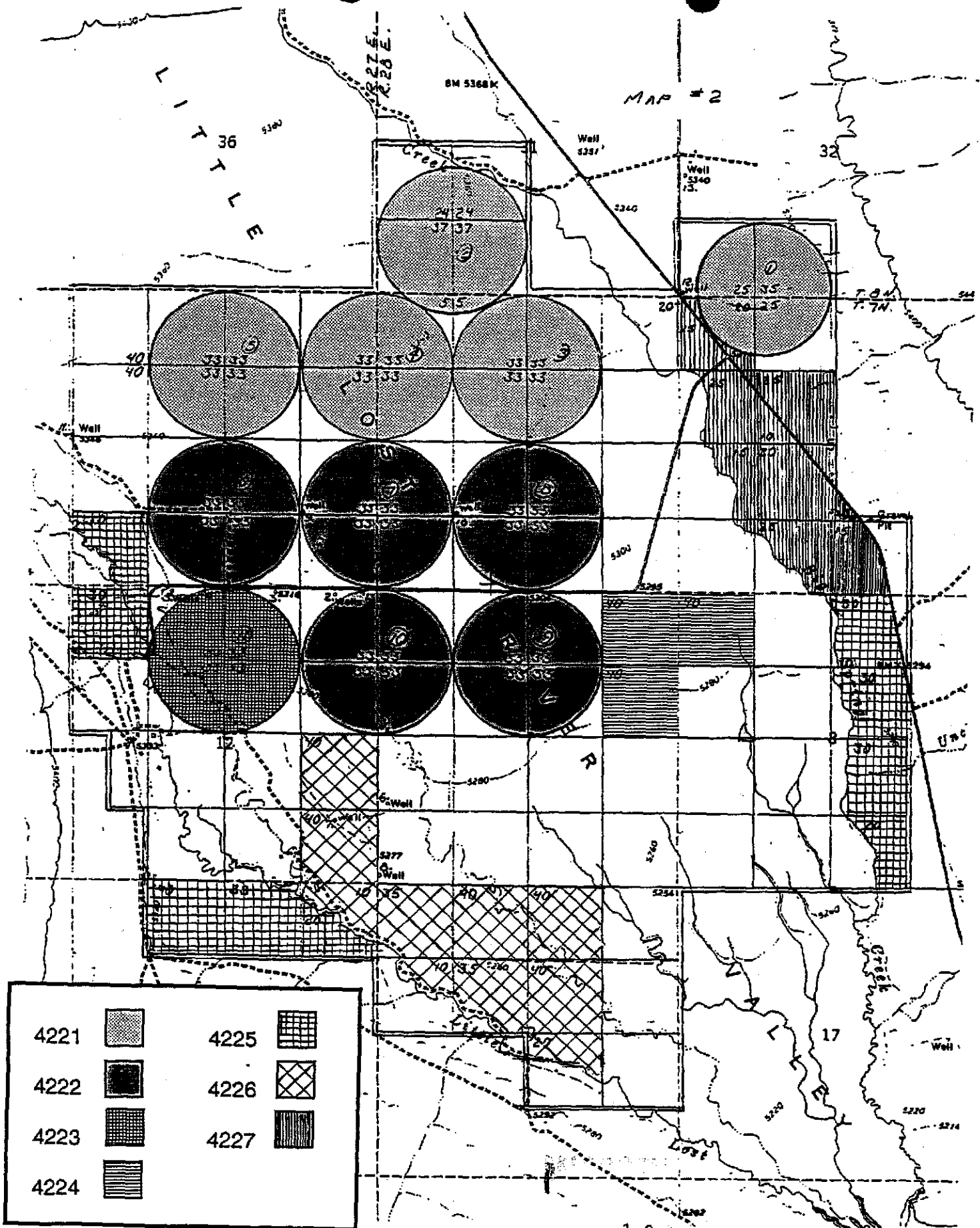
Sage Willow, Inc.
HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
GIVENS PURSLEY & HUNTLEY
P.O. Box 2720
Boise, ID 83701


JULIE L. YARBROUGH
Senior Secretary

APR 18 1996



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NOS. 4221, 4222,)
4223, 4224, 4225, 4226, AND)
4227 IN THE NAME OF)
SAGE WILLOW, INC.)
_____)

ORDER GRANTING PETITION
FOR RECONSIDERATION

On June 5, 1995, Sage Willow, Inc. filed a petition for reconsideration and a supporting brief. Rule 720.a. of the Department's Rules of Procedure states that the hearing officer must dispose of any petition for reconsideration within 21 days of its receipt or the petition will be considered denied by operation of law. This order responds to the petition for reconsideration.

Counsel for Sage Willow raises legal issues which I struggled with while preparing the recommended decision. I will discuss the issues in the following analysis section.

ANALYSIS

Resumption Use

Sage Willow's analysis of the Idaho cases which discuss resumption of use in greater detail is not convincing. Although resumption of use is mentioned in several cases, the legal theory is not used as a basis for a decision in most of them. Nevertheless, it is worth discussing how resumption of use fits into the doctrine of prior appropriation and hydrologic reality.

The recommended decision does not attempt to abrogate the resumption defense. It narrowly limits its application. If the resumption defense is liberally applied as proposed by Sage Willow,

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it will conflict with prior appropriation doctrine, it will conflict with sound hydrologic reasoning, and it will all but prevent a prior appropriator from ever contesting a resumption of use.

Where many waterusers divert water from a stream, a single junior appropriator cannot monitor all of the senior uses of water, and file specific claims to forfeited water when a five year forfeiture period has passed. Furthermore, if the water is delivered by a watermaster in a water district, Idaho law prevents ownership by adverse possession. Difficulty of monitoring is aggravated when the relationship between ground water and surface water is recognized. Not only would the junior user be required to monitor the use of surface water by senior water right holders, but would also be required to monitor all uses of ground water in the basin. Holding a water right ought to be enough.

The Department of Water Resources has been criticized in recent years for ignoring the relationship between surface water flows and tributary ground water, and for not developing regulations for the conjunctive management of related water resources. It has also been criticized for liberally issuing ground water permits without thought of the effect on other waterusers. If each isolated permit were reviewed without consideration of all other permits an expert might conclude the impact is minimal, and lawyers could argue there is no actual injury. But when the cumulative effect of all permits is considered the injury could be substantial.

Recent legal action and legislative enactments have prompted

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the Department to initiate a broad water measurement program, and to promulgate rules and regulations to deliver water rights to both surface water and ground water users who are being injured by ground water withdrawals. This may result in curtailment of some ground water diversions.

Sage Willow proposes that because there are no specific claims to the Sage Willow ground water rights, the Department should ignore the certain hydrologic relationships and ignore the cumulative effect that Sage Willow's proposed resumption, and all other resumptions (if the resumption defense is liberally applied), would have on other water users.

I recognize that no one has filed a petition for delivery call and asked for conjunctive management. The Department should not ignore hydrologic reality in approving a resumption of use, only to cause a greater delivery problem later when the rights may be conjunctively managed. The Department would be inconsistent if it recognized the resumption of use as proposed by Sage Willow. Sage Willow does not persuade me that the conclusions of law in the recommended decision regarding the resumption of use should be reconsidered.

Voiding of Transfer No. 3785

It is clear that water right no. 33-02091 was forfeited/abandoned. Failure to respond to the forfeiture question on the application for transfer form, combined with testimony at the hearing reveals that the forfeiture issue was not addressed by the applicant. The forfeiture issue was also not explored by the Department prior to approval. *[Handwritten signature]*

APR 18 1996

On the other hand, the application was properly published, giving interested parties notice regarding the proposed change. Furthermore, the transfer was approved by the Department although the conditions imply that some issues, including forfeiture, might be reviewed by the adjudication court.

I am troubled by Sage Willow's implicit allegations that because the Department assisted in the preparation of the application, that perhaps the Department should be estopped from raising the forfeiture issue. The applicant goes so far as to state that "[w]e are puzzled as to why IDWR, which has access to the records, transferred right no. 33-02091 to land, most of which was already covered by right no. 33-02090." Much of Sage Willow's discussion attempts to absolve the applicant of any responsibility for ensuring the correctness of the application, to blame the Department for its inadequacies. It is sad that the Department may need to withdraw from assisting the public to insulate itself from accusations that it was responsible for an applicant's decisions. The applicant should bear the responsibility of properly completing an application, and when signing a document, know what is being represented.

Nonetheless, the Department approved transfer no. 3785, and Sage Willow should be able to rely on the Department's decision in proceeding with the project. Perhaps there should be some application of res judicata with respect to administrative matters. Or perhaps the resumption of use doctrine should be invoked if the Department approved the transfer, and the wateruser resumed the use prior to an objection.

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I debated whether I should issue a decision regarding this issue, immediately or whether I should grant the petition for reconsideration, and notify the parties. After reviewing Rule 720.a., I conclude that if the hearing officer is willing to reconsider a decision, both parties should be apprised of the decision, and an opportunity should be given to brief the issues. I note that late on June 22, 1995, I received a brief from James Mays, and Mays Land & Livestock, which I have not fully reviewed. This issue along with one other issue will be reconsidered. A briefing schedule will follow in the order portion.

The Frew Place

I followed the findings and recommendations of Terry Scanlin regarding the place of use rather than the findings of Dr. Charles Brockway because: (1) Scanlin was attempting to define historical use, and Brockway analyzed what could be physically irrigated; and (2) Scanlin's place of use estimates were supported by Vance Hawley's testimony of historical use. Because the decision was based on an analysis of historical use, not what could be physically irrigated, and because of Hawley's supporting testimony, Scanlin's numbers were more credible. My finding of credibility does not imply that Dr. Brockway is dishonest. On the contrary, I've always found Brockway to be honest and forth right. The decision simply judges that historical use, not what can be physically irrigated, is the basis of my review.

Sage Willow rightfully points out, however, that Hawley did not testify about irrigation of the Frew place, and, without the supporting evidence, the estimate by Scanlin may not rise to the

APR 18 1996

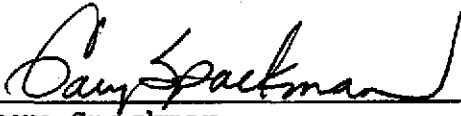
level of clear and convincing evidence justifying a reduction in acreage. This issue may also be addressed by the parties.

ORDER

IT IS HEREBY ORDERED that Sage Willow's petition for reconsideration is GRANTED with respect to the issue of whether use of water pursuant to right no. 33-2091 should be authorized because of the approval of transfer no. 3785, and whether the number of acres authorized for irrigation pursuant to rights nos. 33-02086 and 33-07018 (Frew place) was correct.

IT IS FURTHER ORDERED that any briefs, in addition to those already filed, must be filed on or prior to July 14, 1995.

Dated this 23rd day of June, 1995.



Gary Spackman
Hearing Officer

APR 18 1996

I hereby do certify that on this 23rd day of June, 1995, I mailed a true and correct copy of the foregoing ORDER GRANTING PETITION FOR RECONSIDERATION to the following.

Kris Rhodes

Kris Rhodes
Secretary

Kent Foster
PO Box 50130
330 Shoup Ave. 3rd floor
Idaho Falls ID 83405

Michael C. Creamer
Givens Pursely & Huntley
PO Box 2720
Boise ID 83701

Blaine County Canal Co
C/O Wade T Williams
HC 65 Box 1032
Howe ID 83244

Eastern Region

11222

APR 18 1996

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

IN THE MATTER OF)
APPLICATION FOR TRANSFER)
NOS 4221, 4222, 4223, 4224, 4225,)
4226 AND 4227 IN THE NAME OF)
SAGE WILLOW, INC.)
_____)

**ORDER EXTENDING TIME
FOR FILING BRIEFS ON
RECONSIDERATION**

The applicant, Sage Willow, Inc., having moved the department for an order extending the July 14, 1995 deadline for filing briefs in response to the order granting petition for reconsideration, and good cause appearing therefor;

IT IS HEREBY ORDERED that the deadline for filing briefs in response to the Order Granting Petition for Reconsideration is extended until fourteen (14) days after service by the Department of the requested transcript of the agency hearing in this matter.

DATED this 13TH day of July, 1995.

for 
GARY SPACKMAN
Hearing Officer

ORDER EXTENDING TIME FOR FILING
BRIEFS ON RECONSIDERATION - P. 1

MICROFILMED

APR 1 8 1996

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of July, 1995 I caused to be served a true and correct copy of the following described document upon the person(s) listed below by the method indicated and addressed to the following:

Document served: ORDER EXTENDING TIME FOR FILING
BRIEFS ON RECONSIDERATION

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405
Fax: (208) 523-9518

☒ U.S. Mail
☐ Hand Delivery
☐ Express Mail
☒ Facsimile

J. Evan Robertson
Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax: (208) 736-0041

☒ U.S. Mail
☐ Hand Delivery
☐ Express Mail
☒ Facsimile

Blaine County Canal Co.
HC 65, Box 1018
Howe, ID 83405

☒ U.S. Mail
☐ Hand Delivery
☐ Express Mail
☐ Facsimile

ORDER EXTENDING TIME FOR FILING
BRIEFS ON RECONSIDERATION - P. 2

RECEIVED

APR 18 1996

Michael C. Creamer
GIVENS PURSLEY & HUNTLEY
P.O. Box 2720
Boise, ID 83701
Fax: 343-9492/342-8920

☒ U.S. Mail
☐ Hand Delivery
☐ Express Mail
☒ Facsimile

Deborah Drew-Ellis
Deborah Drew-Ellis

ORDER EXTENDING TIME FOR FILING
BRIEFS ON RECONSIDERATION - P. 3

RECEIVED

APR 18 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NOS. 4221,)
4223, 4224, 4225, 4226 &)
4227 IN THE NAME OF)
SAGEWILLOW, INC.)
_____)

ORDER DENYING
PETITION TO
AMEND PROTEST

On January 18, 1995, the Blaine County Canal Company petitioned the Department to amend its protest against the Sagewillow transfer. The petition sought to add issues regarding the expansion of water and land and of forfeiture.

Blaine County Canal Company has participated as a protestant from the outset. It received copies of correspondence from the parties, and was notified of conferences conducted by the Department. As late as the prehearing conference conducted in November 1994, at which the petition for amendment filed by Mays was discussed, Blaine County Canal Company was apprised of additional issues that might be raised at the hearing. Nonetheless, the Canal Company did not move to amend its protest until less than two weeks prior to the hearing.

The Department should liberally allow the amendment of pleading, but the amendment should not be allowed when the petition is filed so close in time to the hearing that the applicant does not have reasonable time to explore the allegations of a party seeking the amendment. Furthermore, Blaine County Canal Company was not surprised by these issues, and has alleged no basis for the late filing of their petition.

IT IS HEREBY ORDERED that the petition to amend protest filed by Blaine County Canal Company is DENIED.

Dated this 27th day of January, 1995.



Gary Spackman

MICROFILMED

APR 18 1996

I hereby certify that on this 27th day of January, 1995, I mailed a true and correct copy, postage prepaid, of this order denying petition to amend protest to the following:

Sagewillow, Inc.
C/O Holden, Kidwell, Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
Givens, Pursley & Huntley
PO Box 2720
Boise, ID 83701

Kris Rhodes
Kris Rhodes

RECEIVED

APR 18 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NOS. 4221,)
4223, 4224, 4225, 4226 &)
4227 IN THE NAME OF)
SAGEWILLOW, INC.)
_____)

ORDER AMENDING
PREHEARING SCHEDULE

By motion to amend prehearing schedule, the protestants refer to a schedule for exchange of exhibits of which the hearing officer was unaware. The original deadline for the exchange of exhibits was January 16, 1995. The protestants request until January 27, 1995, to prepare and serve exhibits on all parties.

Having shown good cause for the additional delay:

IT IS HEREBY ORDERED that exhibits shall be exchanged by the various parties on or before January 27, 1995.

Dated this 23rd day of January, 1995.



Gary Spackman

RECEIVED

APR 18 1996

I hereby certify that on this 23rd day of January, 1995, I mailed a true and correct copy, postage prepaid, of this amended order to the following:

Sagewillow, Inc.
C/O Holden, Kidwell, Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
Givens, Pursley & Huntley
PO Box 2720
Boise, ID 83701

Kris Rhodes
Kris Rhodes

MICROFILMED

APR 18 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NOS. 4221,)	ORDER GRANTING PETITION
4223, 4224, 4225, 4226, &)	TO
4227 IN THE NAME OF)	AMEND PROTEST
SAGEWILLOW, INC.)	
_____)	

On December 3, 1993, James Mays and Mays Land & Livestock (Mays) protested applications for transfer filed by Sagewillow Inc. (Sagewillow). In the text of the protest, Mays identified three applications for numbered transfer, 4224, 4225 and 4226. These applications for transfer were the application numbers given to Mays' counsel when he inquired of the Department regarding the Sagewillow applications.

Mays objected to the application for transfer on the basis of material injury, expansion, increase in consumptive use, and alleged the transfers, if approved, would not be consistent with conservation of water resources in the state of Idaho.

On March 21, 1994, Mays petitioned the Department to amend his protest. The motion asked that the original protest be extended to apply to four additional applications for transfer, numbered 4221, 4222, 4223 and 4227, which were not identified as Sagewillow applications during the initial inquiry. The motion to amend the protest does not set forth additional grounds for protest. It implies that the original protest criteria will be extended and applied to the other applications for transfer if the petition is approved.

The Department did not rule immediately on the motion to amend the protest.

A letter dated March 17, 1994, written by Mike Creamer, counsel for Mays, to Ron Carlson of the Department, described in detail several legal issues which would probably be raised at the hearing, including the issue of forfeiture. The letter was carbon copied to Kent Foster, counsel for Sagewillow. Furthermore, in a letter written by Kent Foster to Harold Jones of the Department, dated March 21, 1994, Foster recognizes that forfeiture was raised as an issue by Mays.

The parties carefully briefed the issues, and I will not recite in detail from the memorandums.

The Department has a responsibility to review all of the criteria under Idaho Code § 42-222, whether the application is

APR 18 1996

protested or not. The Department is interested in all facts which relate to issues affecting the application for transfer, and should liberally accept information that pertains to these issues. The Department must also grant the applicant a chance to present its case, and fairly respond to information which the Department receives, or which will be presented at a hearing.

Rule 305 of the Rules of Procedure states that pleadings should be liberally construed, and that the pleadings may be amended. The philosophy of liberality should apply to motions to amend. Furthermore, a defect in a pleading caused partially by the Department not providing all the information requested should be correctable.

As an analogous comparison, the Department may grant intervenor status to a petitioner if the petition is filed at least 14 days prior to the date of the formal hearing or prehearing conference. Even if a protestant is prohibited from amending its protest to broaden the scope of the protest, intervention could easily be granted, and the protestant could assume a role of a full party regarding all of the applications.

I find Mays properly filed a motion to amend its protest, and the facts and the Department rules support approval of the amendment. Furthermore, the protest, the motion to amend and subsequent correspondence identified detailed factual and legal issues that might be raised at the hearing.

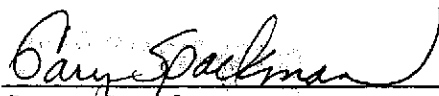
IT IS HEREBY ORDERED that Mays' motion to amend the protest GRANTED.

IT IS FURTHER ORDERED that copies of exhibits should be marked and distributed to the parties prior to the hearing. The applicant should use alpha characters to mark its exhibits; the protestants should use numbers with its name preceding the number (i.e. Mays # 1, or Canal Co. #1).

IT IS FURTHER ORDERED that if the applicant feels the lateness of this order grants insufficient time to develop its case, or feels it has been surprised by any of Mays' allegations, or is uncertain regarding the basis of Mays' protest, I will entertain a motion to continue the hearing, and extend discovery to allow Sagewillow to prepare and present its case.

IT IS FURTHER ORDERED that the hearing scheduled for January 31 and February 1, 1995, shall be held as scheduled, unless a petition is received from the applicants at least five days prior to the hearing date.

Dated this 11th day of January, 1995.



Gary Spackman

APR 18 1996

I hereby certify that on this 12th day of January, 1995, I mailed a true and correct copy, postage prepaid, of this order to the following:

Sagewillow, Inc.
C/O Holden, Kidwell, Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
Givens, Pursley & Huntley
PO Box 2720
Boise, ID 83701

Kris Rhodes
Kris Rhodes

APR 18 1995

State of Idaho
License and Certificate of Water Right

Water License No. R-833 Amount 2960 acre feet
Water District No. Priority June 22, 1949

THIS IS TO CERTIFY that L. R. HAWLEY
of Howe, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated June 22, 1949; that Permit No. R-833
was issued under said application; that Certificate of Completion of works, with a storage capacity of
2960 acre feet, was issued thereunder on May 5, 1954, showing that said works
were completed on the 28th day of July, 1951; and that on the 28th
day of July, 1951,

L. R. HAWLEY
of Howe, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of Little Lost River &
Upper Spring Creek, for the purpose of Soil Root Zone Storage only
, under Use Permit No. R-833 of the Department of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume
9 of Licenses at page 5258, on the 5th day of May, 1954;

The right hereby confirmed dates from June 22, 1949;
from Upper Spring Creek
The Point of Diversion is located in the NE 1/4 SW 1/4 Section 5, Twp. 7 N., Rge. 28 E., B.M. and from
Little Lost River in the NW 1/4 NW 1/4 Section 12, Twp. 7 N., Range 27 E., B.M.
in the 1/4 1/4 Sec. , Tp. , R. , B. M. County Butte

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall

not exceed 2960 acre feet per annum, equally divided between Upper Spring Creek
and Little Lost River.
Description and location of:

Twp.	Range	Section	Forty-Acre Tract	No. Acres described in Permit	No. Acres Actually Irrigated
7 N.	28 E.	5	SE 1/4 SW 1/4	40	40
			SW 1/4 SE 1/4	40	--
		7	NE 1/4 NE 1/4	40	--
			NW 1/4 NE 1/4	40	--
			SW 1/4 NE 1/4	40	40
			SE 1/4 NE 1/4	40	40
			NE 1/4 NW 1/4	40	--
			NW 1/4 NW 1/4	40	--
			SW 1/4 NW 1/4	40	40
			SE 1/4 NW 1/4	40	40
			NE 1/4 SW 1/4	40	40
			NW 1/4 SW 1/4	40	40
			SW 1/4 SW 1/4	40	40
			SE 1/4 SW 1/4	40	40
			NE 1/4 SE 1/4	40	40
			NW 1/4 SE 1/4	40	40
			SW 1/4 SE 1/4	40	40
			SE 1/4 SE 1/4	40	40
		8	W 1/2 NE 1/4	80	--
			NE 1/4 NW 1/4	40	40
			S 1/2 NW 1/4	80	80
			SW 1/4	160	160
		17	W 1/2 SE 1/4	80	80
			SW 1/4 SW 1/4	40	40
		18	S 1/2 NE 1/4	80	80
			SE 1/4 NW 1/4	40	40
7 N.	27 E.	12	N 1/2 SE 1/4	80	80
			N 1/2 NE 1/4	80	--
			S 1/2 NE 1/4	80	80
			NE 1/4 NW 1/4	40	--
			SE 1/4 NW 1/4	40	40
			NE 1/4 SW 1/4	40	30
			SE 1/4 SW 1/4	40	--
			N 1/2 SE 1/4	80	80
			SW 1/4 SE 1/4	40	30
			SE 1/4 SE 1/4	40	40

The right hereby confirmed dates from June 22
from Upper Spring Creek

, 1949 ;

The Point of Diversion is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, Twp. 7 N., Rge. 28 E., B.M. and from
Little Lost River in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, Twp. 7 N., Range 27 E., B.M.
in the $\frac{1}{4}$ $\frac{1}{4}$, Sec. , Tp. , R. , B. M. County Butte

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall

not exceed 2960 acre ~~sub~~ feet per ~~second~~ annum, equally divided between Upper Spring Creek
and Little Lost River.

Description and location of

Twp.	Range	Section	Forty-Acre Tract	No. Acres described in Permit	No. Acres Actually Irrigated
7 N.	28 E.	5	SE $\frac{1}{4}$ SW $\frac{1}{4}$	40	40
			SW $\frac{1}{4}$ SE $\frac{1}{4}$	40	--
		7	NE $\frac{1}{4}$ NE $\frac{1}{4}$	40	--
			NW $\frac{1}{4}$ NE $\frac{1}{4}$	40	--
			SW $\frac{1}{4}$ NE $\frac{1}{4}$	40	40
			SE $\frac{1}{4}$ NE $\frac{1}{4}$	40	40
			NE $\frac{1}{4}$ NW $\frac{1}{4}$	40	--
			NW $\frac{1}{4}$ NW $\frac{1}{4}$	40	--
			SW $\frac{1}{4}$ NW $\frac{1}{4}$	40	40
			SE $\frac{1}{4}$ NW $\frac{1}{4}$	40	40
			NE $\frac{1}{4}$ SW $\frac{1}{4}$	40	40
			NW $\frac{1}{4}$ SW $\frac{1}{4}$	40	40
			SW $\frac{1}{4}$ SW $\frac{1}{4}$	40	40
			SE $\frac{1}{4}$ SW $\frac{1}{4}$	40	40
			NE $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
			NW $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
			SW $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
			SE $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
		8	W $\frac{1}{2}$ NE $\frac{1}{2}$	80	--
			NE $\frac{1}{2}$ NW $\frac{1}{2}$	40	40
			S $\frac{1}{2}$ NW $\frac{1}{2}$	80	80
			SW $\frac{1}{2}$	160	160
		17	W $\frac{1}{2}$ SE $\frac{1}{2}$	80	80
			SW $\frac{1}{2}$ SW $\frac{1}{2}$	40	40
		18	S $\frac{1}{2}$ NE $\frac{1}{2}$	80	80
			SE $\frac{1}{2}$ NW $\frac{1}{2}$	40	40
7 N.	27 E.	12	N $\frac{1}{2}$ SE $\frac{1}{2}$	80	80
			N $\frac{1}{2}$ NE $\frac{1}{2}$	80	--
			S $\frac{1}{2}$ NE $\frac{1}{2}$	80	80
			NE $\frac{1}{2}$ NW $\frac{1}{2}$	40	--
			SE $\frac{1}{2}$ NW $\frac{1}{2}$	40	40
			NE $\frac{1}{2}$ SW $\frac{1}{2}$	40	30
			SE $\frac{1}{2}$ SW $\frac{1}{2}$	40	--
			N $\frac{1}{2}$ SE $\frac{1}{2}$	80	80
			SW $\frac{1}{2}$ SE $\frac{1}{2}$	40	30
			SE $\frac{1}{2}$ SE $\frac{1}{2}$	40	40
		13	NE $\frac{1}{2}$ NE $\frac{1}{2}$	40	20
			NW $\frac{1}{2}$ NE $\frac{1}{2}$	40	--
			NE $\frac{1}{2}$ NW $\frac{1}{2}$	40	--
			SW $\frac{1}{2}$ NE $\frac{1}{2}$	40	--
8 N.	27 E.	34	SE $\frac{1}{2}$ NW $\frac{1}{2}$	40	--
			SW $\frac{1}{2}$	160	--
			W $\frac{1}{2}$ SE $\frac{1}{2}$	80	--
			N $\frac{1}{2}$ NE $\frac{1}{2}$	40	--
7 N.	28 E.	20	N $\frac{1}{2}$ NW $\frac{1}{2}$	80	--

Number of Acres Actually Irrigated

1480

2133

River &
age only

from

k

--	--	--	--	--	--

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this
5th day of May, 19 54 .

MARK R. KULP

State Reclamation Engineer.

(SEAL)

State of Idaho

License and Certificate of Water Right

Water License No. G-22456

Amount 1.04 second feet

Water District No. _____

Priority November 6, 1951

THIS IS TO CERTIFY that D. H. CRANK
 of Letha, Idaho, made application for a permit to appropriate the
 public waters of the State of Idaho, dated November 6, 1951; that Permit No. G-22456
 was issued under said application; that Certificate of Completion of works, with a carrying capacity of
 1.04 second feet, was issued thereunder on May 5, 1954, showing that said works
 were completed on the 20th day of November, 1953; and that on the 20th
 day of November, 1953,

D. H. CRANK
 of Emmett, State of Idaho, made proof to the satisfaction of the
 State Reclamation Engineer of Idaho, of the right to use the waters of two wells
~~as tributary of~~ (subterranean flow), for the purpose of irrigation and domestic
 use, under Use Permit No. G-22456 of the Department of Reclamation
 and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
 and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume

9 of Licenses at page 5257, on the 5th day of May, 1954;

The right hereby confirmed dates from November 6, 1951;
 are

The Points of Diversion located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 31, Twp. 7 N., Rge. 2 W.B.M. and
 in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 6, Tp. 6 N., R. 2 W., B. M. Gem County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
 aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
 not exceed 0.88 cubic feet per second from the well in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, and
 0.16 cubic feet per second from the well in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 6.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
6 N.	2 W	6	NE $\frac{1}{4}$ NE $\frac{1}{4}$	12	13
			SE $\frac{1}{4}$ NE $\frac{1}{4}$	30	8
7 N.	2 W	31	SE $\frac{1}{4}$ SE $\frac{1}{4}$	10	35
Number of Acres Actually Irrigated -				-	56

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place
 of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this

5th day of May, 1954.

MARK R. KULP

State Reclamation Engineer.

(SEAL)

APPLICATION FOR PERMIT

To Construct a Reservoir and Store and Appropriate
The Public Waters of the State of Idaho

22- 2133

Application No. R 28799
Permit No. R 833

1. Name of Applicant: **L. R. HAWLEY**

Postoffice address: **Howe**

County **Butte**

State

Idaho

I. If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of Capital Stock: \$

(c) Amount paid in: \$

(d) Names and addresses of directors:

II. The financial resources of the corporation are:

(a) Cash on hand: \$

(b) Treasury Stock: \$

(c) Bonds to be issued: \$

(d) Other resources:

2. Quantity of water to be stored: **Soil Root Zone Storage only of 4640** acre feet per annum.
Upper Spring Creek

3. Source of water supply is **Little Lost River & Unear** (River) (Spring), a tributary of **Little Lost River** River.
reservoir, ground storage during winter months on lands described as place of use.

4. The outlet of the proposed reservoir is located **No /** feet, distant from the corner of Section , Township ,
(bearing)

Range , B. M. and is in the $\frac{1}{4}$ of $\frac{1}{4}$ of Section , Township , Range , B. M. County of

5. Fill out either (a) or (b).

(a) The reservoir is located in the channel of (Creek) (River).
Water is to be diverted from Spring Creek, with point of diversion in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 5,

(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located feet distant from
Twp. 7 N., Range 28 E., B.M. (bearing)

the corner of Section , Township , Range , B. M. and is in the $\frac{1}{4}$ of $\frac{1}{4}$ of
Diversions from Little Lost River, in NE $\frac{1}{4}$ Section 27, Twp. 8 N., Range 27 E., B. M., and

Section , Township , Range , B. M.; width at bottom feet, width at top
NE $\frac{1}{4}$ Section 2, Twp. 7 N., Range 27 E., B.M.

feet, depth of water feet; average grade per mile feet; Capacity cubic feet per second.
Width at bottom- 4 ft. Width at top 10 ft. Depth of water 2 ft.

6. (a) The area of the high water line of the reservoir is **No reservoir** acres.
Soil root zone storage

(b) The reservoir/capacity is **2 acre feet per acre, or 4640 acre feet.** acre feet.

7. Height of reservoir dam **No dam** feet, length at top feet, length at bottom feet, size of outlet feet

by feet. The dam is to be constructed of materials as follows:

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without commingling with natural flow of

(Creek) (River) ?

(b) Water stored in reservoir will be carried in the channel of (Creek,) (River,) a distance

of miles to point of diversion located (bearing) feet, distant from the corner of Section

Township , Range , B. M., and in the $\frac{1}{4}$ of $\frac{1}{4}$ of Section , Township , Range

B. M.

9. Amount of water claimed from **No other water rights** (Creek) (River) (Spring) in addition to that
stored in reservoir cubic feet per second.

10. Water is to be used for **Ground storage, during winter months, for winter irrigation.** purposes.

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

(a) Point of use of water (bearing) feet, distant from Corner of Section , Township , Range

B. M. and is in the $\frac{1}{4}$ of $\frac{1}{4}$ of Section , Township , Range , B. M.

(b) Amount of power generated: H. P., under feet head.

(c) Water is to be returned to (Creek) (River) (Spring) at a point (bearing) feet

distant from the corner of Section , Township , Range , B. M., in

the $\frac{1}{4}$ of $\frac{1}{4}$ of Section , Township , Range B. M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed under the terms of Permit No.

, which is hereby referred to and made a part hereof.

13. Kind of diversion works: **Dams, headgates and ditches**

(Dam, canal, flume, pipe, etc.)

14. Height of diversion dam: feet, length at top feet, length at bottom feet. The dam is to be constructed of materials as follows:

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

15. Size of headgate: Width feet, Height feet.

16. Diversion Canal: Width at bottom feet, width at water line feet, depth of water feet, Dimensions of Flume
Diameter of Pipe inches; Length of Conduit miles. Average grade per mile feet.

17. Estimated cost of Works: Storage Works: \$ Diversion Works: \$

18. Time required for completion of work **Five (5)** years.

19. Time required for complete application of water to proposed beneficial use is **Six (6)** years.

20. The land to be irrigated is described in the following tabulation:

(Give Irrigable acreage in each 40-acre subdivision.)

Twp.	Range	Sec.	NE ¹ / ₄				NW ¹ / ₄				SW ¹ / ₄				SE ¹ / ₄				Totals
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
7 N.	28 E.	5																	80
		7	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640
		8		40	40		40		40	40	40	40	40	40		40	40		440
		17											40						40
		18				40	40			40					40	40			200
7 N.	27 E.	12	40	40	40	40	40			40				40	40	40	40	480	
		13	40	40			40											120	
8 N.	27 E.	34				40				40	40	40	40		40	40		320	
7 N.	28 E.	20		40			40	40										120	

Total Number of Acres to be Irrigated **2,440**

Remarks:

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and store and appropriate the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

L. R. HAWLEY Applicant.

By Agent.

Date of first receipt at office of ~~Commissioner of Reclamation~~ State Reclamation Engineer: 9:00 A. M. June 22, 1949

Returned to applicant for correction

Corrected application received

STATE RECLAMATION ENGINEER
APPROVAL OF ~~COMMISSIONER OF RECLAMATION~~

The number of this permit is R **833**

Recorded in book R **3** , page **833** Approved **July 15, 1949**

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

Bond in the sum of \$, to be filed on or before

Work to begin on or before **September 15, 1949** and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One fifth of the work above specified to be completed on or before **January 15, 1952**

The whole of said work to be completed on or before **July 15, 1954**

Beneficial use of water stored in accordance herewith, to be made on or before **July 15, 1960**

Witness my hand this **15th** day of **July**

. 19 **49** MARK R. KULP

~~Commissioner of Reclamation~~
State Reclamation Engineer

IN TESTIMONY WHEREOF, We, C. A. ROBINS, Governor of the State of Idaho, and J. D. "CY" PRICE, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 15th day of July, 1949.

(S E A L)

Countersigned:
By J. D. "CY" PRICE
Secretary of State

STATE OF IDAHO
By C. A. ROBINS
Governor

Permit No. R-833
CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that L. R. HAWLEY of Howe, County of Butte and State of Idaho, the holder of Permit No. R-833 issued upon Application No. R-28799, bearing date of priority of June 22, 1949 authorizing the construction of a reservoir, with the right to appropriate and store 4640 acre feet per annum of the waters of Little Lost River and Upper Spring Creek (Soil Root Zone Storage only) in the County of Butte State of Idaho, for irrigation purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works set out and described in said Permit; that said works include a dam and reservoir adequate for the storage of 2960 acre feet of water per annum, with adequate diversion works and conduit to the reservoir, and a conduit capable of conducting said water to the place of intended use; that the points of diversion to said reservoir are located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 7 N., Range 28 E, B.M. from Spring Creek, and NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12, Twp. 7 N., Rge. 27 E., B.M., from Little Lost River, and that the place of use, or the lands proposed to be irrigated by the use of said water, are described as follows, to-wit:
SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All Section 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17; S $\frac{1}{2}$ NE $\frac{1}{2}$, SE NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; All in Twp. 7 N, Range 28 E., B.M. NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13; All in twp. 7 N., Range 27 E., B.M.

Witness my hand this 5th day of May, 1954

MARK R. KULP
State Reclamation Engineer

Proof of completion of works made July 28, 1951
Certificate of Completion of Works issued May 5, 1954

APPLICATION FOR AMENDMENT
TO PERMIT TO APPROPRIATE THE PUBLIC WATERS
OF THE STATE OF IDAHO, NO. R-833

Comes now L. R. Hawley and represents to the State Reclamation Engineer of the State of Idaho:
That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho, No. R-833
That the point of diversion from Spring Creek is described in said Permit as being located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 5, Township 7 North, Range 28 East B.M.
That he now requests that the point of diversion from Spring Creek be changed to a point located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, Township 7 North, Range 28 East B.M.
That the points of diversion from Little Lost River are described in said Permit as being located one in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27, Township 8 North, Range 27 East B.M. and the other in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2, Township 7 North, Range 27 East B.M.
That he now requests that the point of diversion from Little Lost River be change to a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, Township 7 North, Range 27 East B.M.
That his reasons for desiring to make such change are as follows: I could not reach all the ground from the old diversions.

That no one will be injured by such change, and that such change will be made at Permit Holder's own risk.
Signed at Howe, Idaho, this 26 day of April, 1954.

L. R. HAWLEY

Date of receipt at Department of Reclamation May 4, 1954.

APPROVAL OF STATE RECLAMATION ENGINEER

I, Mark R. Kulp, State Reclamation Engineer of the State of Idaho, hereby approve the above and foregoing application for amendment to Permit to appropriate the Public Waters of the State of Idaho, No. R-833. This approval constitutes a new permit and is issued as an amendment to the original permit, to which it refers and of which it becomes a part, and said application is approved only insofar as the rights of others will not be adversely affected thereby.

MARK R. KULP
State Reclamation Engineer

LICENSE ISSUED FOR 2960 A.C.F.
Pg 5258

MEMORANDUM

TO: FILE 33-02133A,B,C

FROM: PAM SKAGGS ^{PS}

RE: TRANSFER #4224, 4225, 4226

DATE: 11-05-93

=====

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 33-00069A,B+C.

MICROFILMED

APR 18 1996

May 16, 1962

Re: L. R. Hawley

Don C. Archibald, Ass't. Vice Pres.
Utah Mortgage Loan Corporation
357 "F" Street
Idaho Falls, Idaho

Dear Mr. Archibald:

April 12th we sent you abstracts of water rights in the name of L. R. Hawley.

We find errors in the second paragraph of the letter in the storage water right, winter irrigation, which should have been as follows:

License No. R-833 was issued to L. R. Hawley for 2960 acre feet of water to irrigate 1480 acres in SE1/4SW1, Sec. 5; S1/2NE1, S1/2NW1, S1/2, Sec. 7; SW1NE1, NE1/4NW1, S1/2NW1, SW1, W1/2SE1, Sec. 8; SW1SW1, Sec. 17; S1/2NE1, SE1/4SW1, NE1/4SE1, Sec. 18, all in T. 7 N., R. 28 E.; S1/2NE1, SE1/4NW1, NE1/4SW1, SE1, Sec. 12; NE1/4NE1, Sec. 13, T. 7 N., R. 27 E. Water to be diverted equally from Upper Springs Creek and Little Lost River. The engineer's report shows that other lands were being irrigated, however they were not included in the permit so were excluded from the Water License.

Very truly yours,

GEO. M. CARTER
State Reclamation Engineer

By:

RALPH W. THOMAS, Deputy
State Reclamation Engineer

RT:ew

R-833

May 15, 1962

Re: License No. 21362
Permit No. R-833 - L. R. Hawley

833

Don C. Archibald, Ass't. Vice-Pres.
Utah Mortgage Loan Corporation
357 "F" Street
Idaho Falls, Idaho

Dear Mr. Archibald:

Enclosed is departmental receipt No. 31056,
in the amount of \$2.75, covering fees for the abstracts mailed to
you on April 12th on the above numbered permits.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer

By:

(Mrs.) Edna P. Rule
Chief Clerk

EPR:ew

Enc. receipt

R-833

See letter in file from C. A. Bottolfsen,
in regard to suggested protest (not filed)
of John J. Dietrich and Henry Stauffer.

Also letter from T. B. Murray, Director Fish
& Game Department, in re protest.

No formal protests filed.

R-833

Sept -

34
40

1440

Both P Ds are
wrong.

Permit says 2 acre feet
per acre.

$$\begin{array}{r} 2\frac{1}{2} \\ 50 \\ \hline 11.00 \end{array}$$

11 30''

divide water
equally
between
streams.

If held to
2 acre feet per
acre
Amt would be

2960 af.

P. 833

April 12, 1962

RE: L. R. Hawley

Don C. Archibald, Assistant Vice President
Utah Mortgage Loan Corporation
357 "F" Street
Idaho Falls, Idaho

Dear Mr. Archibald:

Enclosed are eight sheets, abstract of decreed water rights from Little Lost River and tributaries. You will note that there have been a number of transfers of water right where the decreed amount of water is enclosed () and balance is shown, if any, to the land where the water was originally decreed. The rights you are interested in probably start on page 6.

Permit No. R-833 was issued to L. R. Hawley for 1480 acre-feet of soil root zone storage in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5; SE $\frac{1}{4}$, S $\frac{1}{2}$, Sec. 7; W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17; S $\frac{1}{2}$ N $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 18, T. 7 N., R. 26 E., B.M.; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 12; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 13, T. 7 N., R. 27 E., B.M. from Upper Springs Creek and Little Lost River.

License No. 21362 was issued to Lawrence R. Hawley for 24.0 c.f.s. priority February 1, 1950, from wells in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 12; SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 7, T. 7 N., R. 27 E., B.M. to irrigate 1483 acres in S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 1; NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 12; NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 13, T. 7 N., R. 27 E., B.M.; N $\frac{1}{2}$, Sec. 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17; W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 18; T. 7 N., R. 28 E., B.M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 34, T. 8 N., R. 27 E., B.M.

License No. G-27052 was issued to Lawrence R. Hawley for 5.0 c.f.s., priority August 23, 1957 from the same wells to the same lands as License No. 21362.

Fees for the abstract sheets and above rights total \$2.75 which you may remit to this office.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer
By

Ralph W. Thomas
Deputy State Reclamation Engineer

RWT:mr
Enc. abstract

R-833



ESTABLISHED 1892

RECEIVED

APR 11 1962

UTAH MORTGAGE LOAN CORPORATION

Department of Reclamation

357 "F" STREET

IDAHO FALLS, OFFICE

PHONE JA 2-8954

IDAHO FALLS, IDAHO

April 10, 1962

Department of Reclamation
State of Idaho
State House
Boise, Idaho

Gentlemen:

RE: L. R. Hawley

During the past several years eight different wells have been drilled on the property described on the attached sheet. We assume most, if not all of these wells are under one filing but need verification from your office before proceeding further.

Will you please provide this office with all information you have regarding the water filings, whether underground or surface, that you show decreed to this property. Thank you for your assistance in this matter.

Very truly yours,

UTAH MORTGAGE LOAN CORPORATION

Don C. Archibald

Don C. Archibald
Assistant Vice President

DCA: jw

IN REPLYING REFER TO
NO. L. R. Hawley

R-833

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. R-833

REPORT ON PROOF OF Completion of Works and Beneficial Use

L. R. HAWLEY, Howe, Idaho

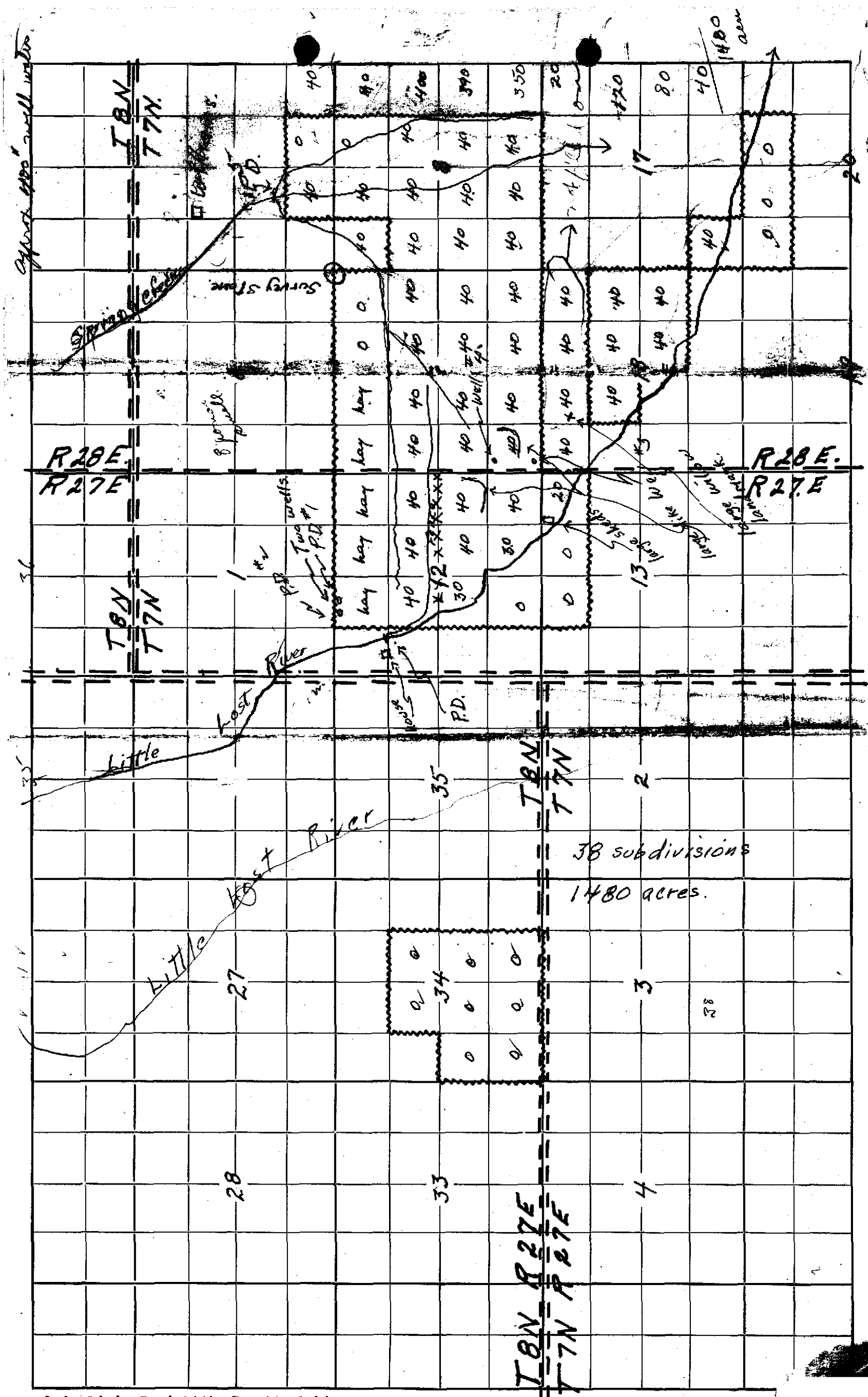
2960 ac-ft. divided equally
between Little Lost & Spr Creek
canal

app. 4640 a. f.

1480 acres

38-40's

R-833



Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. R-833This proof is for Completion of works and Beneficial use In Water District No. 9

1. Name of applicant L. R. Hawley, Howe, Idaho
2. Source of water supply: Little Lost River & Upper Spring Creek
from Spring Creek E., B.M.; from Little Lost River
3. Location of point of diversion/ Is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 5, T. 7 N., R. 28 E. of ~~Section~~ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 27,
T. 8 N., R. 27 E., B.M., and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 2, T. 7 N., R. 27 E., B.M.
T. 8 N., R. 27 E., B.M., and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 2, T. 7 N., R. 27 E., B.M.
County of Butte.

4. Describe works as they exist, giving dimensions and capacities of same: The diversion dam located in
the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 5, T. 7 N., R. 28 E. is a concrete headgate with 10" thick walls. The main
opening is 10' wide. Wing walls extend onto bank on each side and then support walls parallel
the stream. There is a concrete floor in the headgate opening. The dam height is approx. 4'
above the stream bed. This dam was built when Nolans owned the ranch. There is a large ditch
or canal leading from each side. The one carrying the flood water under this permit takes
out upstream approx. 30 ft. from the dam into a canal 6' wide at the bottom and extends to
the So. and W. Diversion No. 8 in the farm yard in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12, T. 7 N., R. 27 E. is a new
concrete structure. There is a 10' headgate to the East and a 12' headgate to the So. which
is down the main branch of the stream. East is approx. 5' high and each has a concrete
floor 16' long. Side walls are also 16' long. Short wing wall extends out to the banks. The
water control is through use of 2" planks placed in headgates.

5. Water is used for: Ground storage during winter months for winter irrigation

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, ~~SE~~ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8;
SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20;
All in Township 7 North, Range 28 East, B. M.
NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13;
All in Township 7 North, Range 27 East, B. M.
SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34;
Township 8 North, Range 27 East, B. M.

See Map

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? No river, flows into Little
Lost River sinks.
Remarks: The lands were too wet on this date for satisfactory inspection and a return for
a closer check of the land acreage will be made in July. Mr. Hawley is well pleased with
the improvement in grass and the increase in flowing of springs below the place that he
feels is due to the winter spreading program.

There are 8 small ponds to aid in holding and distribution.

This examination was made on the 20th day of May, 19 52(Signed) E. M. Humphrey

Examiner.

Completed the check up on Aug 15-52

R-833

Diversion in farm yard
 10' headgate to East
 12' " " South
 5' high
 concrete floor in each
 16' long
 taken 2" plank

L. E. HARTLEY
 Butte, Idaho
 Permit No. E-833

Examination for Completion of Works
 and Beneficial Use

County	Butte
7 N, 27 E, 28 E	
8 N, 27 E	

Q = 4.640 acre feet 925
 in soil root zone.
 1 wing

S, Little Lost Cr. &
 Upper Spring Cr.

P.D. = SW NW 55, 7N, 28 E
 NE SE 52, 8N, 27 E
 NE SE 52, 7N, 27 E

Cont = 2 acre ft for a.
 1 wing

Priority = Jan 22, 49
 Compl. due July 15-54
 B. V. due July 15-60

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

Concrete Headgate
 10" walls. approx. 10' long
 Headgate on East
 canal 4' w. in bottom
 spills onto a cement floor.
 Built when Nolan owned
 ranch. Wing well parallel
 to stream on each side
 h. approx 4'
 ditch on West carries
 water under this permit
 takes but stream approx
 30' for dam. Canal in 6' w.
 in bottom

185' =
 128' =

May 12, 1954

RE: Permit No. R-833

Mr. L. R. Hawley
Howe
Idaho

Dear Mr. Hawley:

We return your application for amendment to the point of diversion in Permit No. R-833, which has been approved by the State Reclamation Engineer and recorded in this department.

We also enclose Certificate of Completion of Works and License and Certificate of Water Right issued under said Permit for the storage of 2960 acre feet of water from Little Lost River and Upper Spring Creek, for the purpose of Soil Root Zone Storage only, with point of diversion from Upper Spring Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, Township 7 North, Range 28 East B.M. and from Little Lost River in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, Township 7 North, Range 27 East B.M., with water to be used on 1480 acres as described in Township 7 North Range 28 East B.M. Township 7 North, Range 27 East B.M. and ~~28~~North Range 27 East B.M.

We also enclose departmental receipt No. 26646 for the \$81.00 paid in connection with completion of works and beneficial use proofs.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll
Enc.

R-833

P9 Spg Creek SW NW S - S -
77.288 -

Little Lark - N E S E Sec. 27
87 - 27 E a

N E S E Sec. 2 -

77 - 27 E - R-833



LEN JORDAN
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, RECLAMATION ENGINEER

BOISE

December 10, 1953

RE: Permit No. R-833

Mr. L. R. Hawley
Howe
Idaho

Dear Mr. Hawley:

We now have on file the report of our field engineer on examination for completion of works and beneficial use on your Permit No. R-833, for the storage of water from Little Lost River and upper Spring Creek. This report shows that the points of diversion are actually located differently than as shown in your application and permit.

The permit shows the point of diversion from Spring Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 5, Township 7 North, Range 28 East, B.M., whereas it is actually in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section.

The permit also shows the points of diversion from Little Lost River in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27, Township 8 North, Range 27 East, B.M., and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2, Township 7 North, Range 27 East, B.M., whereas the actual point of diversion from Little Lost River is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, Township 7 North, Range 27 East, B.M.

We enclose an application for amendment to the point of diversion which should be executed by you and returned to this department for approval and record. When this has been done, Certificate of Completion of Works and License can be issued for 2,960 acre feet of water, divided equally between Little Lost River and Upper Spring Creek.

The Certificate of Completion of Works fee amounts to \$5.00, and the License fee will amount to \$76.00, being at the rate of \$2.00 for each 40 acre subdivision in which the water has been used.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Jeannie L. Anderson
Chief Clerk

Dear Sirs

A:fg
Enc.

*This mail had been misplaced. I hope
being late hasn't done any harm*
R-833 L.R. Hawley

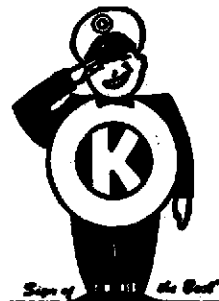
O.K. Rubber Welders

HOLLIS' O. K.
TIRE SHOP



Complete **TIRE** Service

MONTPELIER, IDAHO



RECAPS

*

REPAIRS

*

NEW

*

USED

*

Coast to Coast

Little Lost river winter water Diversion

on the south east corner of Northwest quarter
of the northwest quarter of section twelve of
township 7 N., range 27 E. B. M.

Spring Creek winter water diversion

530 ft east of the northeast corner of the South
west quarter of the southwest quarter of
section 5 of township 7 N Range 28 E. B. M.
and 200 ft. north of the north side of the
south west quarter of the southwest quarter
of section 5 of township 7 N Range 28 E. B. M.

L833.

Address all communications to
L.R. Hawley
 P. O. *Howe Idaho*

APPLICATION FOR PERMIT

To Construct a Reservoir and Store and Appropriate
 The Public Waters of the State of Idaho

Application No. R. *28799*

Permit No. R. *833*

1. Name of Applicant: *L.R. Hawley,*
 Postoffice address: *Howe,* County *Butte,* State *Idaho.*

I. If applicant is a corporation, give:

- (a) Date and place of incorporation: _____
 (b) Amount of Capital Stock: \$ _____
 (c) Amount paid in: \$ _____
 (d) Names and addresses of directors: _____

II. The financial resources of the corporation are:

- (a) Cash on hand: \$ _____
 (b) Treasury Stock: \$ _____
 (c) Bonds to be issued: \$ _____
 (d) Other resources: _____

2. Quantity of water to be stored: *Ground Storage only, 4640* acre feet per annum
Upper Spring Creek,
 3. Source of water supply is *Little Lost River, and* (Creek) (River) (Spring), a tributary
 of *Little Lost River,* Riv *Soil root zone storage,*
 4. *No Reservoir, Ground storage during winter months, on lands described*
 The outlet of the proposed reservoir is located _____ feet, distant from the _____
 as place of use. (bearing) _____
 corner of Section _____, Township _____, Range _____, B. M., and is in the _____ 1/4 of _____ 1/4
 of Section _____, Township _____, Range _____, B. M. County of _____

5. Fill out either (a) or (b).

- (a) The reservoir is located in the channel of *No Reservoir,* (Creek) (River).
 (b) *Water to be diverted from Spring Creek, point of diversion*
 The reservoir is to be filled through a feeder canal, the point of diversion for which is located _____ (bearing) _____
 in the *SW 1/4 NW 1/4* _____ of Section *5*, Township *7.N.*, Range *28.E.*

Diversions from Little Lost River, in the NE 1/4 SE 1/4 Section 27, T.8.N.
R.27.E. B. M., and is in the *NE 1/4 of SE 1/4 of Section 2*, Township *7.N.*, Range *27.E.* B. M.;
 width at bottom *4* feet, width at top *10* feet, depth of water *2* feet; average grade
 per mile _____ feet; Capacity _____ cubic feet per second.

6. (a) The area of the high water line of the reservoir is *No Reservoir,* _____ acres.
 (b) The reservoir *Soil root zone storage,* *4640* Acre Feet
 capacity is *is two acre feet per acre, or* _____ acre feet.
 7 Height of reservoir dam *No Dam* feet, length at top _____ feet, length at bottom _____ feet, size of
 outlet _____ feet by _____ feet. The dam is to be constructed of materials as follows: _____

(If height of dam will exceed 10 feet or capacity of reservoir will exceed 100 acre feet, plans must be approved
 by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without com-
 mingling with natural flow of _____ (Creek) (River)? _____

(b) Water stored in reservoir will be carried in the channel of..... (Creek.) (River,) a distance of..... miles to point of diversion located.....,.....feet, distant (bearing) from the.....corner of Section.....Township....., Range....., B. M., and in the..... $\frac{1}{4}$ of..... $\frac{1}{4}$ of Section....., Township....., Range..... B. M.

9. Amount of water claimed from..... (Creek) (River) (Spring) in addition to that stored in reservoir..... No other water rights,..... cubic feet per second. for winter irrigation

10. Water is to be used for Ground storage, during winter months, 7..... purposes.

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

(a) Point of use of water.....feet, distant from..... Corner of Section..... (bearing) Township....., Range..... B. M. and is in the..... $\frac{1}{4}$ of..... $\frac{1}{4}$ of Section....., Township....., Range....., B. M.

(b) Amount of power generated:..... H. P., under.....feet head.

(c) Water is to be returned to..... (Creek) (River) (Spring) at a point.....feet distant from the.....corner of Section....., Township....., Range..... (bearing)....., B. M., in the..... $\frac{1}{4}$ of..... $\frac{1}{4}$ of Section....., Township....., Range....., B. M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed under the terms of Permit No....., which is hereby referred to and made a part hereof.

13. Kind of diversion works: Dams, Headgates and ditches,..... (Dam, canal, flume, pipe, etc.)

14. Height of diversion dam:.....feet, length at top.....feet, length at bottom.....feet. The dam is to be constructed of materials as follows:.....

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

15. Size of headgate: Width....., feet, Height.....feet.

16. Diversion Canal: Width at bottom.....feet, width at water line.....feet, depth of water.....feet, Dimensions of Flume..... Diameter of Pipe.....inches; Length of Conduit.....miles. Average grade per mile.....feet.

17. Estimated cost of Works: Storage Works: \$..... Diversion Works: \$.....

18. Time required for completion of work.....years.

19. Time required for complete application of water to proposed beneficial use is..... 5.....years.

20. The land to be irrigated is described in the following tabulation:

6

(Give Irrigable acreage in each 40-acre subdivision.)

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
7.N.	28.E.	5											40				40		80
		7	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640
		8		40	40		40		40	40	40	40	40			40	40		440
		17											40						40
		18			40	40				40					40	40			200
7.N.	27.E.	12	40	40	40	40	40			40	40			40	40	40	40	40	480
		13	40	40			40												120
8 N.	27 E.	34			40	40				40	40	40	40	40		40	40		320
7 N.	28 E.	20		40			40	40											120

Total Number of Acres to be Irrigated..... 2400
2440

21. Existing rights and/or valid permits appurtenant to lands described in Sec. 20 are.....

Remarks:

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and store and appropriate the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

L. P. Hawley

Applicant.

By

Agent.

Affidavit of Permission to Store and Appropriate the Water of Springs

(Not to be used when spring is situated on lands owned by applicant)

I,, of, County of, State of, do hereby certify that I am the owner or lessee of the land on which the spring mentioned in the application of is located, to-wit: and that I do hereby grant unto the said permission to file on the said spring as set forth in the foregoing application for permit to construct reservoir and store and appropriate the water from said spring.

STATE OF IDAHO,

County of

} ss.

On this day of, 19....., before me, a Notary Public for the State of Idaho, residing at, personally appeared known to me to be the person whose name subscribed to the foregoing certificate, and acknowledged to me that he executed the same.

Witness my hand and seal, the day and year in this certificate first above written.

Notary Public.

My commission expires

P-833

Approval of State Reclamation Engineer

833

The number of this permit is R.....

Recorded in book R....., page 833 Approved JUL 15 1949

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

Bond in the sum of \$....., to be filed on or before.....

Work to begin on or before September 15, 1949 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before January 15, 1952

The whole of said work to be completed on or before July 15, 1954

Beneficial use of water stored in accordance herewith, to be made on or before July 15, 1960

Witness my hand this 15th day of July, 19 49

Mark R Kulp

State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, C. A. ROBINS, Governor of the State of Idaho, and J. D. "CY" PRICE, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho and caused the Great Seal of the State of Idaho to be hereunto affixed, this 15th day of July, 19 49.

Countersigned:

By

J. D. Price
Secretary of State.

By

STATE OF IDAHO

C. A. Robins
Governor.

833

No. R.....

STORAGE PERMIT

Date of first receipt at office of State

Reclamation Engineer

9:00 A.M. June 22, 1949

Returned to applicant for correction

Corrected application received

Fees, \$ 9.50 Paid.

FILING FEES FOR STORAGE PERMITS:

For the first 250 acre-feet.....\$5.00

For each additional 250 acre-feet or

fraction thereof.....\$0.25

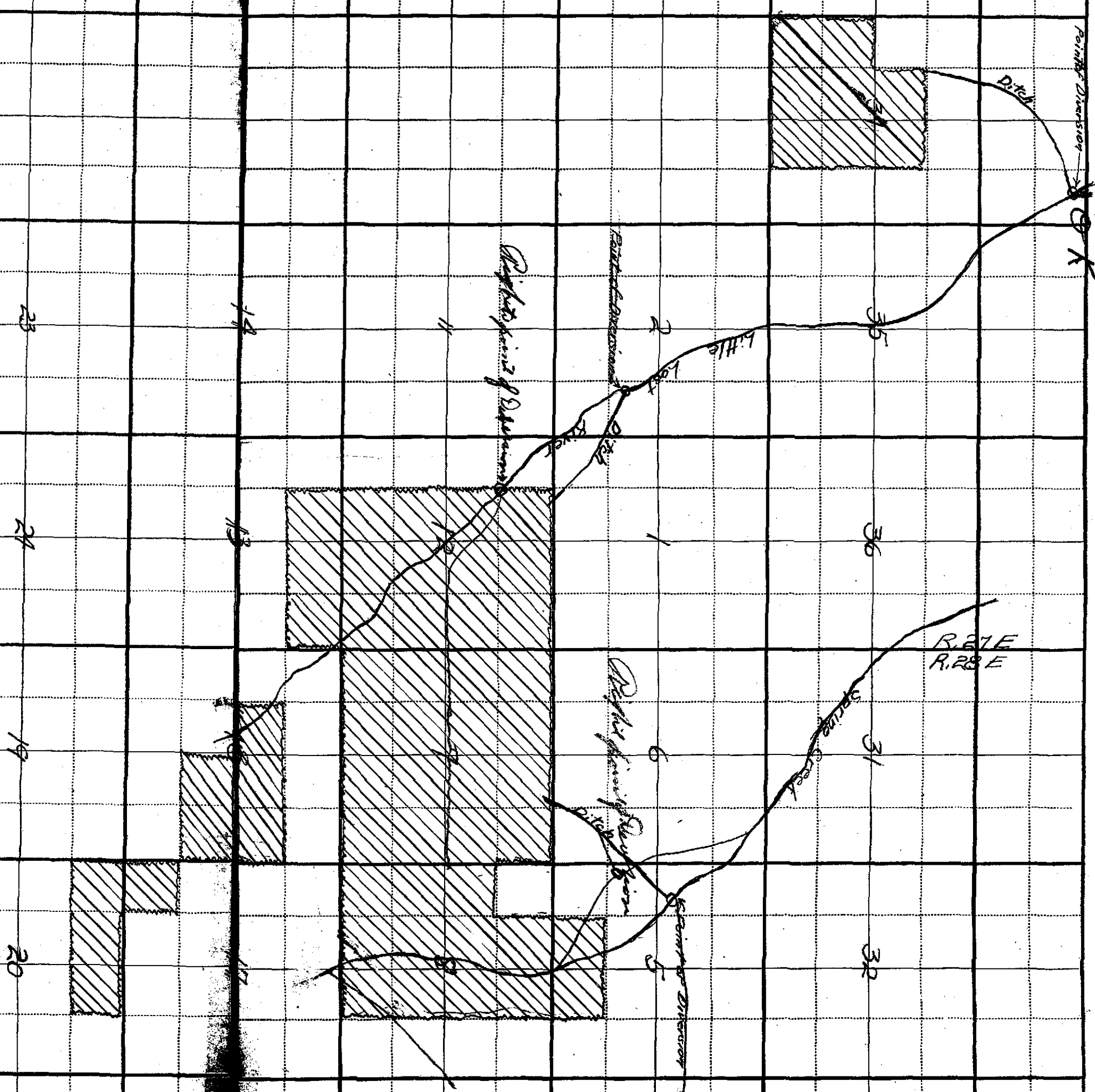
FOR NORMAL FLOW PERMITS:

For the first Second foot.....\$5.00

For each additional second foot or

fraction thereof.....\$0.25

L. R. Hawley

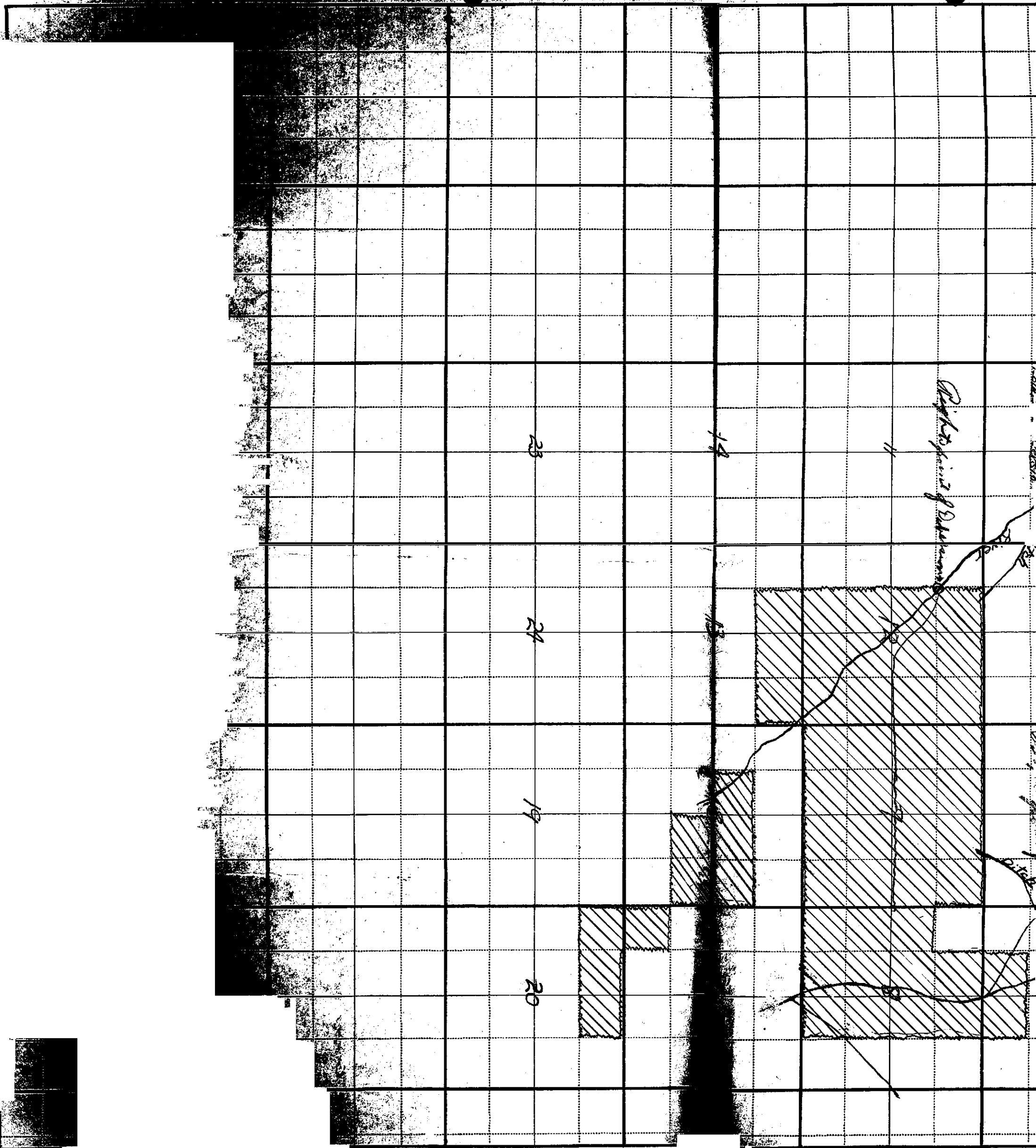


NAME OF APPLICANT

FORM NO.

NAME OF APPLICANT

L. P. Hawk



SCALE

INCHES EQUAL 1 MILE. DRAW PLAN IN INK.

December 20, 1951

RE: Permit No. R-833

Mr. C. A. Bottolfsen
Arco
Idaho

Dear Mr. Bottolfsen:

In reply to your letter of December 17, 1951, in regard to the Lawrence Hawley Permit No. R-833 for winter storage from Little Lost River and Upper Spring Creek.

It has not been possible to make a field inspection this season and until such inspection is made, no final action can be taken. Mr. Humphrey will try and make this inspection in the early spring, after which we shall notify you as to his report and the statutory fees in connection with issuing a certificate of completion of works and license.

It is advisable that Mr. Hawley allow a small amount of water to pass his diversion so as to take care of the fish and wild life. In this way, it will counteract any criticism that might be forthcoming from anyone interested in their preservation.

Thanking you for your kind expressions and wishing for you all the joys of Christmas and the coming New Year.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:fg

R-833

C. A. BOTTOLFSEN
PARLIAMENTARY LAW
ARCO, IDAHO

RECEIVED
DEC 20 1951

Department of Reclamation

Dec. 17, 1951.

Dept. of Reclamation,
State House, Boise.

Atten.: Mrs. Anderson.

Dear Mrs. Anderson:

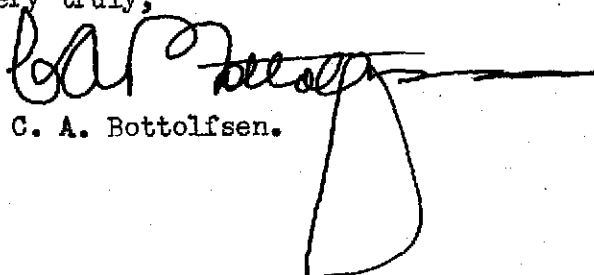
Thanks, Very much, for your prompt attention to the G. G.
Harrell matter.

Now I have another:

Lawrence Hawley, Howe, made final proof on his water development some months ago, and has as yet, not received his certificate, and because I heard the evidence for him I told him I would write and see what has happened--if anything.

The joyous Christmas season is here shortly, and I want to take this opportunity to extend the Season's Greerings to you and yours and a full measure of happiness in the New Year.

Very truly,



C. A. Bottolfsen.

R-833

R-833

September 5, 1951

Mr. M. W. Hansen, Water Master
Water District 9
Howe, Idaho

Dear Mr. Hansen:

We wish to refer you to our letter of July 18, 1951, in which we requested that you report the conditions that existed in Spring Creek during the winter months of 1950 and 1951, in regard to drying up the stream, and the loss of fish in the section below. Water was diverted by L. R. Hawley.

This information was requested on behalf of Mr. Hawley, as his proof of completion of works has been protested by the Idaho Game Department.

Providing you do not know the actual conditions which occurred in regard to the loss of fish, please report on what you think the conditions were at this time, or what has been hearsay in that regard.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:fg

R-833

August 1, 1951

Re: Permit No. R-833
L. R. Hawley

Mr. C. A. Bottolfsen
Arco, Idaho

Dear Mr. Bottolfsen:

We acknowledge receipt of your letter of July 28, 1951, enclosing depositions of L. R. Hawley and two witnesses in Proof of Completion of Works and Beneficial Use under Permit No. R-833.

We have had no formal protests on the above permit.

All permits issued by the Department are subject to existing rights and the Hawley Permit No. R-833 is valid with a priority of June 22, 1949, meaning that it cannot interfere with rights of earlier priority. This would be true regardless of the date when the Watermaster is called into service. The Watermaster is called on each year at the request of three water users and the obvious recourse of the other water users would be to call on the Watermaster.

Limits could be written into the License but except for some common good like the preservation of fish, the relative priorities give the other water users adequate protection.

The Little Lost River Decree defines the irrigation season as from April 1 to November 1, and implies a storage season as November 1 to April 1, but local custom, weather conditions and extraordinary conditions modify the actual beginning and end of the season.

The winter spreading of the water under Permit No. R-833 should materially improve ground water storage and the application for permit was approved on the basis of root zone storage alone without claim for ground water storage for subsequent withdrawal by pumping.

Thanks for the information about the informal protests. I think they can be worked out locally within existing law.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

MRK:bh

P-833

July 31, 1953

RE: Permit No. 21362

Mr. L. R. Hawley
Howe
Idaho

Dear Mr. Hawley:

I intend to make inspection as required by law in connection with your Permit No. 21362 on Thursday, August 6, 1953.

Please be prepared to accompany me on this inspection.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

. H:fg

R-833

C. A. BOTTOLFSEN
PARLIAMENTARY LAW
ARCO, IDAHO

July 28, 1951.

State Commissioner of Reclamation,
State Capitol Building,
Boise, Idaho.

Attem.: Mr. Mark Kulp, Commissioner.

Dear Mr. Kulp:

I have just this moment finished taking the testimony for the L. R. Hawley proof, etc., the papers of which I am enclosing.

John J. Dietrich and Henry Stauffer appeared at the meeting and indicated that they wished to file a protest. I informed them that I was in no position to assist them in filing a formal statement and suggested that they should employ an attorney or someone similar and that if they prepared such a statement that I would include it with the material I am sending in.

First, I suggested they talk over with Mr. Hawley their grievance, which it seems, was limited to a proposition of "when is the winter season, and when does spring open." Mr. Hawley informed them that he could not, of course, agree to setting a definite date on which storage should begin, but he did agree to this proposal, which he suggested:

"I will turn the water back into the river the date you notify me that you have employed your ditch rider, and I will begin use of the water, less the amount already recommended by the State Commissioner of Reclamation, when his services are discontinued in the fall."

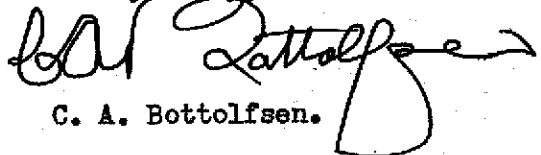
They left and made no decision as to whether they would agree to Mr. Hawley's suggestion or not.

In the course of conversation Mr. Hawley stated that one spring while he has been operating, he was told by a user that water would be needed shortly, and he turned the water back into the river. No beneficial use of the water was made for ten days, thereby, in his belief, being entirely wasted.

In view of the hinted protest thought I had better tell you about it. Mr. Hawley assures me that he will gladly comply with the suggestion he made and if you wish me to do so, I can prepare and submit to you a statement under oath by Mr. Hawley to that effect.

I shall be at your service to assist in any way I can.

Yours very truly,


C. A. Bottolfson.

RECEIVED
JUL 31 1951

Department of Reclamation,

R-833

July 19, 1951

Re: Permit No. R-833

Mr. T. B. Murray, Director
State Fish and Game Department
518 Front Street
Boise, Idaho

Dear Mr. Murray:

We acknowledge receipt of your letter of July 16, 1951, in regard to Permit No. R-833 of L. R. Hawley of Howe, Idaho.

This has been placed on file and will be given full consideration before final action is taken in the matter of this Permit.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bh

R-833

✓
July 18, 1951

Re: Permit No. R-833
L. R. Hawley, Howe, Idaho

Mr. H. W. Hansen, Watermaster
Water District No. 9
Howe, Idaho

Dear Mr. Hansen:

Mr. L. R. Hawley of Howe, Idaho, is now in the process of making Proof of Completion of Works and Beneficial Use on 640 acre feet per annum of the waters of Little Lost River and Upper Spring Creek, as stated in Publication Notice attached hereto.

A protest has been received from Mr. T. B. Murray of the Fish and Game Department, as per copy enclosed.

Will you kindly make an investigation and report on the conditions that existed in Spring Creek during the winter months of 1950 and 1951, in regard to drying up the stream and the loss of fish in the section below.

We will thank you for any information that you might obtain.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:bh
Enc.
CC: Mr. C. A. Bottolfsen.

R-833

DEPARTMENT OF FISH & GAME

STATE OF IDAHO

BOISE, IDAHO

**518 Front Street
July 16, 1951**

RECEIVED
JUL 17 1951

Department of Reclamation

Mr. Mark R. Kulp, Engineer
State Reclamation Department
Statehouse
Boise, Idaho

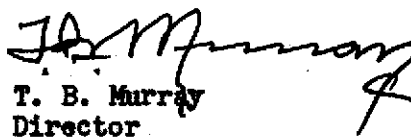
Dear Mr. Kulp:

Reference is hereby made to the application of L. R. Hawley, Howe, Idaho, for water for beneficial use.

It is the intent of Mr. Hawley to divert water from Spring Creek for soil root zone storage. Mr. Hawley, in diverting the water from Spring Creek, has diverted the entire flow thus allowing the stream channel to be dry for a distance of one mile before any seepage water returns to the stream bed. During the past season, there has been considerable loss of fish in Spring Creek due to this diversion.

We are, therefore, protesting the diversion of the entire flow of water from Spring Creek. We would not object to Mr. Hawley diverting a portion of the flow of Spring Creek but we do feel that a sufficient amount of water should be left in the creek to sustain fish life.

Yours very truly,


T. B. Murray
Director

TEB:JCS:ls

R833

21362

R-833

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Permit No. R-833

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. L. R. Hawley, Rancher, Howe, Idaho

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. _____

Ques. 3 State number and date of permit, and date of priority you propose to establish under the permit.

Ans. R-833; date of permit ~~June 22, 1949~~ July 15, 1949; Priority date, June 22, 1949.

Ques. 4. State source of water supply and give exact location of point of diversion.

✓ Ans. Waters of Little Lost River and Upper Spring Creek; points of diversion in Sections five and two, Sections seven and eight; ranges 28 and 27 E. B. M.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use. If a well, state depth of well, depth and size of casing and depth to water. If pump is used, state discharge of pump and tell how it was measured or determined.

Ans. Soil Root Zone Underground storage; storage applied for 4650 acre feet; conducted to underground zone by ditches, and to land irrigated by natural river channel and ditches.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Natural meadow land; description as follows: SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34, Township 8 North, Range 27 East, B. M.

R-833

Ans. Only for irrigation purpose.

Ans. 4,640 acre feet

Ans. Original applicant.

Ans. Have used same two years: water applied to meadow lands above described.

Ans. No other water used.

(Sign) L.R. Hawley

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Arco, County of Butte, State of Idaho, on this 28th day of July, A. D. 1951.

My commission expires Dec. 20, 1952.

Barney

The Depositions of two Witnesses, in this form, taken separately, required in each case.

Permit No. R-¹~~833~~.....

Proof of Completion of Works

DEPOSITION OF WITNESS

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Tony L. Fallert, Howe, Idaho, Rancher

Ques. 2. Are you acquainted with L. R. Hawley....., the holder of Permit No. R-~~833~~....., authorizing the storage of 4640..... acre feet of the waters of Upper Spring Creek which is tributary to Little Lost River, in the County of Butte....., State of Idaho? How long have you known him, and where does he reside?

Ans. 35 years; he resides on ranch north of Howe, Idaho

Ques. 3. Have you read or heard read said Permit? Yes..... Are you familiar with its terms and conditions? Yes.....

Ques. 4. Of what material and how has the dam been constructed?

Ans. Not a dam; Soil Root Zone Storage.

Ques. 5. Is the reservoir fully constructed?..... Has water been turned into it? yes..... And to what extent? Underground storage for average of three months during winter

Ques. 6. Where is the point of diversion of the feeder canal?

Ans. $\frac{1}{4}$ $\frac{1}{4}$ Section ~~7 & 8~~ 5 & 2, Township ~~28 & 27~~ ^{7 & 8} Range s 28 & 27.

Ques. 7. The outlet of the reservoir is located in the $\frac{1}{4}$ $\frac{1}{4}$ Section..... Twp. Range..... Underground

Ques. 8. Describe the spillway.

Ans. None

Ques. 9. How much below the top of the dam is the bottom of the spillway? none..... Ft.

Ques. 10. State the dimensions of the outlet for the reservoir. None

Ques. 11. Of what material is the outlet made? none

Ques. 12. How is the outlet gate operated? gate removed

Ques. 13. Of what material has the dam been constructed? none

Ques. 14. Are the works from the reservoir to place of use fully completed? Yes

Ques. 15. Describe these works as they now exist, and give your estimate of their capacity.

Ans. Ditches and natural channel; capacity 4640 acre-feet.

Ques. 16. For what purpose is the water to be used?

Ans. Irrigate pasture land.

L-833-

Ques. 17. If for irrigation purposes, are you acquainted with the land to be irrigated? Yes
How much water is required for its profitable cultivation?

Ans. 4640 acre-feet.

Ques. 18. Give the legal description of the land to be irrigated, or the place of use.

Ans. SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; ~~SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{2}$ Section 13; Township 8 North, Range 27 East,~~ (Sign here) Jerry L. Felt
B. M.

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Arco, County of Butte, State of Idaho, on this 20th day of July 19 51.

[Signature]
Notary Public

My commission expires Dec. 20, 1952.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Permit No. R-833

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Tony L. Fallert, Howe, Idaho, Rancher

Ques. 2. Are you acquainted with L. R. Hawley, the holder of Permit No. R-833, Yes. Yes? How long have you known him and where does he reside?

Ans. 35 years; he lives on ranch north of Howe, Idaho

Ques. 3. Have you read or heard read said Permit No. R-833, and are you familiar with its provisions and conditions?

Ans. Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Waters of Little Lost River and Upper Spring Creek. Place of diversion is in Sections 5 and 2; Is Underground storage designated as Soil Root Zone storage

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 1640 acre-feet

Ques. 6. (Pumps) How much water in cubic feet per second, miner's inches, or gallons per minute have you seen the pump deliver, and how did you measure or estimate the amount?

Ans. _____

R-833

Ques. 7. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. ...Used on Meadow Lands on following decribed tract: $SE\frac{1}{4}SW\frac{1}{4}$ and $SW\frac{1}{4}SE\frac{1}{4}$ Sec. 5; All of Section 7; $W\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}W\frac{1}{2}SE\frac{1}{4}$ Section 8; $SW\frac{1}{4}$ Section 17; $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$ Section 18; $NW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; $NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$ and $SE\frac{1}{4}$ Section 12; $N\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$, Sec. 13; Twp. 7 N., R 27 E. B. M.; $SW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}$ and $W\frac{1}{2}SE\frac{1}{4}$ Sec 34, T. 6 N., R. 27 E., B. M.

Ques. 8. If for power or other purposes than irrigation, state how water has been applied and to what etxent.

Ans. _____

Ques. 9. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Is pasture or meadow land and requires 4640 acre-feet.

Ques. 10. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No

Ques. 11. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Have seen the lands irrigated and believe tract requires 4640 acre-feet to properly irrigate.

(Signed) Tony L. Gallert

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Arco, County of Butte, State of Idaho, on this 28 day of July, A. D. 19 51.

Ed A. Petrus
Notary Public.

My commission expires Dec. 20, 1952.

Permit No. R-833

Proof of Completion of Works

DEPOSITION OF HOLDER

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. L. R. Hawley, Rancher, Howe, Idaho

Ques. 2. If acting on behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State number and date of permit, acre feet of water you claim for storage, and source of same.

Ans. No. R-833; date of priority June 22, 1949; amount of water claimed for storage 4,640 acre-feet per annum; source of same: soil root zone storage of waters of Little Lost River and upper Spring Creek.

Ques. 4. Under terms of permit construction was required to be completed by July

15, 1954.

Ques. 5. Construction was actually completed on the date of June 22, 1950 19

Ques. 6. Does the construction fully comply with the specifications? Yes

Ques. 7. Of what material was the dam built? No dam; soil zone storage.

Ques. 8. State whether or not the water has been turned into your reservoir, and if so, when and to what extent.

Ans. Complies with application and all waters turned into area late in fall.

Ques. 9. The capacity of the reservoir is 4,640 acre feet.

Ques. 10. The area of the high water line of the reservoir is acres.

Ques. 11. The height of the dam above bottom of reservoir is feet, above low water is feet.

Ques. 12. The dimensions of the spillway are and the bottom of the spillway is feet below the top of the dam.

Ques. 13. Dimensions of the reservoir outlet are

Ques. 14. Describe the gate and control unit.

Ans. Comes out of river and spring Creek by gate control.

Ques. 15. The reservoir outlet is made of natural channel

Ques. 16. Is the reservoir filled through a feeder canal? Through ditches.

Ques. 17. If so, where is the point of diversion for same?

Ans. 1/4 1/4 Section, 5 and 2 Twp. Range

R-833

Ques. 18. Does the feeder canal comply with the specifications in the permit? Yes

Ques. 19. If not, explain

Ques. 20. Cost of constructing feeder canal? \$ 3,000.00 Cost of reservoir? \$ 2,000.00

Ques. 21. State whether or not the works from reservoir outlet to place of use are fully completed, and whether or not they comply with the specifications in permit. If not, explain.

Ans. Completed and Comply with specifications.

Ques. 22. Water has (~~has not~~) been delivered to place of intended use? Yes

Ques. 23. Give description of dam, state dimensions, and give slope of face both upstream and downstream. Also method and material for protecting against wave action.

Ans. Soil Root Zone Storage.

Ques. 24. State the purpose for which the water is to be used and give the place of use, and if for irrigation, state the number of acres, and give the legal description of same.

Ans. SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$; S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec. 8, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Sec. 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 13, Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 34, Township 8 North Range 27 East B. M.
(Sign here) L.P. Hamley

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Arco, County of Butte, State of Idaho, on this 28th day of July A.D. 1951.

[Signature]
Notary Public

My commission expires Dec. 20, 1952

The Depositions of two Witnesses, in this form, taken separately, required in each case.

Permit No. R-833.....

Proof of Completion of Works

DEPOSITION OF WITNESS

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. William Martin ~~Butler~~ Butler, Farmer, Howe, Idaho

Ques. 2. Are you acquainted with L. R. Hawley, the holder of Permit No. R-833, authorizing the storage of 4640 acre feet of the waters of Upper Spring Creek which is tributary to Little Lost River, in the County of Butte, State of Idaho? How long have you known him, and where does he reside?

Ans. Known him since fall of 1949; lives on ranch north of Howe.

Ques. 3. Have you read or heard read said Permit? R-833. Are you familiar with its terms and conditions? Yes.

Ques. 4. Of what material and how has the dam been constructed?

Ans. No dam

Ques. 5. Is the reservoir fully constructed? Has water been turned into it? And to what extent?

Ques. 6. Where is the point of diversion of the feeder canal?

Ans. $\frac{1}{4}$ $\frac{1}{4}$ Section s. 5 & 2, Township s. 7 & 8, Ranges 28 & 27

Ques. 7. The outlet of the reservoir is located in the $\frac{1}{4}$ $\frac{1}{4}$ Section Twp. Range.

Ques. 8. Describe the spillway.

Ans. No spillway

Ques. 9. How much below the top of the dam is the bottom of the spillway? none Ft.

Ques. 10. State the dimensions of the outlet for the reservoir. none

Ques. 11. Of what material is the outlet made? ~~agate~~

Ques. 12. How is the outlet gate operated?

Ques. 13. Of what material has the dam been constructed?

Ques. 14. Are the works from the reservoir to place of use fully completed? yes

Ques. 15. Describe these works as they now exist, and give your estimate of their capacity.

Ans. Root Zone Storage, capacity about 4640 acre-feet.

Ques. 16. For what purpose is the water to be used?

Ans. Irrigate Meadow lands

R-833

Ques. 17. If for irrigation purposes, are you acquainted with the land to be irrigated? Yes
How much water is required for its profitable cultivation?

Ans 1640 acre-feet.

Ques. 18. Give the legal description of the land to be irrigated, or the place of use
SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 5; All of Sec. 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$

Ans. Sec. 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 20; Twp. 7 N., R. 28 E., B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Sec. 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 13; Twp. 7 N., R. 27 E., B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 34, Twp. 8 N., R. 27 E., B. M.

(Sign here) William M. Butte

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Arco, County of Butte, State of Idaho, on this 28th day of July 1951.

Ed P. Tetzlaff

Notary Public

My commission expires Dec. 20, 1952

**STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO**

Permit No. R-833

**Proof of Application of Water to Beneficial Use
Deposition of Witness**

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. William Martin Butler, 33 years, farmer, Howe, Idaho

Ques. 2. Are you acquainted with L. R. Hawley, the holder of Permit No. R-833? How long have you known him and where does he reside?

Ans. Fall of 1949; lives on ranch north of Howe, Idaho

Ques. 3. Have you read or heard read said Permit No. R-833, and are you familiar with its provisions and conditions?

Ans. Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

✓ Ans. Upper Spring Creek and Little Lost River; points of diversion are sections 5 and 2; works consist of root zone storage underground.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 1640 acre-feet.

Ques. 6. (Pumps) How much water in cubic feet per second, miner's inches, or gallons per minute have you seen the pump deliver, and how did you measure or estimate the amount?

Ans. _____

R-833

Ques. 7. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use. Water used on Meadow lands described as follows: SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Sec. 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,

Ans. S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 20; Twp. 7 N., R. 28 E., B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Sec. 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 13; ~~SW~~ Twp. 7 N., R. 27 E., B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 34, Twp. 8 N., R. 27 E., B. M.

Ques. 8. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. _____

Ques. 9. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Meadow Lands; requires 4640 acre-feet.

Ques. 10. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 11. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Have seen water applied to meadow lands, past two years.

(Signed) William M. Buttle

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in _____ Area _____, County of Butte _____, State of Idaho, on this 28 day of July _____, A. D. 1951.

W. M. Buttle
Notary Public.

My commission expires Dec. 20, 1952.

Affidavit of Publication

I, John J. LePorte, foreman 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 four consecutive weeks, commencing with the issue dated June 22, 1951 and ending with the issue dated July 20, 1951.

John J. LePorte

Subscribed and sworn to before me this 28th

day of July, 1951

Mark R. Kulp
Notary Public:

Residence. Arco, Idaho.

My commission expires Dec. 20, 1952.

Legal Notice

NOTICE OF PROOF OF COMPLETION OF WORKS and APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 28th day of July, 1951, at Arco, County of Butte, State of Idaho, before C. A. Bottolfson, Notary Public, proof will be submitted of the completion of works for the soil root zone storage of 4,640 acre feet per annum of the waters of Little Lost River and Upper Spring Creek and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. R-833 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit are L. R. Hawley, Howe, Idaho.

2. Said works will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use, in accordance with the plans accompanying the application for such permit, is 4,640 acre feet per annum.

3. The use to which said water has been applied is ground storage during winter months for winter irrigation, and the amount applied to beneficial use is 4,640 acre feet per annum.

4. The place where said water is used is SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec. 8, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34, Township 8 North, Range 27 East, B. M.

The date of priority which said user is prepared to establish is June 22, 1949.

MARK R. KULP,
State Reclamation Engineer.
(Pub June 29, July 6, 13, 20, 1951)

2-833

✓
July 10, 1951

Re: Permit No. E-833

Arco Advertiser
P. O. Box 8
Arco, Idaho

Gentlemen:

We acknowledge receipt of an affidavit which states that Notice of Proof of Completion of Works and Beneficial Use on Permit No. E-833 was published for four weeks commencing June 29 and ending July 20, 1951.

Since this is only July 10, 1951, obviously the publication has not yet been completed, although it is your intention to publish it in the two issues of July 13 and July 20.

If you will refer to the letter transmitting this Notice, the cost was to be paid by the applicant, L. R. Hawley of Howe, Idaho, so we return the statement in order that it may be remailed to him, together with another Affidavit of Publication after publication has been completed.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

Asbh
Enc.

R-833

Affidavit of Publication

I, James W. Martin 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 four consecutive weeks,
commencing with the issue dated June 29, 1951
and ending with the issue dated July 20, 1951

James W. Martin

Subscribed and sworn to before me this 1st

day of July 19 51

C. V. Boyatt

Notary Public:

Residence. Arco, Idaho.

My commission expires 8-30, 19 54

RECEIVED

JUL 9 1951

Department of Reclamation

NOTICE OF PROOF OF COMPLETION OF WORKS

and APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 28th day of July, 1951, at Arco, County of Butte, State of Idaho, before C. A. Bottolfsen, Notary Public, proof will be submitted of the completion of works for the soil root zone storage of 4,640 acre feet per annum of the waters of Little Lost River and Upper Spring Creek and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. R-833 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or persons

ter which said works are capable of conveying to the place of use, in accordance with the plans accompanying the application for such permit, is 4,640 acre feet per annum.

3. The use to which said water has been applied is ground storage during winter months for winter irrigation, and the amount applied to beneficial use is 4,640 acre feet per annum.

4. The place where said water is used is SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec. 8, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B. M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B. M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34, Township 8 North, Range 27 East, B. M.

The date of priority which said user is prepared to establish is June 22, 1949.

MARK R. KULP,
State Reclamation Engineer.
(Pub June 29, July 6, 13, 20, 1951)

R-833



ARCO ADVERTISER

PRINTERS - PUBLISHERS - STATIONERS

SERVING AMERICA'S NEWEST ATOMIC CENTER

JAMES W. MARTIN, *Publisher*

ARCO, IDAHO

RECEIVED
JUN 27 1951
Department of Reclamation

R-833

June 25, 1951

Department of Reclamation
Boise, Idaho

Gentlemen:

This is to acknowledge receipt of your notice sent on June 22, 1951 to the Arco Advertiser for publication four consecutive weeks prior to July 28, 1951.

First publication date: June 29, 1951.

Yours truly,

James Martin

R-833

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Re: Permit No. R-833

Date: June 22, 1951

Arco Advertiser

Arco, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to **July 28, 1951** the date set for proof, the expense of the publication to be paid by the applicant, **L. R. Hawley** of **Howe Idaho**, to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication, in order that we may check same.

Very truly yours,

MARK R. KULP

State Reclamation Engineer
By

Chief Clerk

R-833

NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

28th

Notice is hereby given that at 10:00 A. M. on the 28th day of July, 1951, at Arco, County of Butte, State of Idaho, before C. A. Bottolfson, Notary Public, proof will be submitted of the completion of works for the soil root zone storage of 4,640 acre feet per annum of the waters of Little Lost River and Upper Spring Creek and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. R-833 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit are L. R. Hawley, Howe, Idaho.

2. Said works will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use, in accordance with the plans accompanying the application for such permit, is 4,640 acre feet per annum.

3. The use to which said water has been applied is ground storage during winter months for winter irrigation, and the amount applied to beneficial use is 4,640 acre feet per annum.

4. The place where said water is used is SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; All of Section 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20; Township 7 North, Range 28 East, B.M.; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13; Township 7 North, Range 27 East, B.M.; SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34, Township 8 North, Range 27 East, B.M.

The date of priority which said user is prepared to establish is June 22, 1949.

MARK R. KULP

State Reclamation Engineer

P-833

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) June 9, 1951

(P. O.) Howe, Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the
Advertiser of Arco, Idaho published in
the county in which the works are situated.

L. D. Hawley

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

.....
Engineer.

P-833

May 21, 1949

Howe

Idaho

Department of Reclamation
Dear Sirs:

I would like this
filing to go into effect
when the water master
goes off in the fall and
be good until he
goes on in the spring.

This map is as close
as I can get it.

The colored is the Knevels ranch.

Yours Truly
L R Hawley

p-833

June 22, 1951

Re: Permit No. R-833

Mr. C. A. Bottolfsen
Arco, Idaho

Dear Mr. Bottolfsen:

In writing you this morning, I overlooked the fact that both Proof of Completion of Works and Beneficial Use are to be made on L. R. Hawley's Permit No. R-833, and we only enclosed the forms of affidavit for making Proof of Beneficial Use.

We enclose other forms for use in making Proof of Completion of Works, both sets of forms to be filled out at the time set for proof.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bh
Enc.

R-833

June 22, 1951

Re: Permit No. R-833

Mr. C. A. Bottolfsen
Arco, Idaho

Dear Mr. Bottolfsen:

We have sent the Arco Advertiser, copy of Notice of Beneficial Use Proof to be made July 28, 1951, on Permit No. R-833 of L. R. Hawley, with instructions to publish once a week for four consecutive weeks prior to that date and to send Mr. Hawley the Affidavit of Publication, together with statement of costs.

We enclose the necessary forms of deposition to be used in making this proof, consisting of one for Mr. Hawley and one for each of two disinterested witnesses, who should appear before you at the time set in order to execute the depositions.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:dh
Enc.

R-833

C. A. BOTTOLFSEN
PARLIAMENTARY LAW
ARCO, IDAHO

June 21, 1951.

State Commissioner of Reclamation,
Boise, Idaho.

Dear Sirs:

Mr. Hawley believes your suggestion regarding completion of proof on the wells is a good one, and for the present at least, has concluded not to make final proof.

Due to delays beyond his control, he was unable to complete the enclosed, and you will note that the date has been moved up to July 28th (instead of July 14th) to give plenty of time for its publication in The Arco Advertiser.

Yours very truly,

C. A. Bottolfsen.

RECEIVED
JUN 22 1951
Department of Reclamation

P-833

June 11, 1951

Re: Permit No. R-833

Mr. C. A. Bottolfsen
Arco, Idaho

Dear Mr. Bottolfsen:

Reference is made to the Notice of Completion of Works and Beneficial Use Proof on Permit No. R-833 in the name of L. R. Hawley.

Since this notice is incomplete in several particulars, especially as to the source of the water and the description of the land where the water has been beneficially applied, we have made out another form of notice which we enclose herewith.

If you find this to be correct, please o.k. and return two copies to this Department and we shall send a copy at once to the Arco Advertiser for publication. We are sending this notice in triplicate so that you may retain one for your files.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bh
Enc.

R-833

464 upper a
NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M., on the 14th
day of July, 19 51, at Arco, County of
Butte State of Idaho, before C. A. Bottelfsen
proof will be submitted of the completion of works for the ~~diversion of~~
cubic feet per second of the waters of Soil Root Zone storage and of
the application to beneficial use of said water, in accordance with the terms and
conditions of Permit No. R833 heretofore issued by the Department of Reclamation
of the State of Idaho.

1. The name and postoffice address of the person or corporation
holding said permit are Howe, Idaho L. R. Hawley, Howe, Idaho

2. Said works of diversion will be fully completed on the date set for
such completion, and the amount of water which said works are capable of con-
veying to the place of use, in accordance with the plans accompanying the appli-
cation for such permit, is _____ cubic feet per second.

3. The use to which said water has been applied is beneficial
~~and domestic~~ purposes, and the amount applied to beneficial use is
_____ cubic feet per second. PD

4. The place where said water is used is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 5,
Township 7 N. Range 28 East B. M.

5. The date of priority which said user is prepared to establish is
July 15, 1949.

State Reclamation Engineer

R-833

May 28, 1951

Re: Permits Nos. R-833 and 21362

Mr. C. A. Bottolfsen
Arco, Idaho

Dear Mr. Bottolfsen:

In reply to your letter of May 25, 1951, advising that L. R. Hawley wishes to make final proof on the above numbered Permits, we enclose several forms of Notice for making Proof of Completion of Works and Beneficial Use. This form should be filled out in duplicate for each Permit, setting the time and place where the proof is to be made and naming the Notary Public, which we understand will be yourself.

Two copies of each notice to be returned to this Department, together with Form 11 which is Mr. Hawley's authorization for us to have the notice published at his expense in the designated county newspaper.

We are enclosing a few extra forms, thinking you may wish to keep a copy in your own files.

Very truly yours,

MARK H. KULP
State Reclamation Engineer
By

Chief Clerk

A:bn
Enc.

R-833

C. A. Bottolfsen,

Arco, Idaho

May 25, 1951.

RECEIVED
MAY 28 1951
Department of Reclamation

Mr. Mark Kulp,
State Reclamation Engineer,
State House,
Boise, Idaho.

Dear Mr. Kulp:

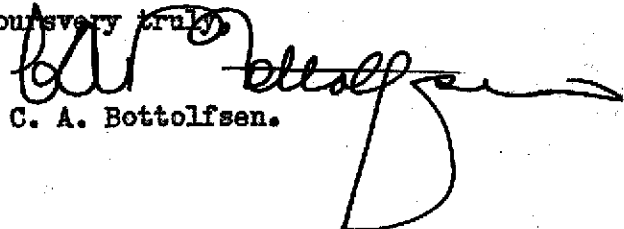
Mr. L. R. Hawley, of Howe, who has heretofore filed on flood waters under Permit R 833, and recorded in Book R 3 at page 833, which application was approved on July 15, 1949, wishes to make final proof; also,

he wishes to make final proof on application covering permit 21362, which is recorded in book 76 at page 21362, and which was approved on February 2, 1950.

He has complied with all of the requirements and now wishes to make final proof before me.

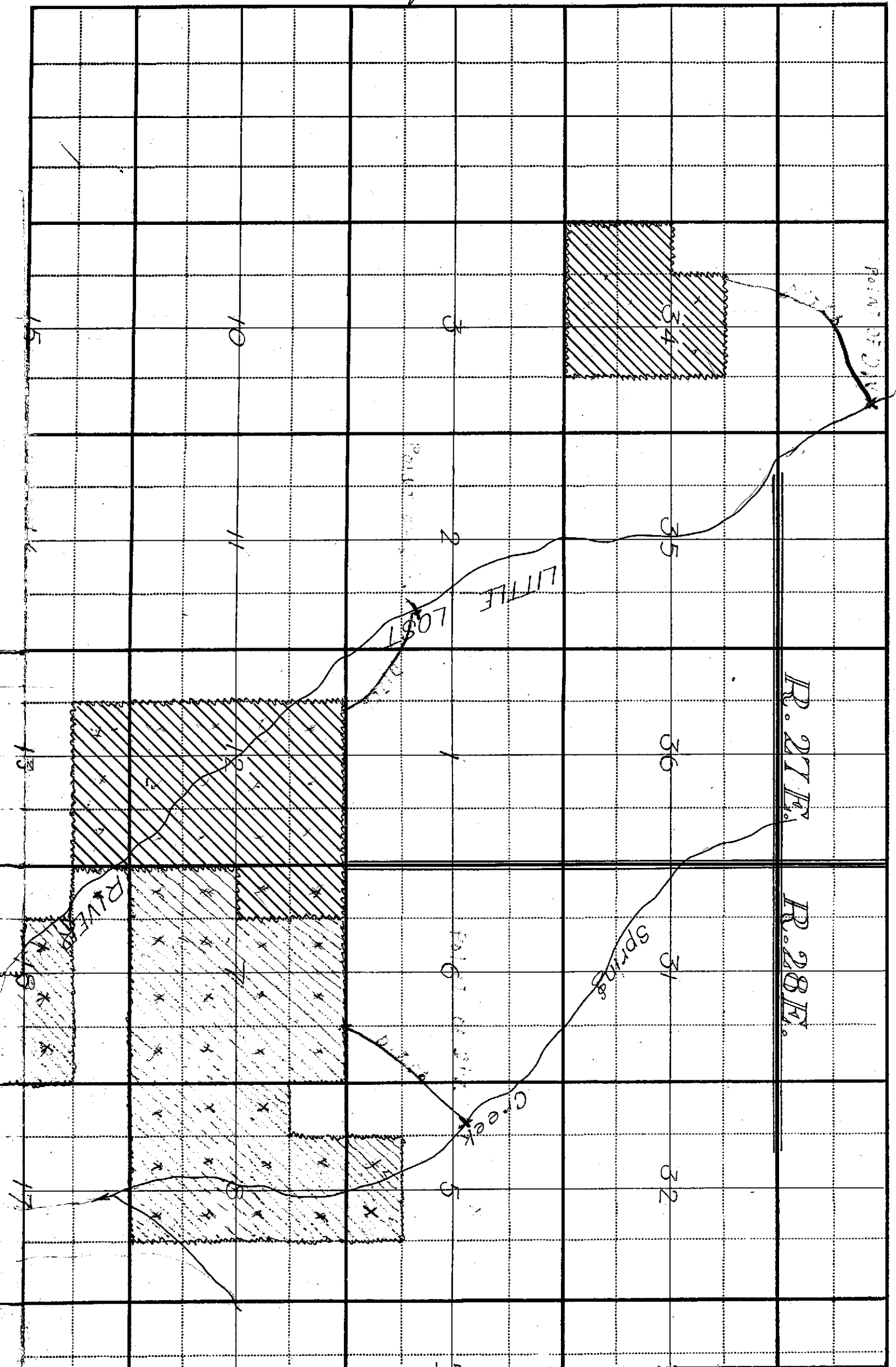
If you will send the blanks to me, I will see that they are returned to you in the due course of time.

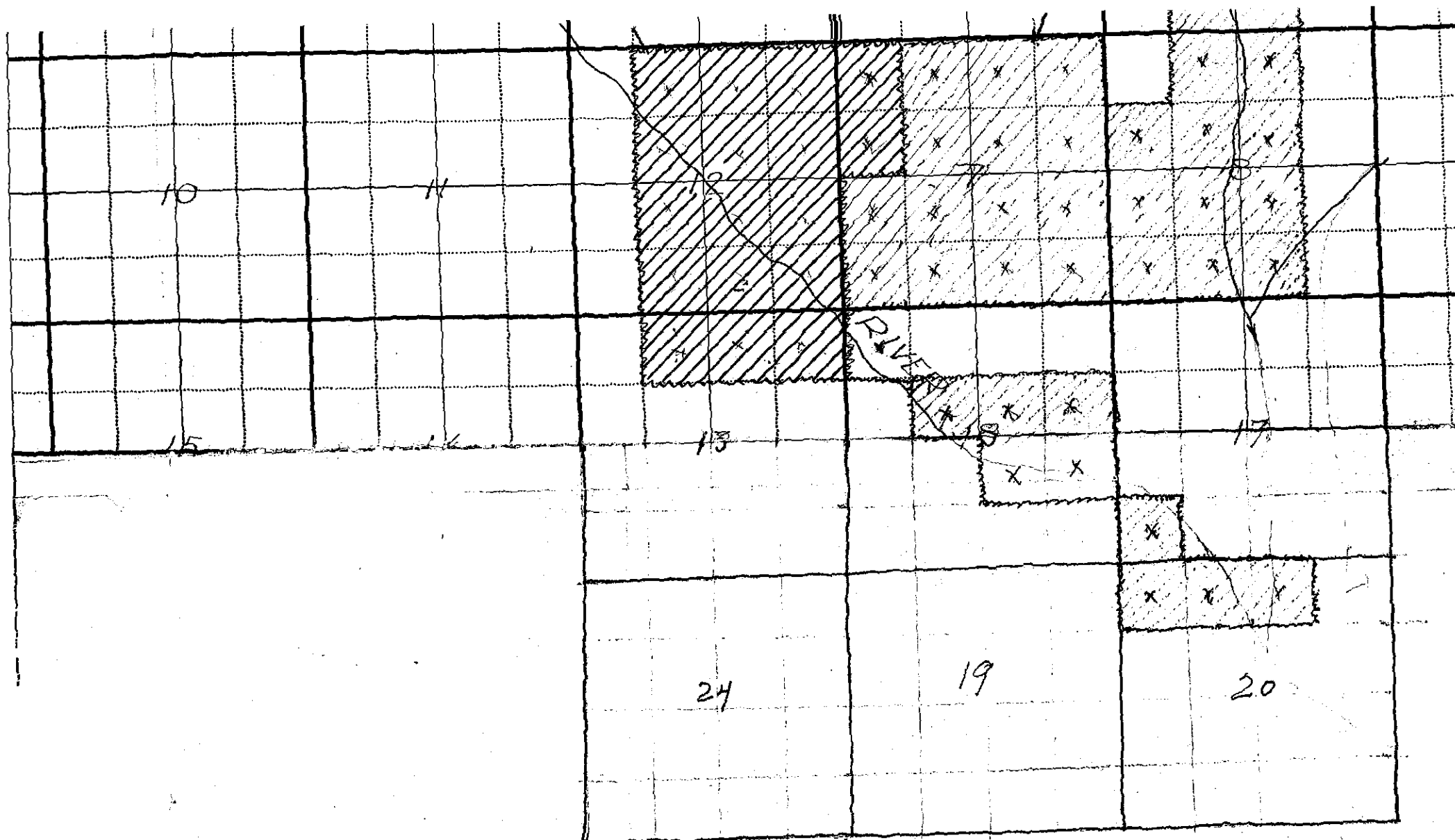
Yours very truly,


C. A. Bottolfsen.

R-833 - 4640 a. j.
21362 - 24 c. j. s.

R-833





Permit Map No. R-833

As Approved

JUL 15 1949

MARK R. KULP

State Reclamation Engineer

R-833

July 21, 1949

Re: Permit No. R-833

Mr. L. R. Hawley
Howe, Idaho

Dear Mr. Hawley:

We enclose Reservoir Permit No. R-833
and direct your attention to the limitations and
conditions as given on the fourth page under Ap-
proval of the State Reclamation Engineer.

We also enclose Departmental Receipt
No. 21627 for the \$9.50 filing fee and as your
check was for \$9.75, there is a refund of \$.25
due you, which we enclose in stamps.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bh
Enc.

R-833



C. A. ROBINS
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, STATE RECLAMATION ENGINEER

BOISE

May 11, 1949

Mr. L. R. Hawley
Howe, Idaho

Dear Mr. Hawley:

We wish to apologize for the delay in answering your letter of April 7, in which you requested information on filing on winter flow water to irrigate what is called the Knowlen ranch, from the waters of Little Lost River, to be used during the winter months only.

Approximately three weeks ago, the writer was in Arco, and intended, at that time, to come over to Howe to see you. Your letter and the map prepared has been in my brief case, unnoticed, ever since.

The reason why I wanted to talk the matter over with you is because this is an unordinary request, and the application will have to be made on our storage water from for application for permit. The Permit, after approval, will allow you to store so many acre feet as ground storage during the winter months, to be diverted from Little Lost River and Upper Spring Creek.

We can prepare the application for permit in this office, providing you furnish the following information. We are enclosing a sketch map, showing the land location of the Knowlen ranch and will request that you show on said map the points of diversion from Little Lost River and Spring Creek within a 40 acre subdivision. Also, if the land description, as shown on the plat, is not all under your ownership, please designate on said map what is owned by you and what is not.

If you will return this map with the information requested, we will mail you the application, for your signature, at an early date.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Roy W. Thompson
Supervisor of Water Distribution

RWT:bh
Enc.

R-833

Dear Mr. Humphrey
we have measured
and checked these
points of discussion
on the winter
water diet.
I think we have
them right on the
date.

I would like to
finish this deal
up, so alone R-833

let me know
what to do next.

Yours Truly

L D Hawley
Hawley
Hawley

RECEIVED

DEC 7 1956

Department of Reclamation

The East Half (NE $\frac{1}{2}$), the East half of the West Half (E $\frac{1}{2}$ W $\frac{1}{2}$) and Lots One (1) (36.40 acres), Two (2) (36.40 acres), Three (3) (36.85 acres), and Four (4) (37 acres) of Section Eleven (11); the West Half (W $\frac{1}{2}$), the West Half of the East Half (W $\frac{1}{2}$ E $\frac{1}{2}$) of Section Eight (8); the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$), and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Five (5); the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Seventeen (17); the Northeast Quarter (NE $\frac{1}{4}$), the East Half of the Northwest Quarter (E $\frac{1}{2}$ W $\frac{1}{2}$), the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Eighteen (18), Lot One (1) (39.30 acres) and Lot Two (2) (39.53 acres) of Section Eighteen (18); the North Half of the Northwest Quarter (N $\frac{1}{2}$ W $\frac{1}{2}$), and the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty (20); all in Township Seven (7) North, Range Twenty-eight (28) East of the Boise Meridian.

Also, the Southwest Quarter (SW $\frac{1}{4}$), the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ W $\frac{1}{2}$), the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), the West half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$), Section Thirty-four (34), Township Eight (8) North, Range Twenty-seven (27) East of the Boise Meridian.

Also, the South Half of the Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$), Section One (1); the North Half (N $\frac{1}{2}$), the Southwest Quarter (SW $\frac{1}{4}$), the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$), Section Twelve (12); the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$), the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ W $\frac{1}{2}$), Section Thirteen (13), all in Township Seven (7) North, Range Twenty-seven (27) East of the Boise Meridian.

The above described land with

May 11, 1949

Mr. L. R. Hawley
Howe, Idaho

Dear Mr. Hawley:

We wish to apologize for the delay in answering your letter of April 7, in which you requested information on filing on winter flow water to irrigate what is called the Knowlen ranch, from the waters of Little Lost River, to be used during the winter months only.

Approximately three weeks ago, the writer was in Arco, and intended, at that time, to come over to Howe to see you. Your letter and the map prepared has been in my brief case, unnoticed, ever since.

The reason why I wanted to talk the matter over with you is because this is an unordinary request, and the application will have to be made on our storage water from for application for permit. The Permit, after approval, will allow you to store so many acre feet as ground storage during the winter months, to be diverted from Little Lost River and Upper Spring Creek.

We can prepare the application for permit in this office, providing you furnish the following information. We are enclosing a sketch map, showing the land location of the Knowlen ranch and will request that you show on said map the points of diversion from Little Lost River and Spring Creek within a 40 acre subdivision. Also, if the land description, as shown on the plat, is not all under your ownership, please designate on said map what is owned by you and what is not.

If you will return this map with the information requested, we will mail you the application, for your signature at an early date.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:bh
Enc.

R-833

August 18, 1952

RE: Permits Nos. 21362 and R-833

Mr. L. R. Hawley
Howe
Idaho

Dear Mr. Hawley:

Your well permit is No. 21362, for an amount of 24 cubic feet per second, or 1200 inches, filed February 1, 1950; completion of works and beneficial use proofs are both due February 2, 1953; it was to cover an area of 1200 acres.

Inasmuch as Permit No. 21362 and Permit No. R-833 cover almost the same ground, I am withholding the final report under Permit No. R-833 until I have had time to check it and its relation to Permit No. 21362, in order that there will be no overlapping that would prevent you from getting the full amount of the delivery from your two wells.

The Chief Clerk, Mrs. Anderson, will enclose an additional letter to you explaining all that is necessary in bringing your two wells to license under your Permit No. 21362.

We will get over and measure the water from your wells and make inspection as required as soon as possible so that the inspection under Permit No. 21362 will be out of the way before you shut your pumps down for the winter.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:fg
Enc.

cc: Mr. C. A. Bottolfson

~~21362~~
R 833

Hawley Appl No R 28799

Suggest. "Soil root zone storage" in place of "ground storage".

We have other applications where water is proposed to be stored in underground storage for future withdrawal by pumps

~~SATURDAY, MAY 19~~

R-833

R-833

Howe 2da

April 7 1949

Department of Reclamation
Dear Sir:

I have bought the
Knowlen Ranch from
the Blain County Canal Co.

I would like to file on
winter water from Little Lost
River & upper Spring Creek.

This water will be used
on the Knowlen Ranch
in the winter to make
summer pasture. It will
also help the summer
flow of the river.

I would like this filing
to go into effect when
the water master 2da of
D. 833

in the fall and until
he goes on in the spring.

This ranch has 2380
acres, a good part of it
is sub ground and a
natural Reservoir to
the River.

Running water on it
in the winter will
greatly increase this
sub.

Please send me
the form for a filing
of this kind.

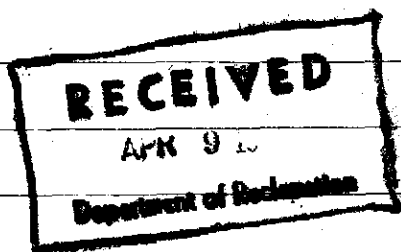
For information about
this, write Mr. Hansen
or John Hansen of Howel
Idaho.

R-833

I will be glad
to answer any question
and give you all
the information I can
on this.

Yours Truly
L. R. Hawley

Howe
2da



R-833