

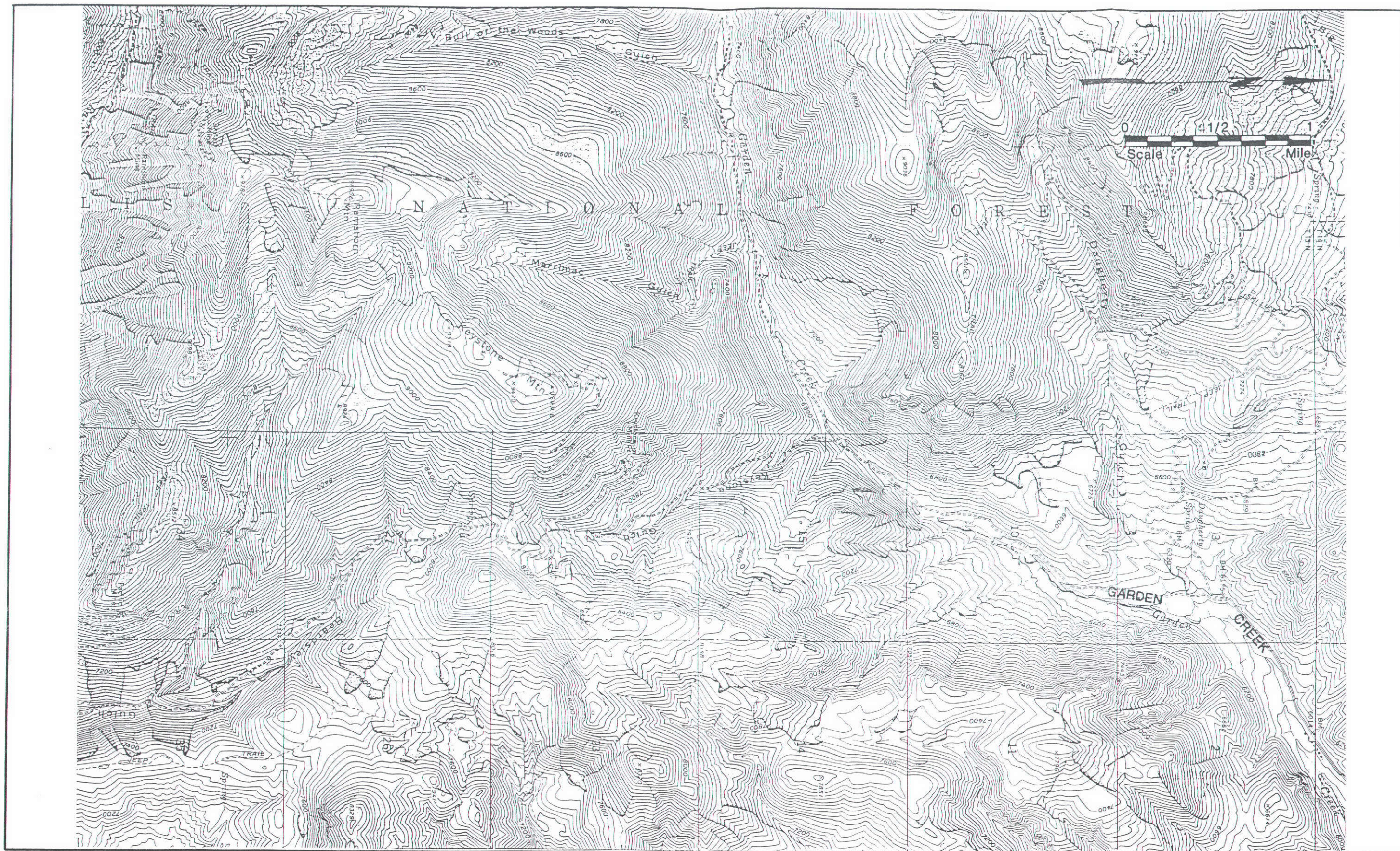


FIGURE 2

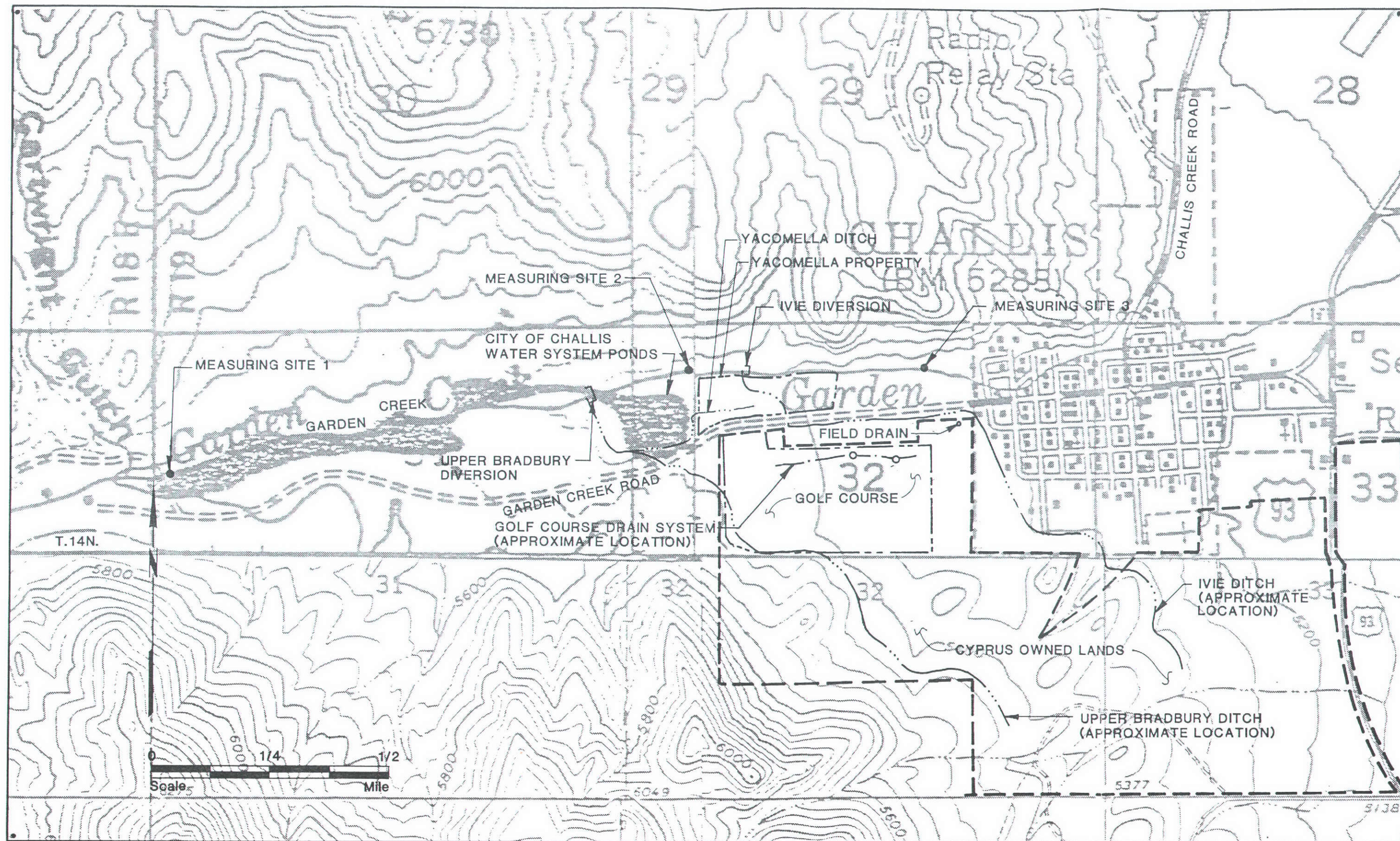


FIGURE 3

FIGURE 4C

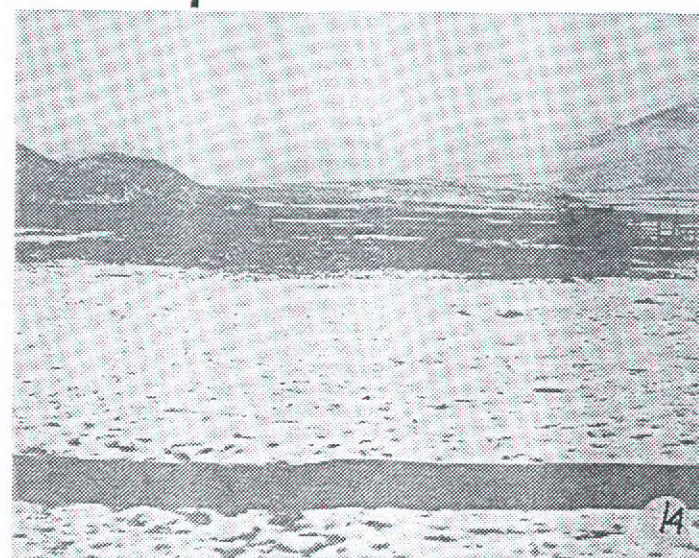
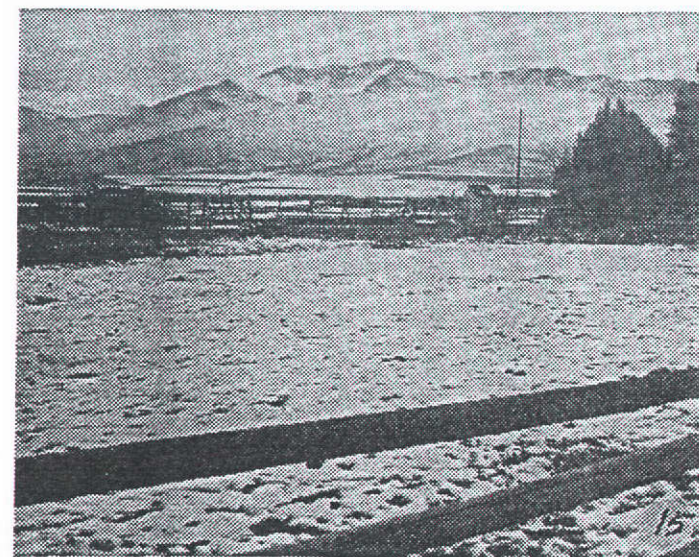
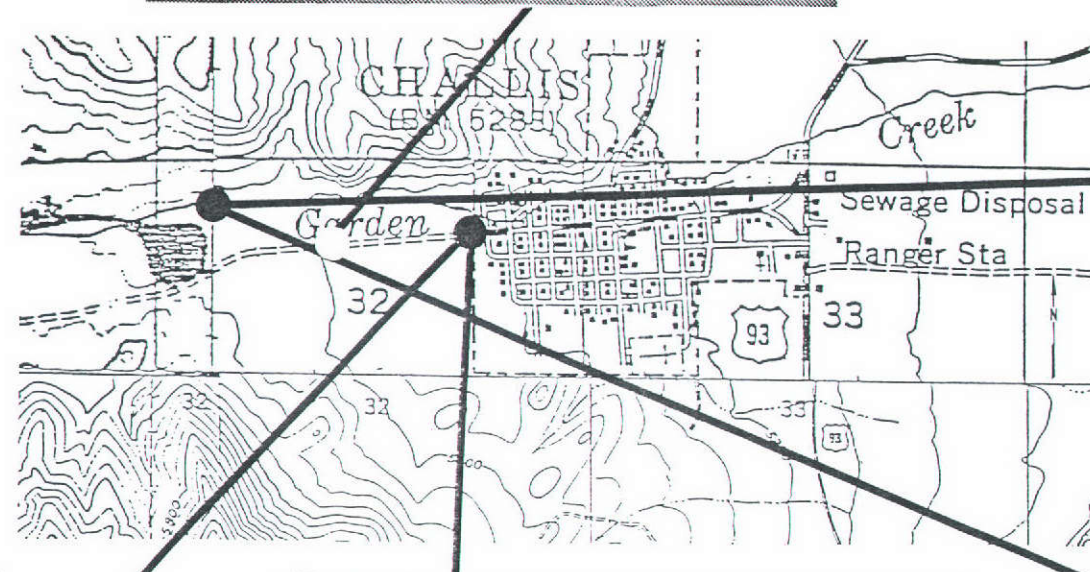
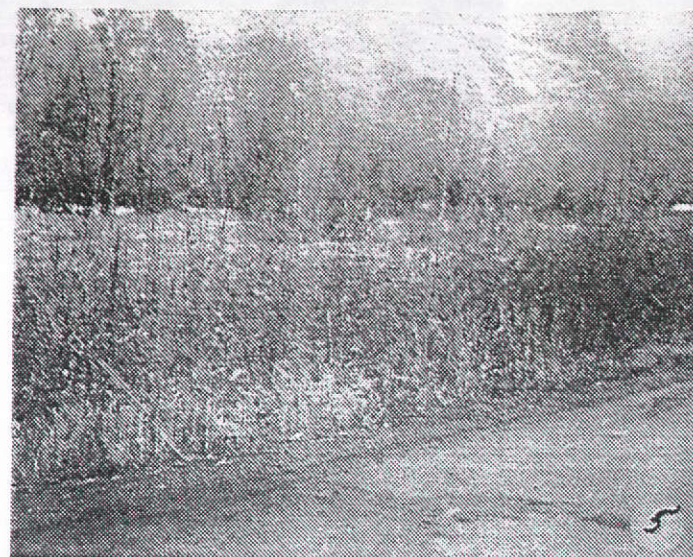


FIGURE 4A

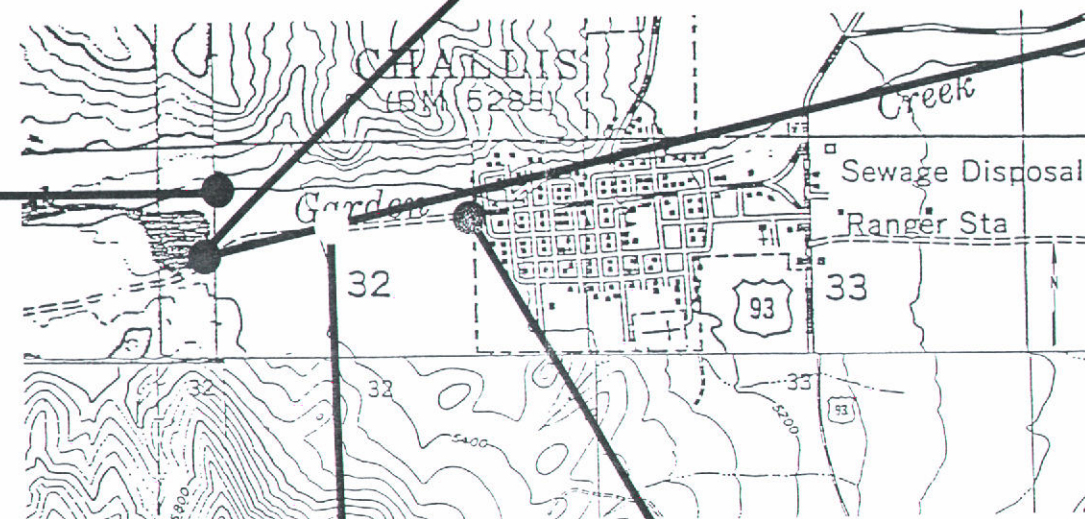
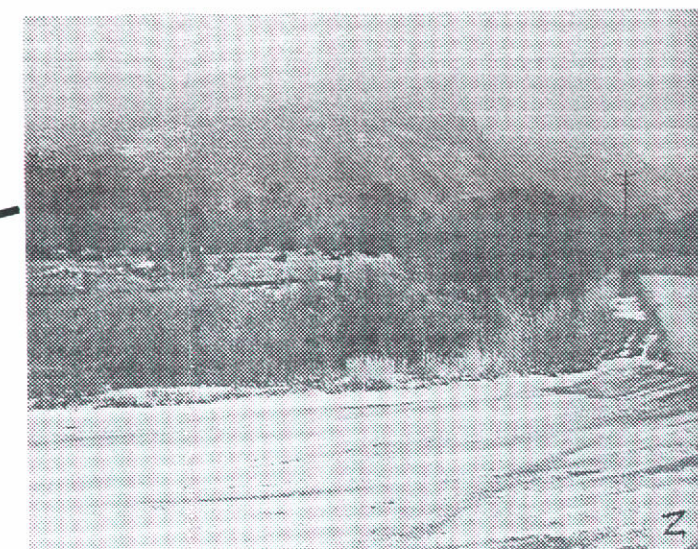
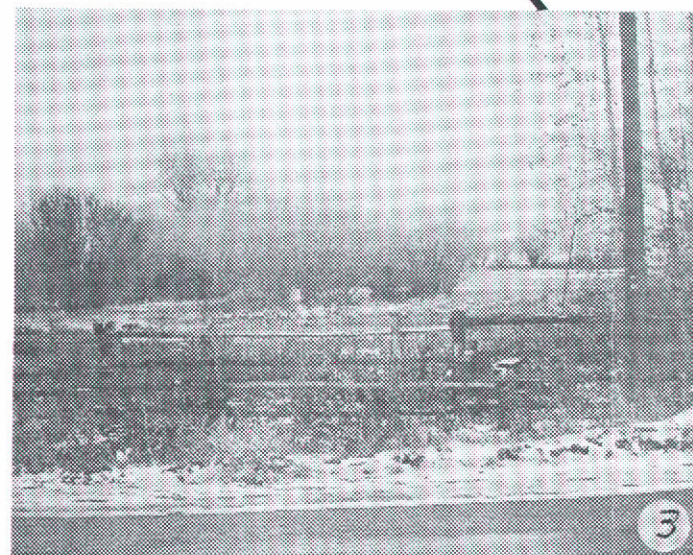
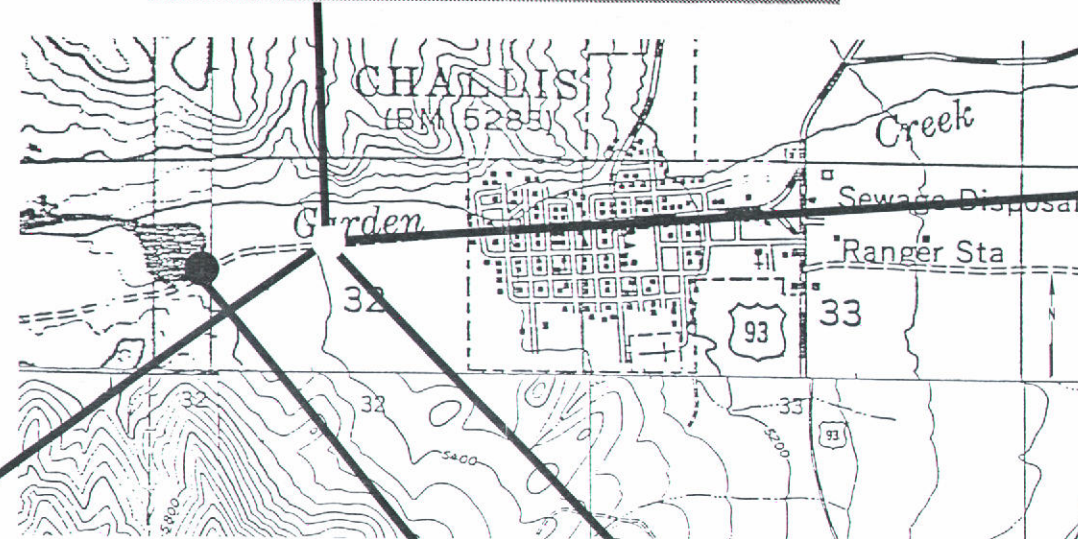
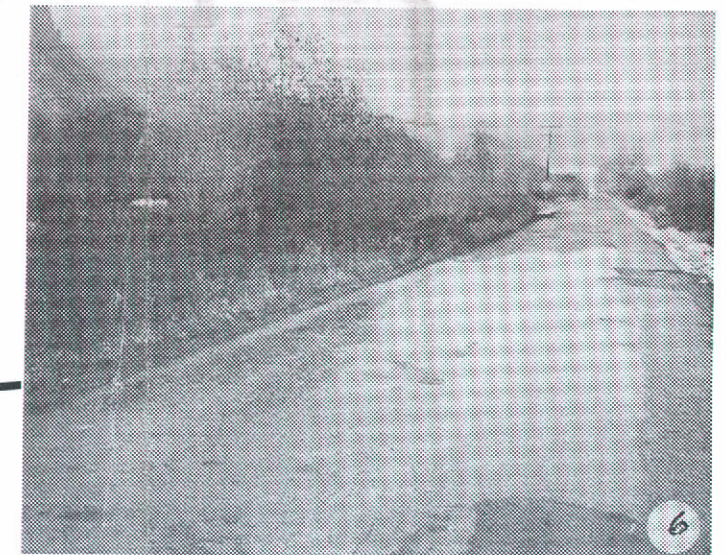
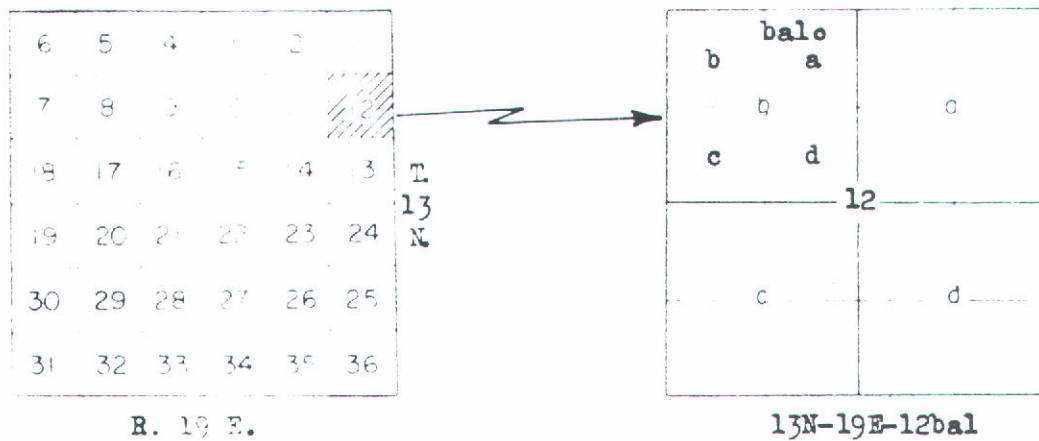


FIGURE 4B



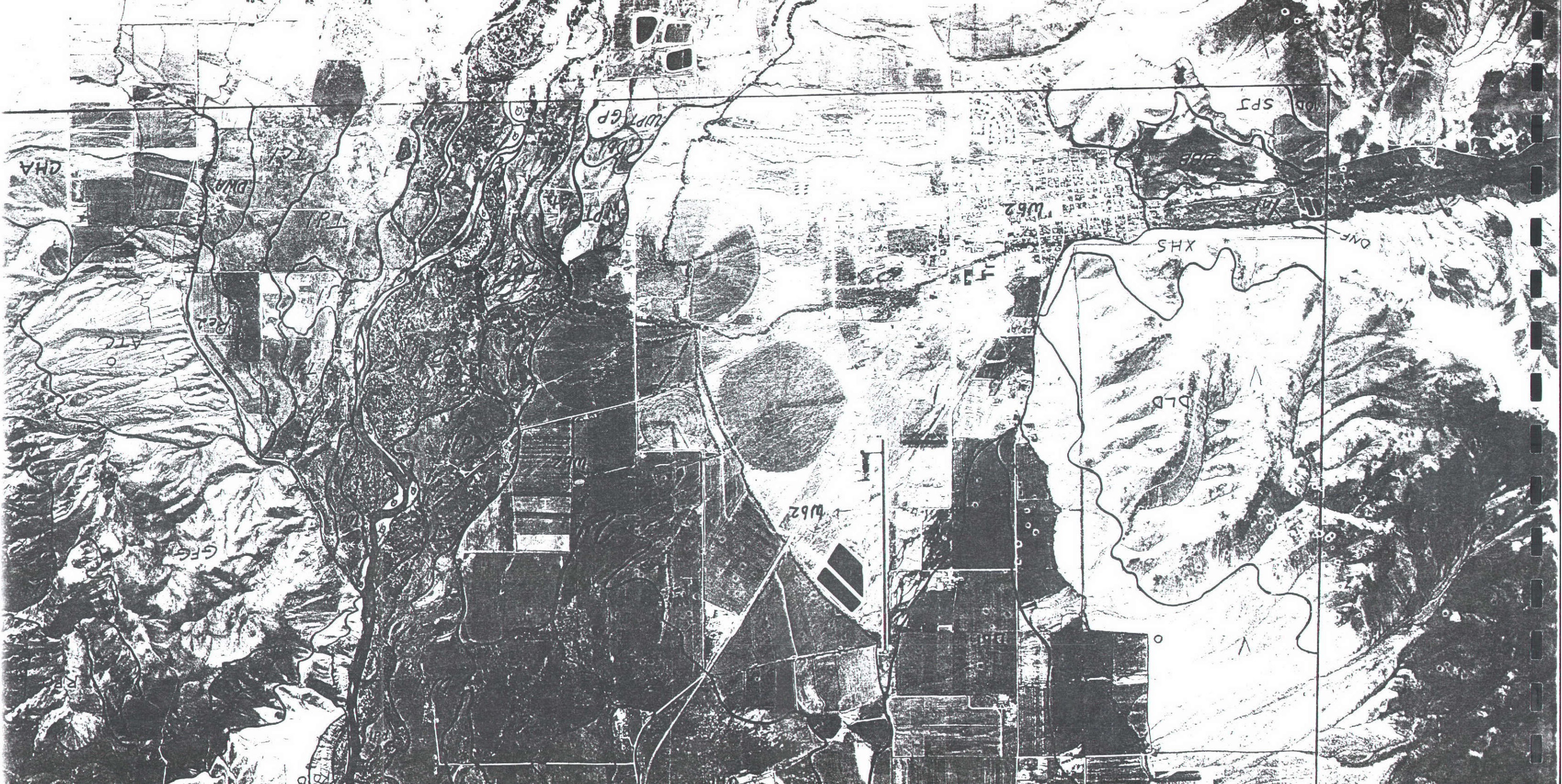
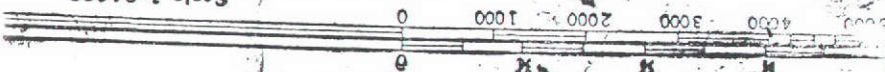


Sketch showing well numbering system.

CFL 208406

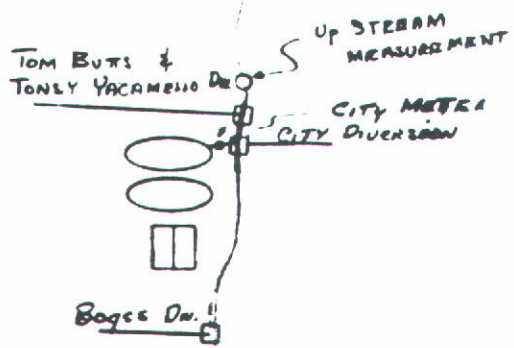
243-38

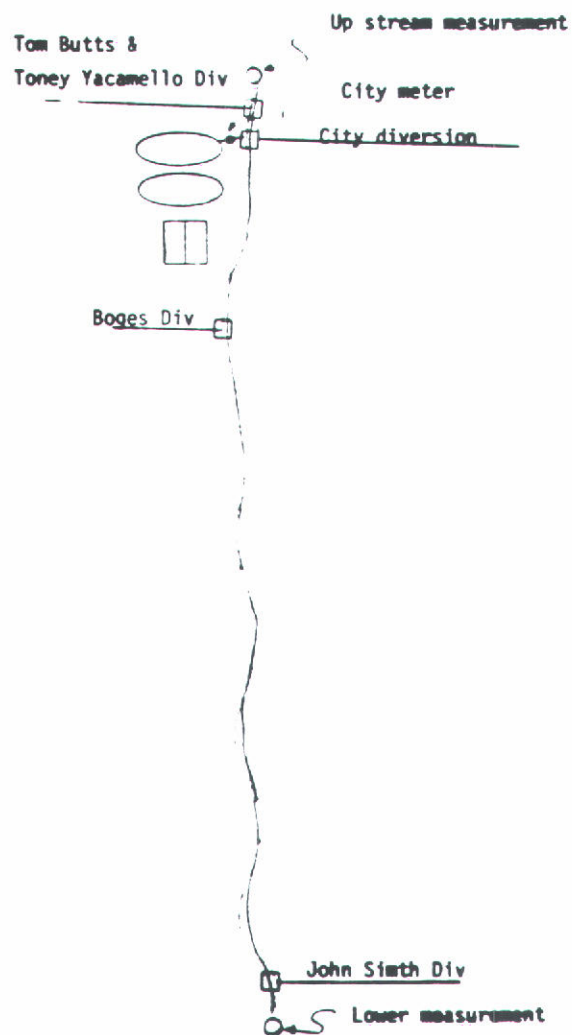
Scale 1:24000





241-161





P.

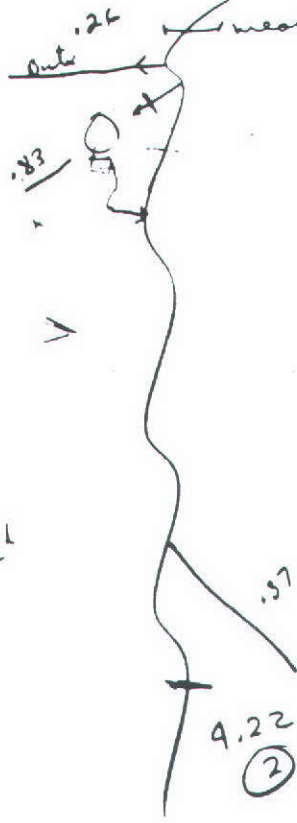
5
30

①
4.12 C.F.S.
meat

4.12
+ .26
= 4.38

4.12
4.02

.10 = S



4.22
1.37
1.26

4.85
- .83

4.02 C.F.S.

4.12

P.

MEASUREMENT FOR GARDEN CREEK

PAGE 1

MEASUREMENT LOCATION ABOVE CHALLIS CREEK ROAD
MEASURED BY AGM

LEGAL DESCRIPTION

V =

.966N

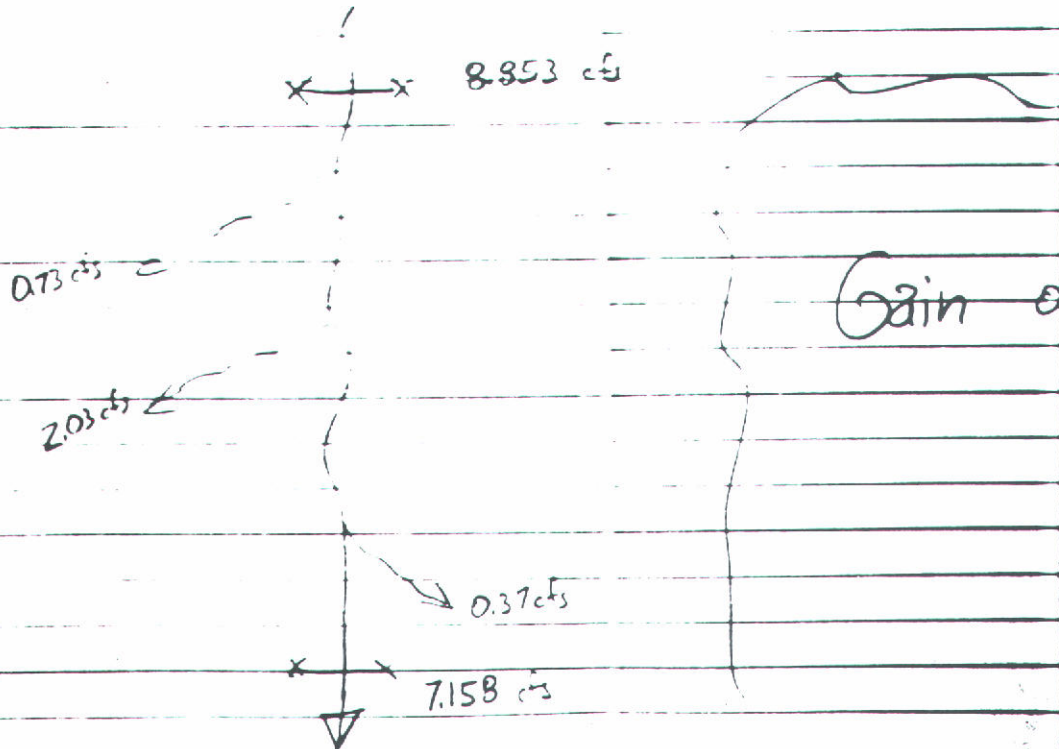
SEC

TWP

R10

ON 9/24/00

DISTANCE FROM INITIAL POINT FEET	DEPTH FEET	AREA SQ FT	REVOLUTIONS	TIME SEC	VELOCITY FT/SEC	DISCHARGE CFS
3.000	.000	.000	0	.000	.000	.000
3.500	.500	.375	50	47.000	1.063	.399
4.000	.700	.350	50	50.000	.990	.340
4.500	.700	.350	50	20.000	2.366	.820
5.000	.750	.375	50	20.000	1.763	.607
5.500	.800	.400	50	19.300	2.523	1.009
6.000	.600	.300	50	14.500	3.243	1.002
6.500	.500	.250	50	36.000	1.352	.330
7.000	.600	.300	40	41.000	.961	.200
7.500	.600	.300	50	36.000	1.374	.412
8.000	.500	.250	50	24.200	2.021	.905
8.500	.500	.250	50	18.300	2.650	.663
9.000	.300	.150	50	21.100	2.311	.347
9.500	.250	.125	50	27.000	1.778	.222
10.000	.150	.100	30	42.400	.722	.136
11.000	.000	.000	0	.000	.000	.000
TOTALS		3.963				7.150



LEGAL NOTICE

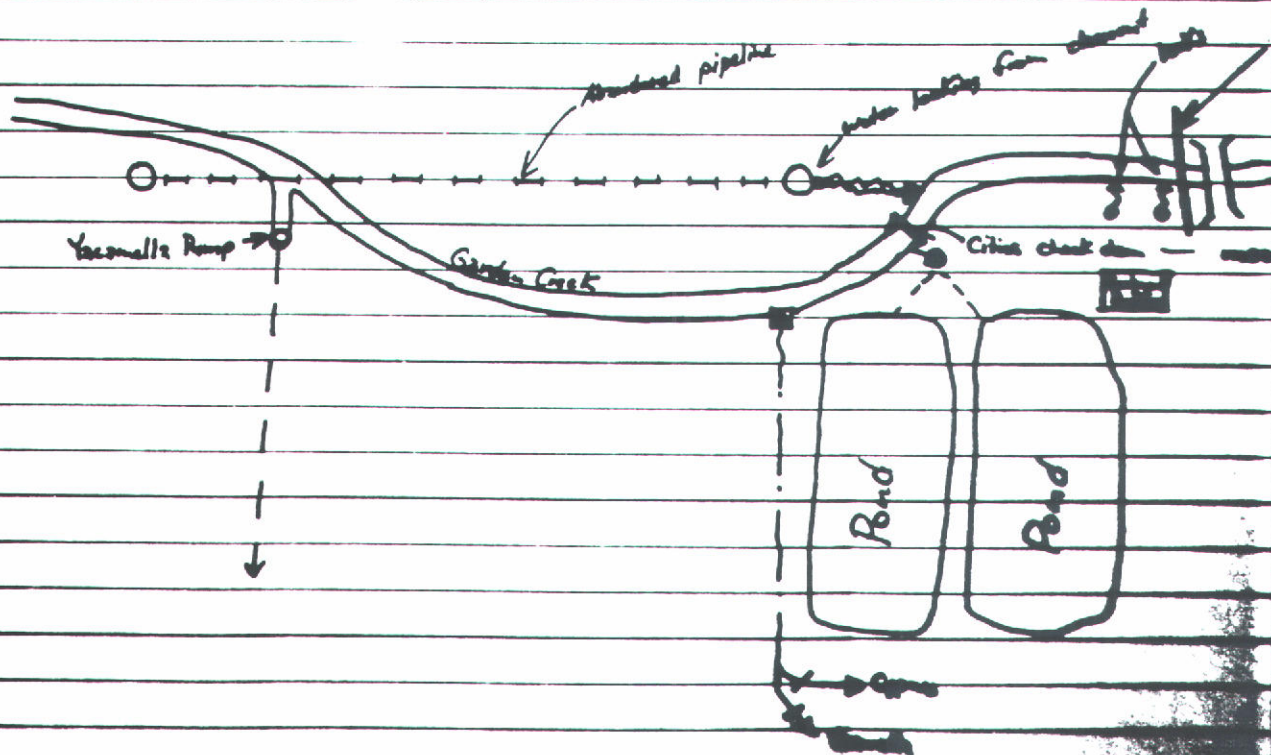
ON 9/23/81

✓ 1.000 • 200 1/2

THE

TOTALS

4517



NEW BRUNSWICK CITY DIV.

LEGAL DESCRIPTION

SEC

TWP

RNG

ON 9/23/81

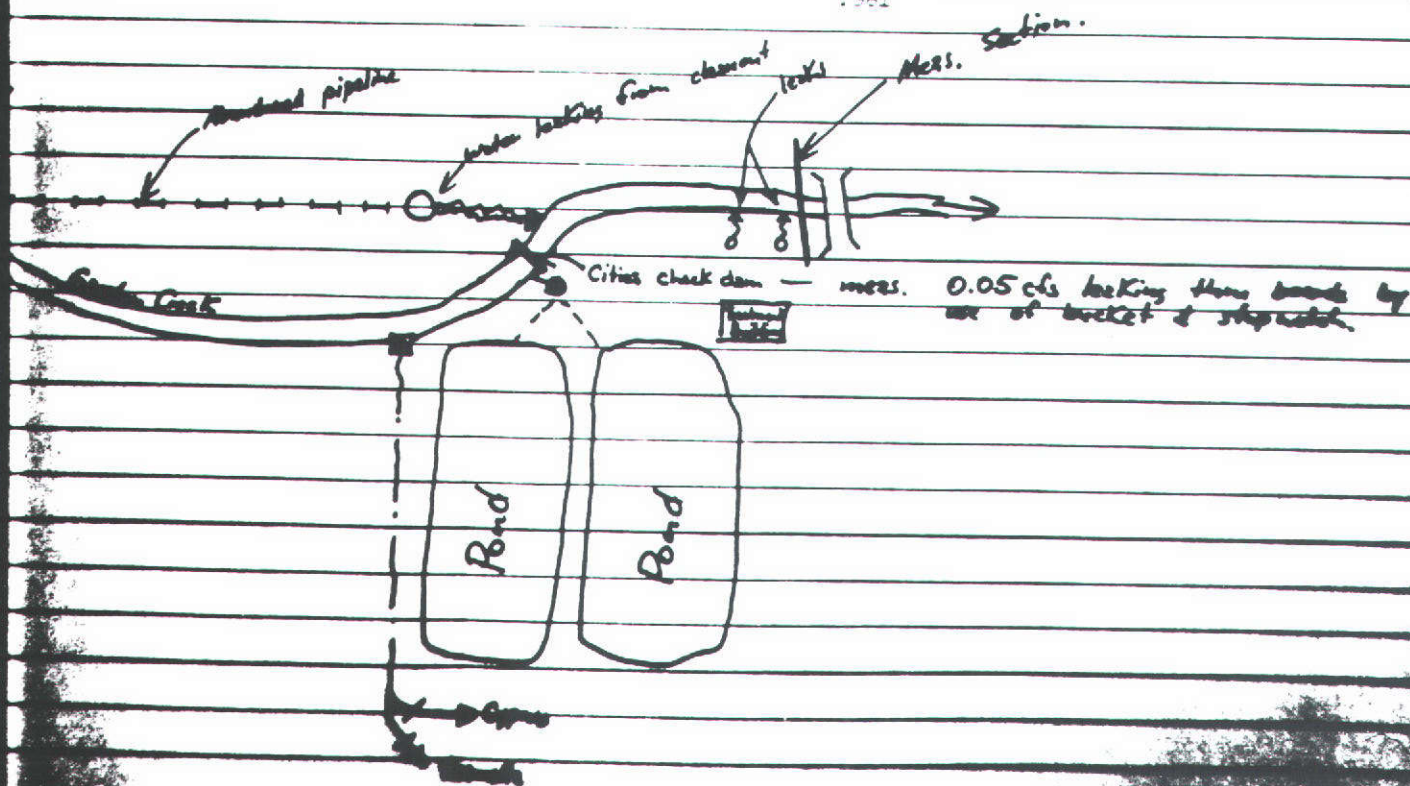
$V = 1.000N + 0.000$ FOR $N \leq 1$

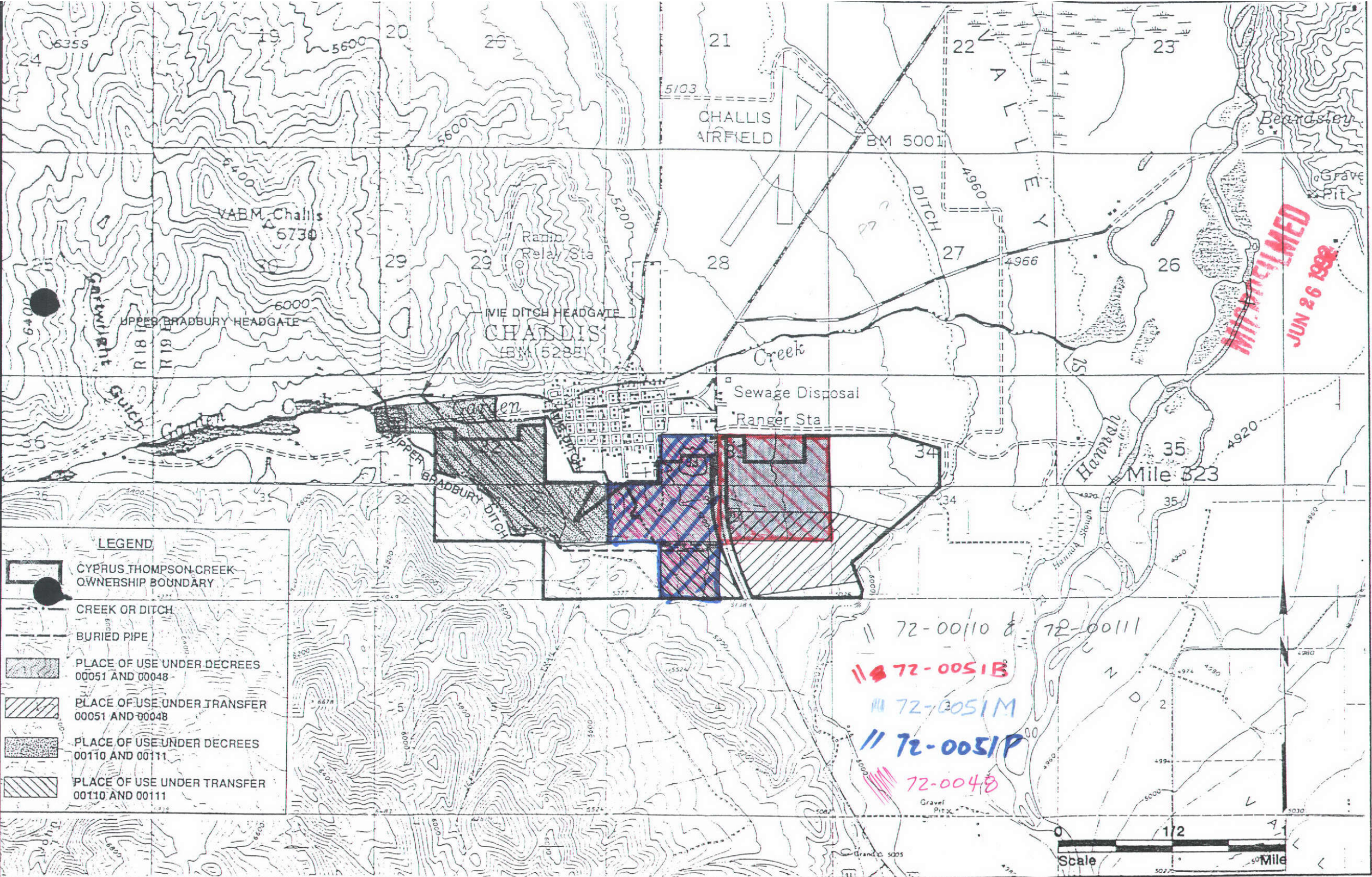
$V = 1.000N + 8.000$ FOR $N > 1$

WATER	REVOLUTIONS	TIME	VELOCITY	DISCHARGE
30 FT		SEC	FT/SEC	CFS
.000	0	.000	.000	.000
.125	7	42.000	.167	.025
.250	20	25.500	.784	.078
.375	20	27.000	.741	.074
.500	20	27.500	.727	.091
.625	20	49.000	.410	.051
.750	25	33.700	.742	.111
.875	20	32.700	.612	.107
1.000	20	55.500	.360	.065
1.125	10	48.000	.208	.031
1.250	3	55.000	.096	.013
1.375	5	21.000	.228	.040
1.500	10	32.600	.307	.054
1.625	5	25.000	.179	.024
1.750	10	25.700	.375	.056
1.875	3	23.000	.130	.016
2.000	3	40.000	.075	.008
2.125	5	38.700	.129	.019
2.250	0	.000	.000	.000

2.450

.961





CFL209.92

20201



163

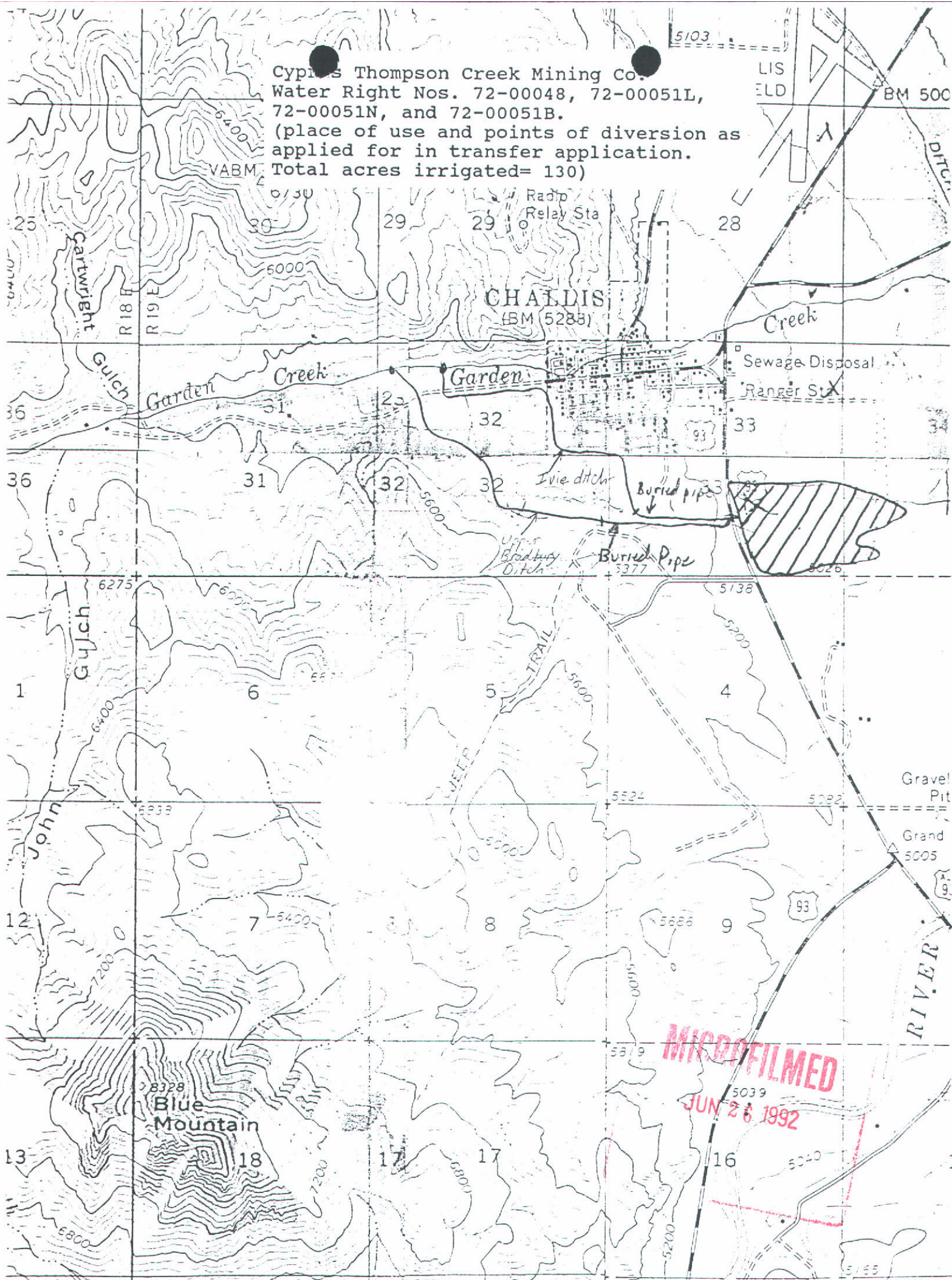
10-2-79

16-2-1

Cypress Thompson Creek Mining Co.
Water Right Nos. 72-00048, 72-00051L,
72-00051N, and 72-00051B.
(place of use and points of diversion as
applied for in transfer application.
Total acres irrigated= 130)

LIS
ELD

BM 500

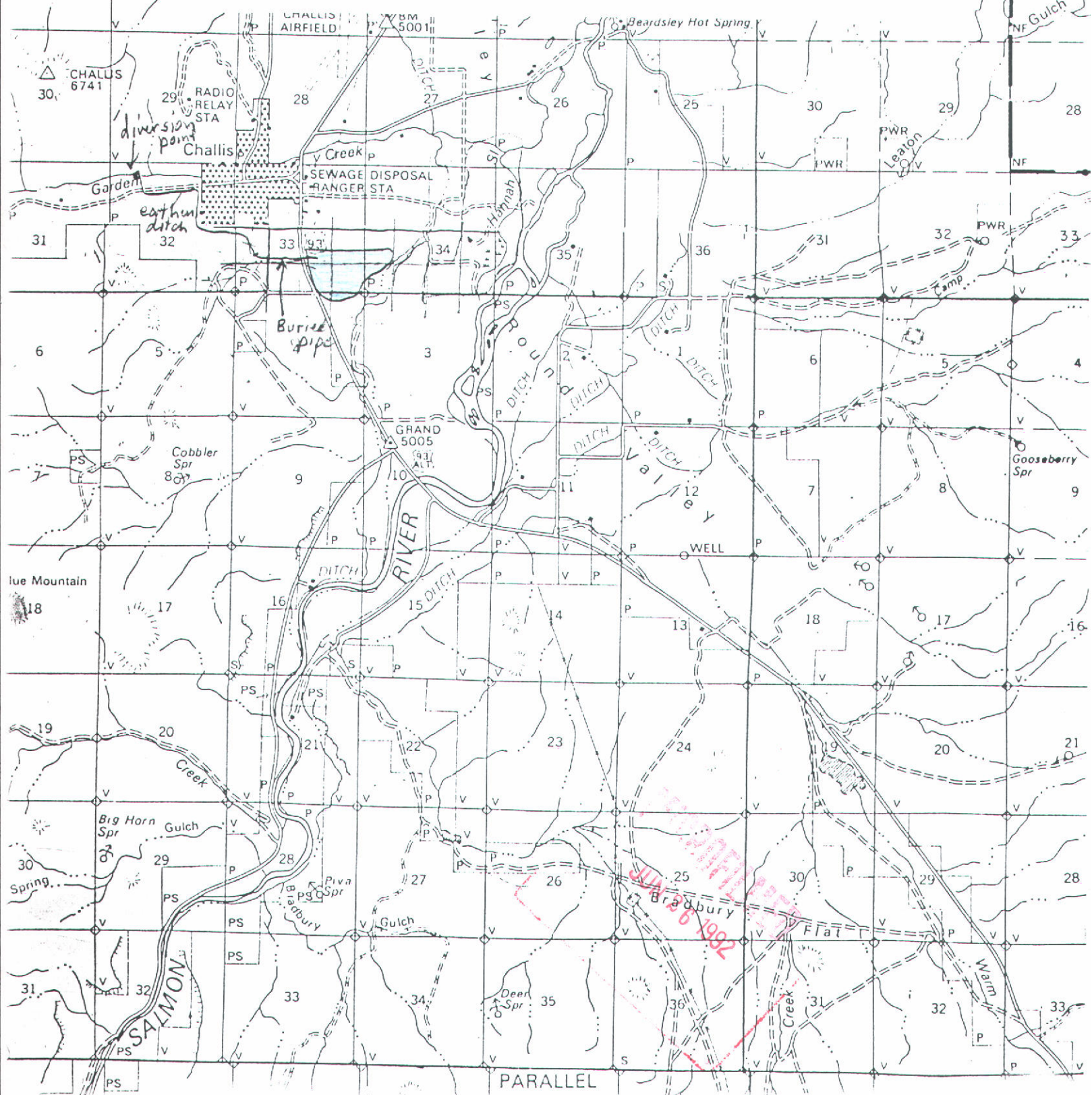


PART 3 Map showing place of use and point of diversion.

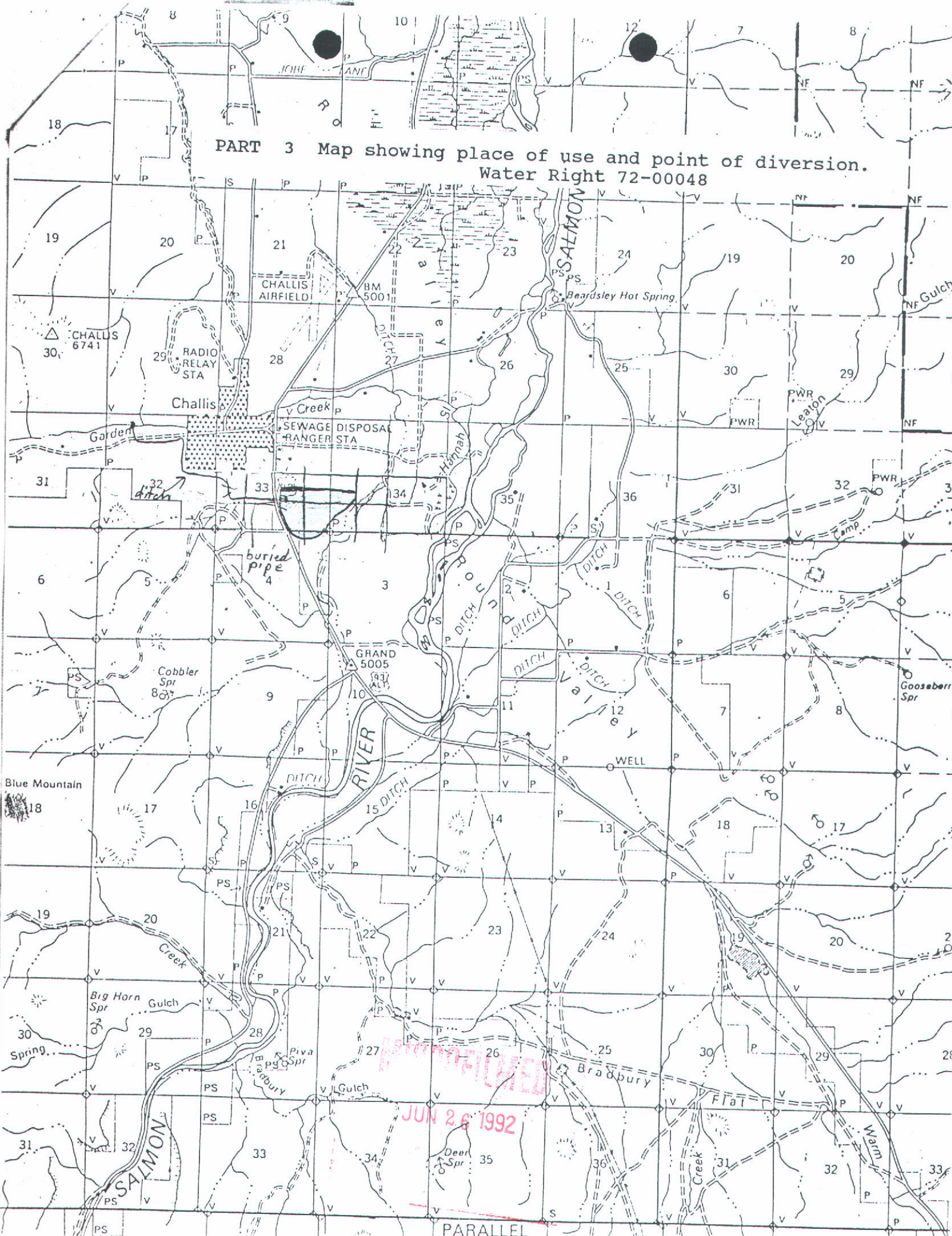
Water Right 72-00051N

Water Right 72-00051L

Water Right 72-00051B



PART 3 Map showing place of use and point of diversion.
Water Right 72-00048



Public Notices

The People's Right To Know

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NOS. 72-00051B, 72-00051N, 72-00051L, 72-00048

Notice is hereby given that CYPRUS THOMPSON CREEK MINING COMPANY of Clayton, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to Section 42-222 of the IDAHO CODE.

WATER RIGHT AS RECORDED

Water right No. 72-00051B, Transfer #353

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort, dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .50 cfs Water use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 160 acres within S1/2NE1/4, N1/2SE1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

Water Right No. A72-00051B

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051B.

Priority Date: May 15, 1880

Source: Garden Creek, tributary to Salmon River

Amount of Water: .50 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right No. 72-00051L, Transfer #372 & #2258

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .25 cfs Water use: irrigation

Point(s) of diversion: NE1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 160 acres within S1/2NE1/4, N1/2SE1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

Water Right No. A72-00051L

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051L

Priority Date: May 15, 1880
Source: Garden Creek tributary to Salmon River

Amount of Water: .25 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right No. 72-00051N, Transfer #776

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .30 cfs Water use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 160 acres within SE1/4NW1/4, NE1/4SW1/4, NW1/4SW1/4, SE1/4SW1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

Water Right No. A72-00051N

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051N.

Priority Date: May 15, 1880

Source: Garden Creek tributary to Salmon River

Amount of Water: .30 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right no. 72-00048, Transfer #193 & #177

Basis of right: Decreed to John Q. Adams in case of Adams et al vs Vandervoort et al dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1901

Amount of water: 3.20 cfs Use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 140 acres within SE1/4NW1/4, NE1/4SW1/4, NW1/4SW1/4, SE1/4SW1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

Water Right No. A72-00048

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00048

Priority Date: May 15, 1901

Source: Garden Creek tributary to Salmon River

Amount of Water: 3.20 cfs Use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 200 acres within NW1/4SW1/4, SW1/4SW1/4, SE1/4SW1/4, S33, T14N, R19E; SW1/4NE1/4, NW1/4, E1/2SE1/4, S32, T14N, R19E.

WATER RIGHT NO. 72-00051N & ADJUDICATION CLAIM NO. A72-00051N TO BE CHANGED AS FOLLOWS:

Amount: .30 cfs Water use: irrigation

WATER RIGHT NO. 72-00051B & ADJUDICATION CLAIM NO. A72-00051B TO BE CHANGED AS FOLLOWS:

Amount: .50 cfs Water use: irrigation

WATER RIGHT NO. 72-00051L & ADJUDICATION CLAIM NO. A72-00051L TO BE CHANGED AS FOLLOWS:

Amount: .25 cfs Water use: irrigation

WATER RIGHT NO. 72-00048 & ADJUDICATION CLAIM NO. A72-00048 TO BE CHANGED AS FOLLOWS:

Amount: 2.6 cfs Water use: irrigation

Total amount of water being transferred: 2.6 cfs

Source: Garden Creek tributary to Salmon River

Points of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); NW1/4NW1/4, S32, T14N, R19E (Upper Bradbury Ditch); Custer County.

Place of use: 130 acres within SE1/4, S33, T14N, R19E; W1/2SW1/4, S34, T14N, R19E.

Any protest against approval of the application for transfer must be filed with the Department of Water Resources, 222 Shoshone Street East, Twin Falls, ID 83301 on or before September 2, 1991.

R. Keith Higginson, Director
Pub: Aug. 15 & 22, 1991.

OK
8-20-91
NB

OK
8-23-91
NB
(8-22-91)
Joanne

RECORDED

JUN 26 1992

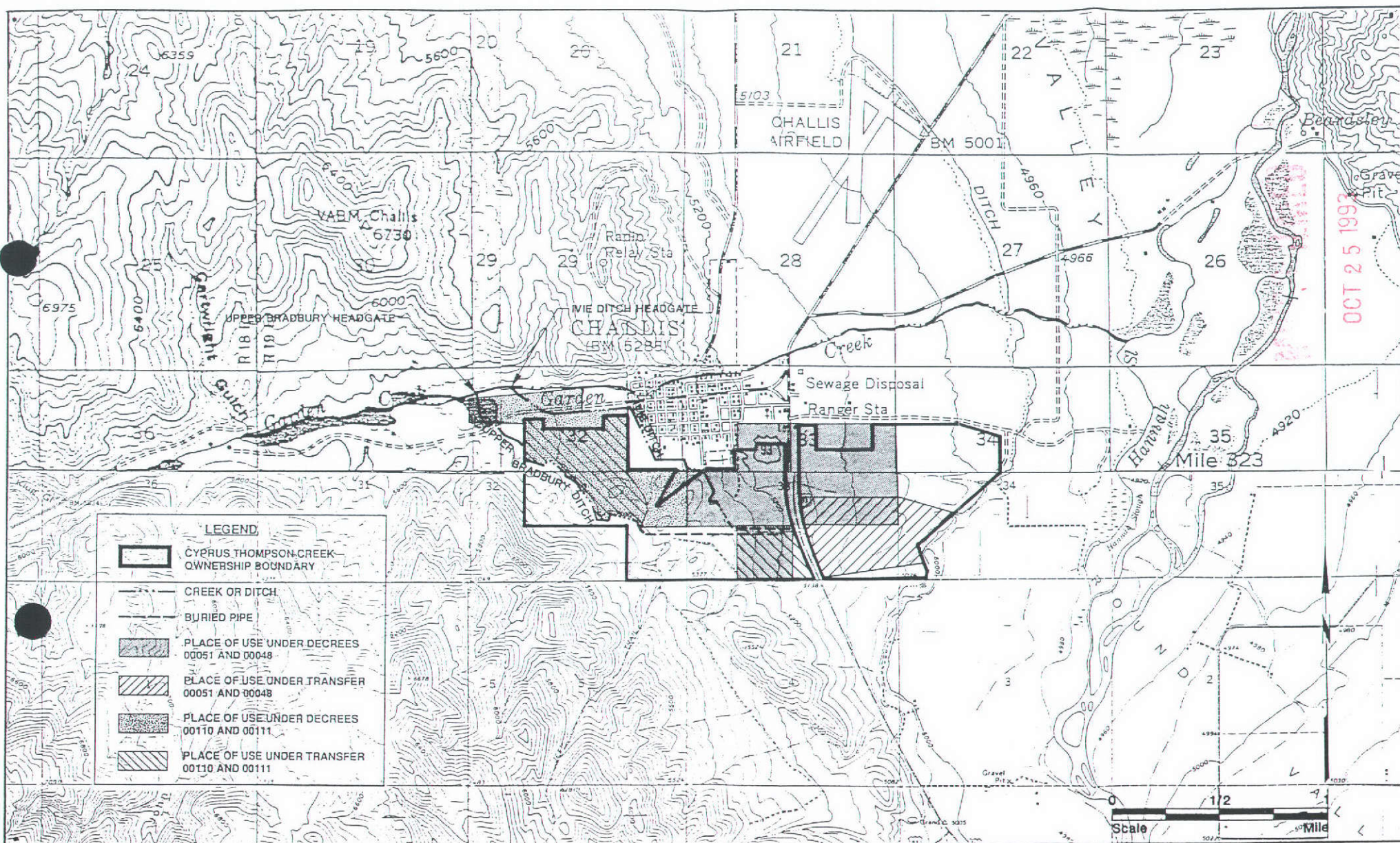


FIGURE 1

VABM Challis
6730

30

29

29

Radio
Relay Sta

28

27

1966

CHALLIS
(BM 5283)

Upper Bad Butte
Headgate

Lower Bad Butte
Headgate

Creek

Creek

34

31

 CYPRUS OWNERSHIP

 72-00048 OFF-RECORD

 A72-00048 - Adj. Claim
XX = Acres in Tract

 Proposed transfer
of 72-00048

N

RECEIVED
JUN 26 1992

DITCH

St. Herman

VABM Challis
6730

30

29

29

Radio
Relay Sta

28

27

1966

CHALLIS
(BM 5283)

Upper Bad Butte
Headgate

Lower Bad Butte
Headgate

Creek

CHALLIS

34

31

32

33

20

20

20

40

30

30

20

30

30

10

5

5

 CYPRUS OWNERSHIP

 72-00051N as recorded

 72-00051B as recorded
72-00051L

 A72-00051B
A72-00051N as claimed
A72-00051L

 Proposed 72-00051B,N,L
After transfer

N

4

3

UNCLASSIFIED

JUN 26 1992

DISCH

St. Horn

Meridian

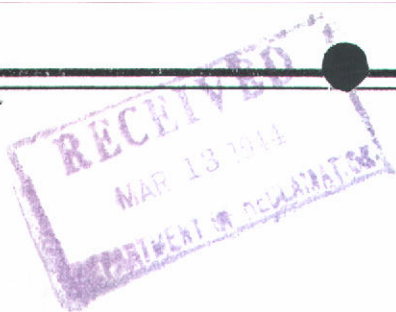
R.

2

SEC. 3
DITCH

COYOTE PRINT J-327

Plot P4b



**NOTICE OF PROPOSED CHANGE
IN POINT OF DIVERSION OF
WATER RIGHT**

Notice is hereby given that Lawrence Bradbury of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one fourth-mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the East line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$, Section 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic feet per second with point of diversion 300 feet East from the West line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$, Section 32, Township 14 North, Range 19, East, B. M.

And that on the 14th day of March A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

JAMES SPOFFORD
49-3 State Reclamation Engineer

CHALLIS, IDAHO

AFFIDAVIT OF PUBLICATION

State of Idaho, }
County of Custer, } ss:

I, Halsey M. Gridley, manager of The Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of The Challis

Messenger for 3
consecutive weeks, commencing with the issue dated February 23, 1944, and ending with the issue dated March 8, 1944

Halsey M. Gridley

Subscribed and sworn to before me this 8th

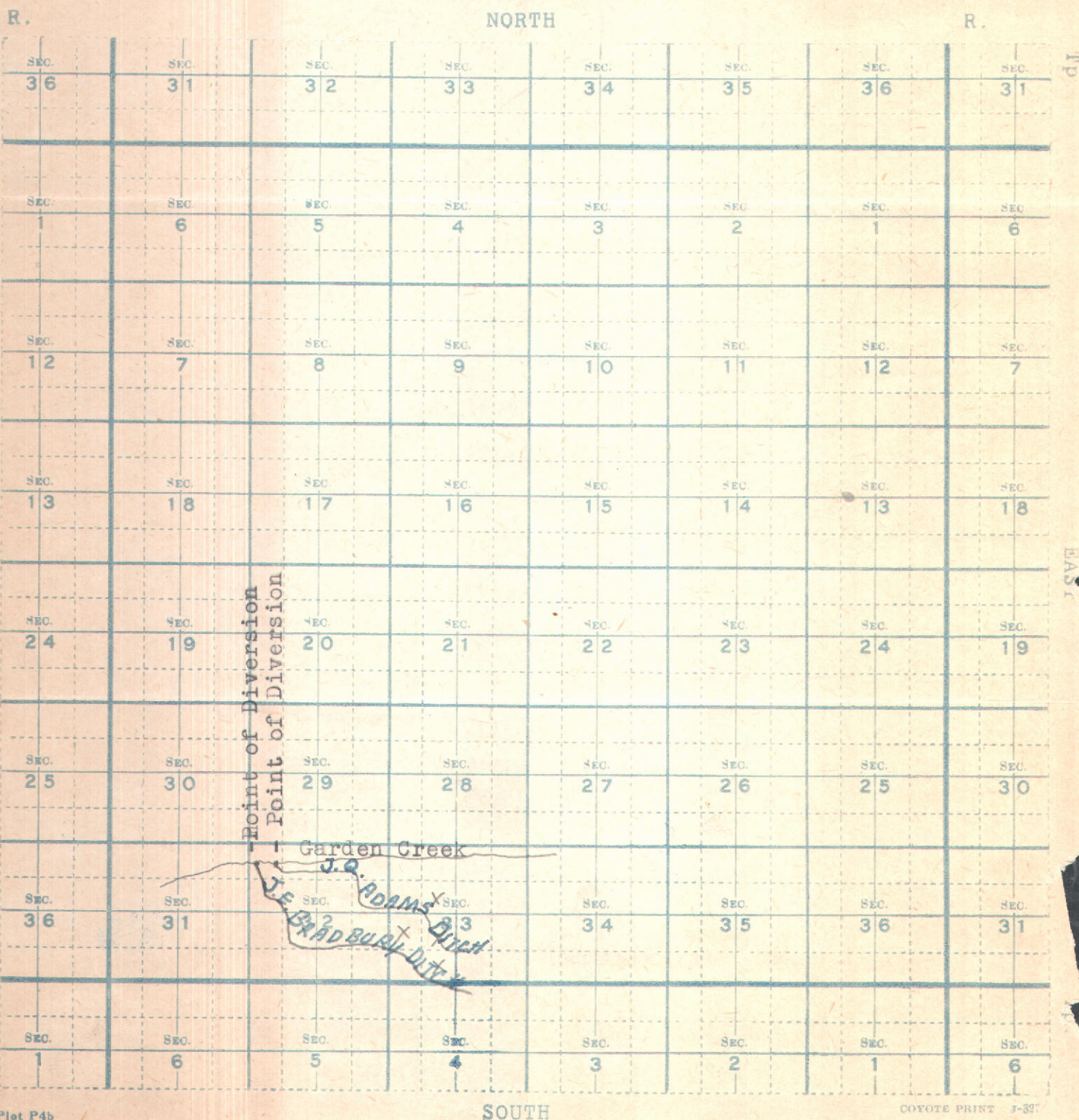
day of March, 1944
A. B. Kiehl

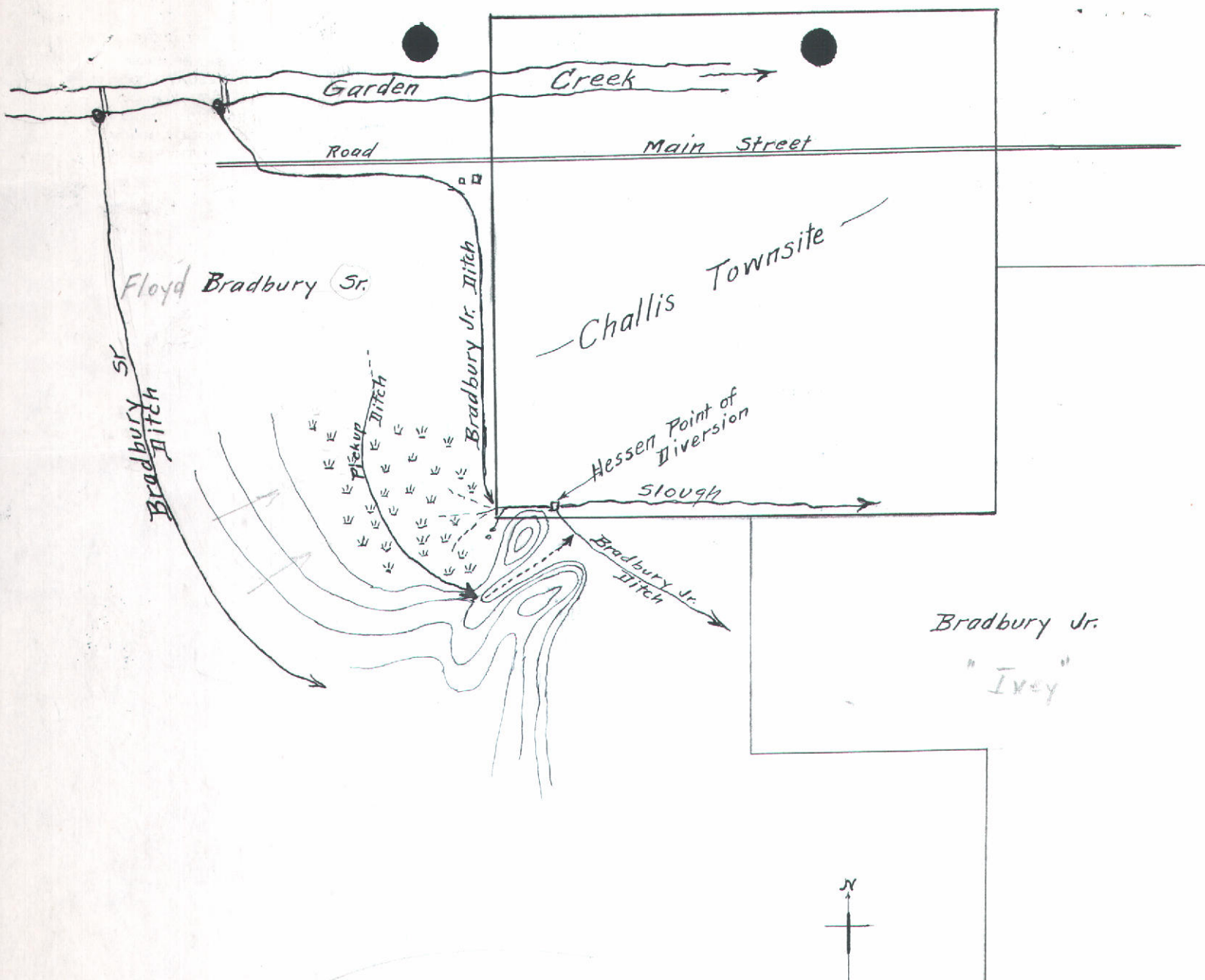
Notary Public, Residing at
Challis, Idaho.

My Commission expires 8/12/45

MICROFILMED

Township 14 North, Range 19 East, Boise Meridian.



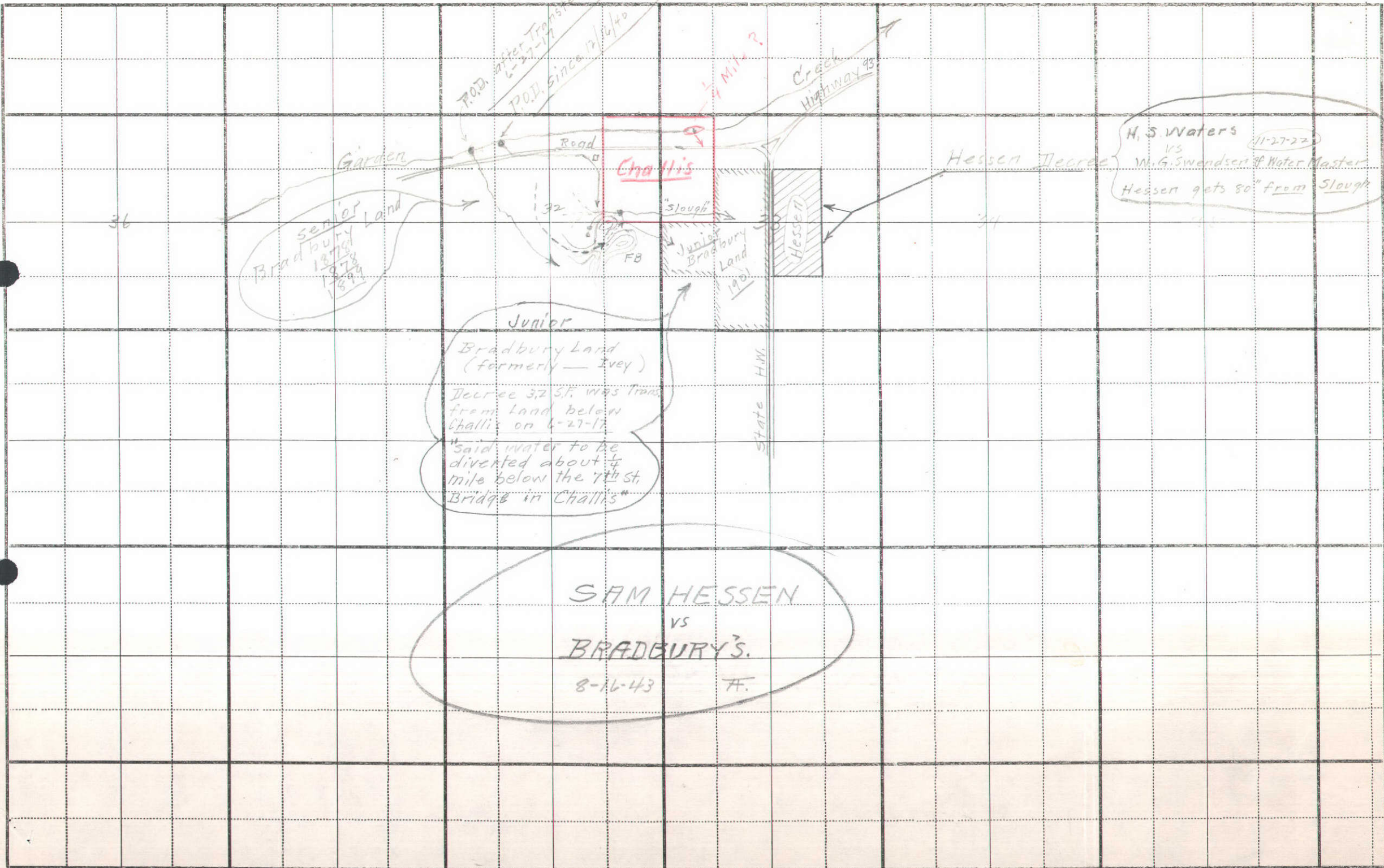


DETAIL SKETCH
(DIVERSIONS)

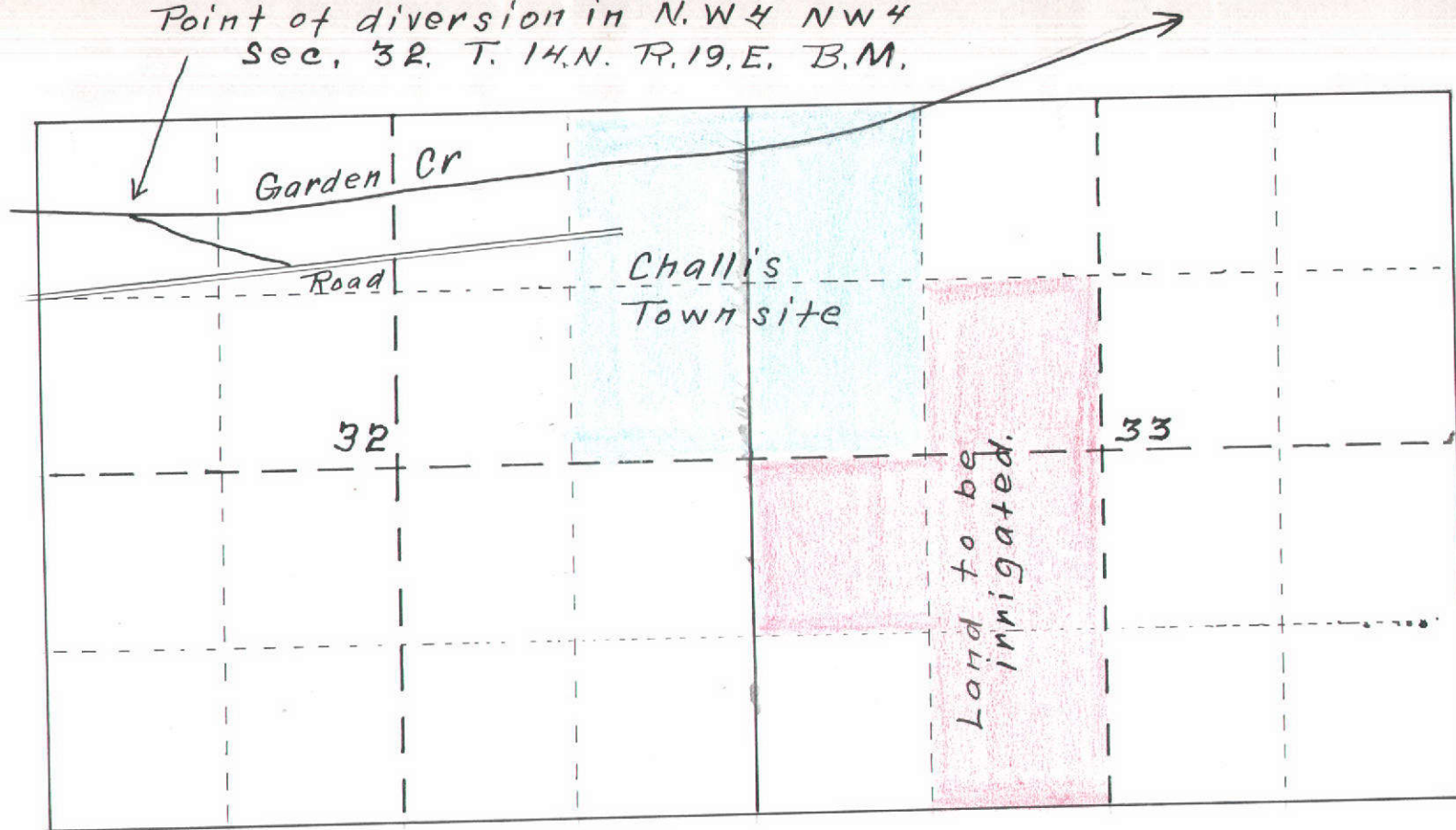
HESSEN VS BRADBURY

8-16-43

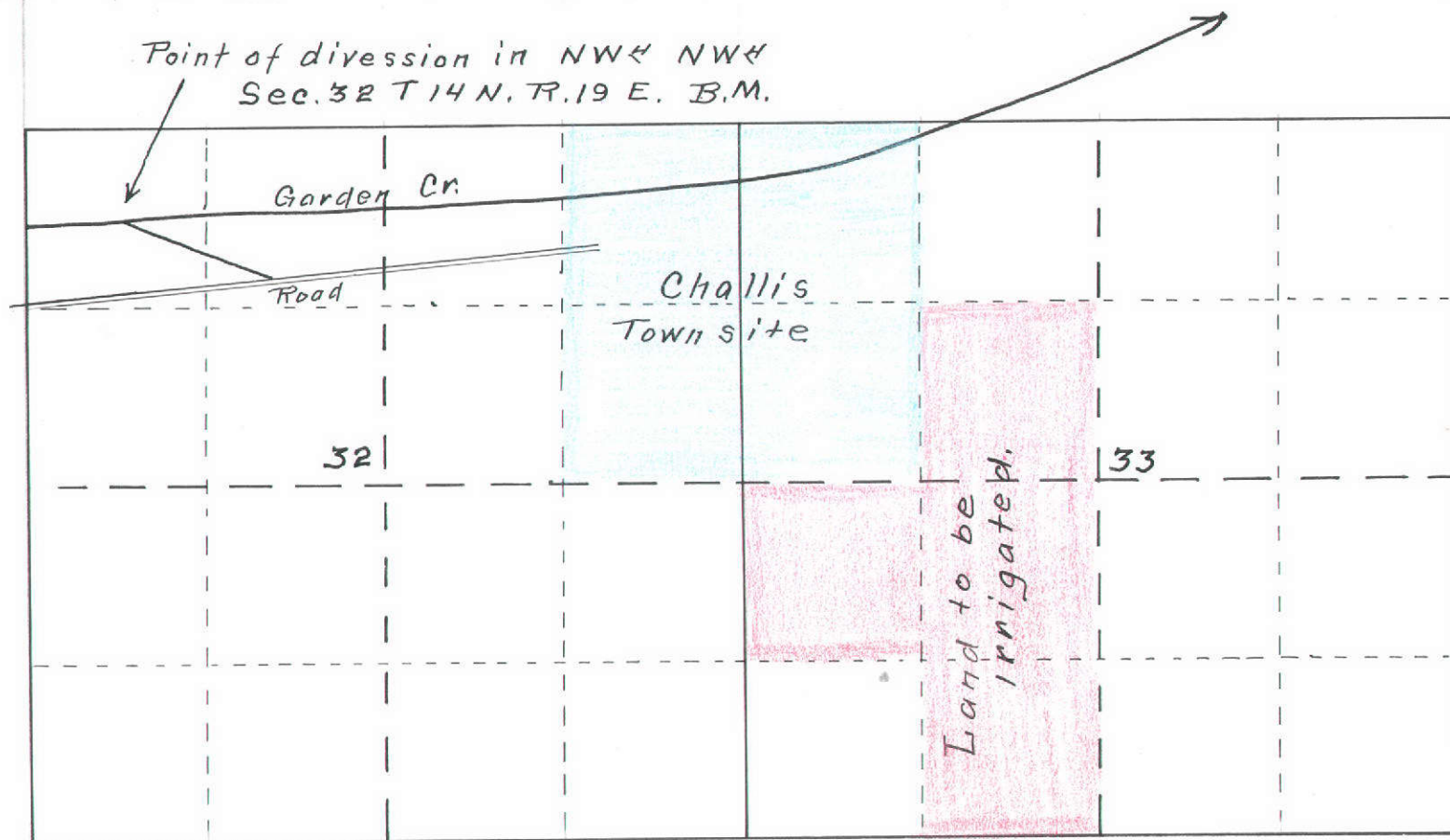
FF.



Point of diversion in N.W. 4 NW 4
Sec. 32. T. 14. N. R. 19. E. B.M.



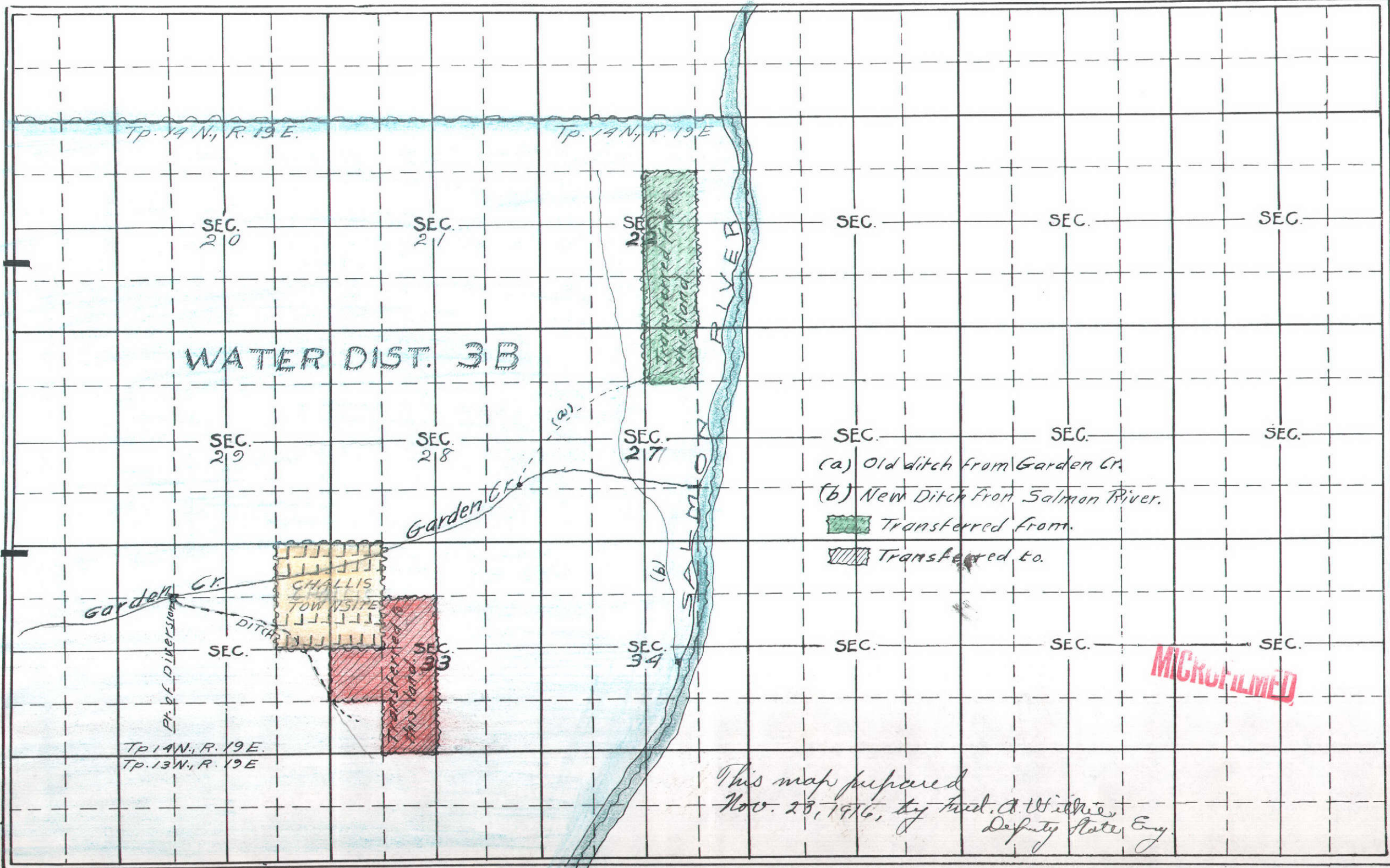
Scale 4 inches = one mile



Scale 4 inches = one mile

Name of Applicant

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



WRITTEN TESTIMONY

*PREPARED FOR CYPRUS THOMPSON
CREEK MINING COMPANY*

**SCOTT I. BENOWITZ, P.E.
JAMES M. MONTGOMERY,
CONSULTING ENGINEERS, INC.**

DECEMBER 30, 1991

JMM James M. Montgomery



RECEIVED
JUN 26 1992

WRITTEN TESTIMONY
PREPARED FOR CYPRUS THOMPSON CREEK MINING COMPANY

SCOTT I. BENOWITZ, P.E.
JAMES M. MONTGOMERY, CONSULTING ENGINEERS, INC.

December 30, 1991

MICROFILMED

JUN 26 1992

161 Mallard Drive, Boise
Idaho 83706 3974

JMM James M. Montgomery
Consulting Engineers Inc



**WRITTEN TESTIMONY
SCOTT I. BENOWITZ, P.E.
JAMES M. MONTGOMERY, CONSULTING ENGINEERS, INC.**

**PREPARED FOR CYPRUS THOMPSON CREEK MINING COMPANY
December 30, 1991**

Reference: Cyprus Thompson Creek Water Rights Application for Transfer of Water Rights Nos. 72-00051L, 72-00051N, 72-00051B, 72-00048, 72-00110 and 72-00111

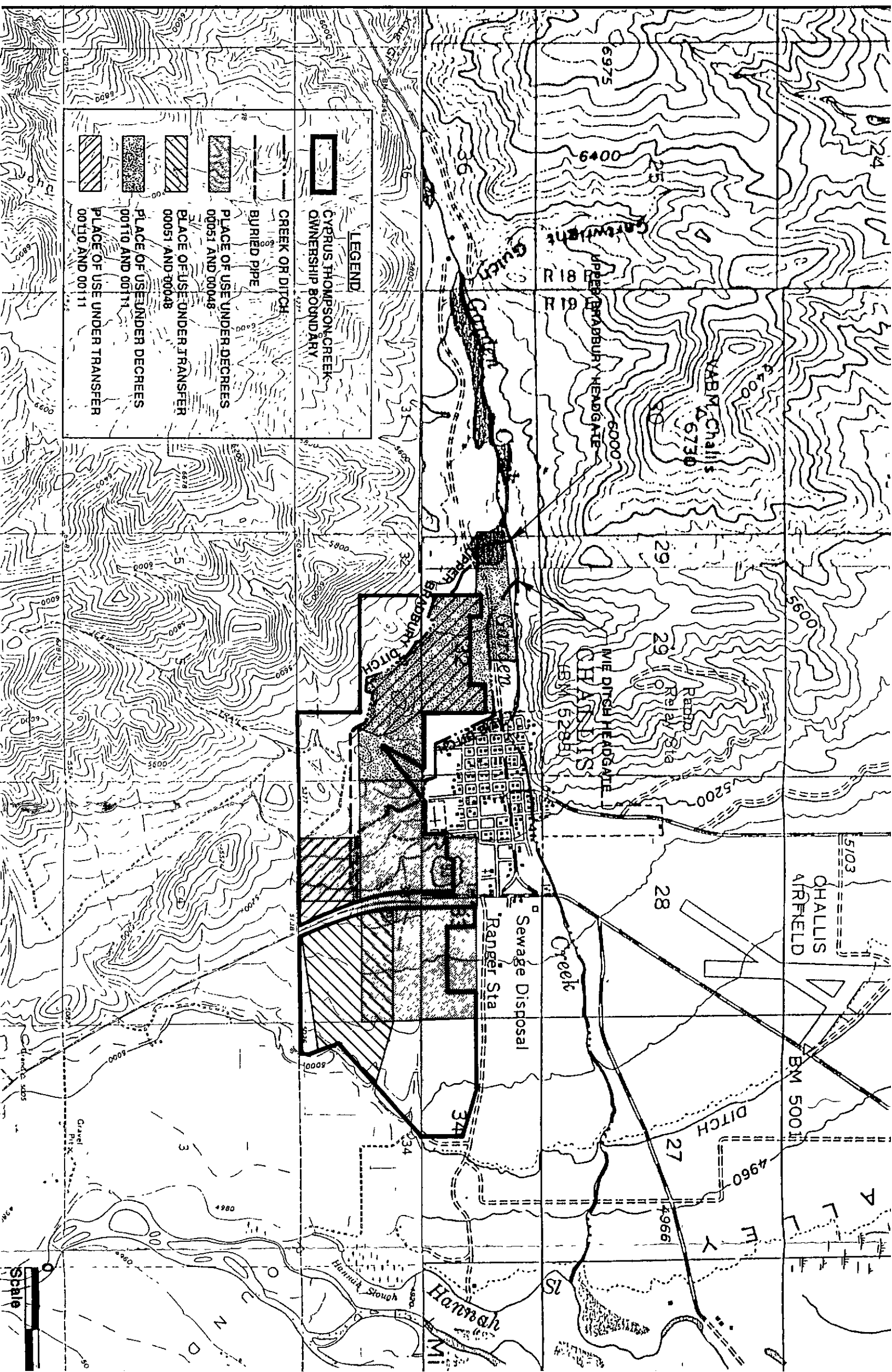
This testimony summarizes my hydrological investigation regarding the transfer of the above mentioned water rights by Cyprus Thompson Creek Mining Company (Cyprus). As requested by Mr. Bert Doughty of Cyprus, and Mr. Scott Campbell, Davis, Wright, Tremaine, I have investigated the impact, if any, of transferring irrigation water from the decreed place of use to the proposed place of use identified in the transfer applications (refer to Figures 1 and 2). To this end, I have reviewed several technical documents, visited the sites in question (refer to Figures 3 and 4a, 4b, and 4c), and interviewed various individuals regarding irrigation practices, diversion amounts, stream flows in Garden Creek, and land use in the immediate vicinity of the lands identified in the decrees and proposed transfers (Subject Property).

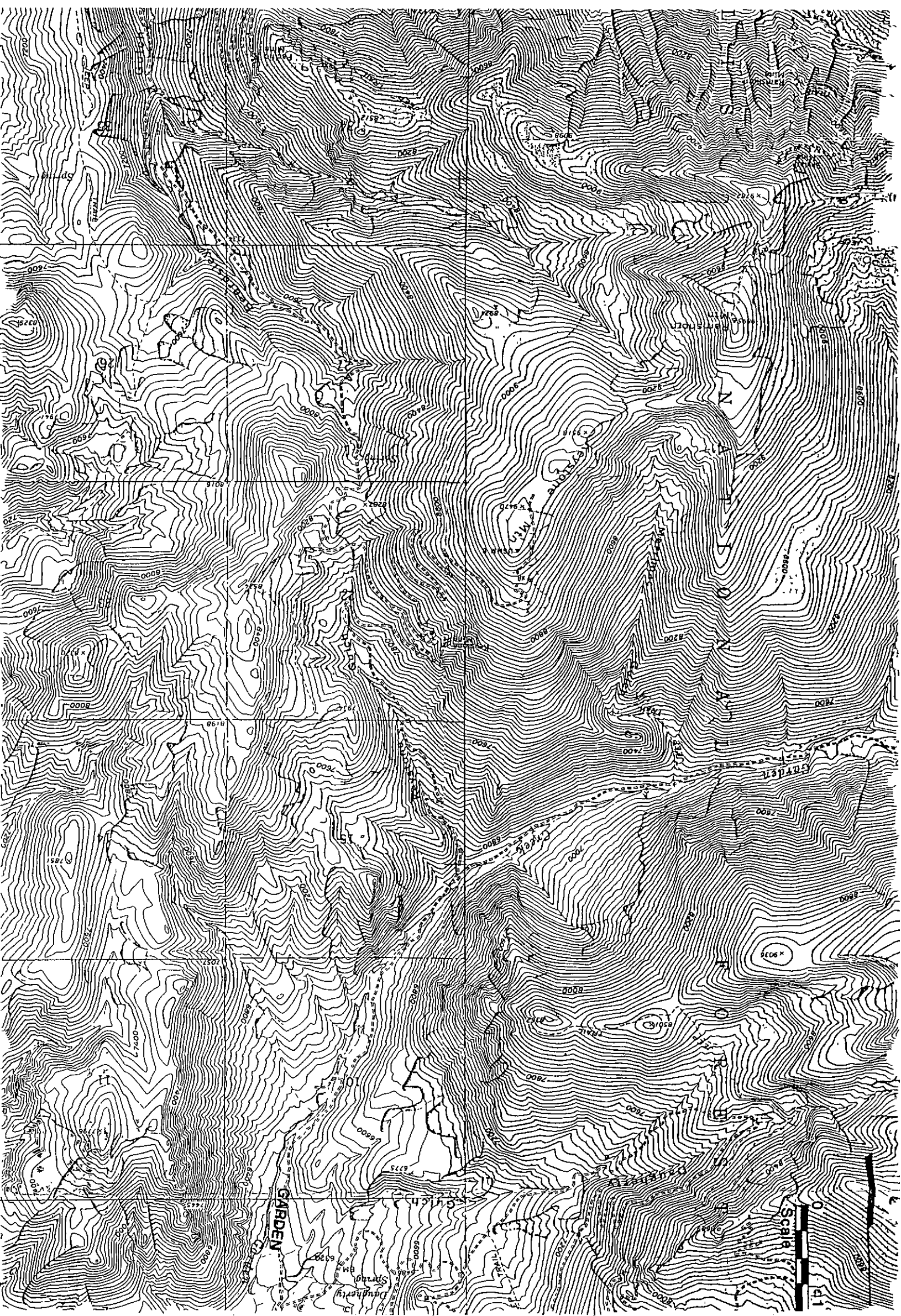
SOURCES OF BACKGROUND INFORMATION

I have reviewed several sources of technical information during this evaluation. Copies of these data are included in the Appendices. This review includes:

- State of Idaho Department of Water Resources (IDWR) Well Drillers reports for 12 wells drilled within approximately one mile of the Subject Property. This information was reviewed to try and establish the soil profiles and piezometric surface under the Subject Property. (Appendix A)
- United States Department of the Interior Geological Survey, Water Resources Division, Ground Water Branch. Ground-Water Reconnaissance In Round Valley, Custer County, Idaho. E. G. Crosthwaite. Prepared for the U.S. Bureau of Reclamation. U. S. Geological Survey Open-file Report. Boise, Idaho. October, 1962. (Appendix B)
- Soil survey for the Challis area (advance copy, subject to change). U. S. Department of Agriculture, Soil Conservation Service, Salmon, Idaho. Unpublished. (Appendix C)

REFILED
JUN 26 1992





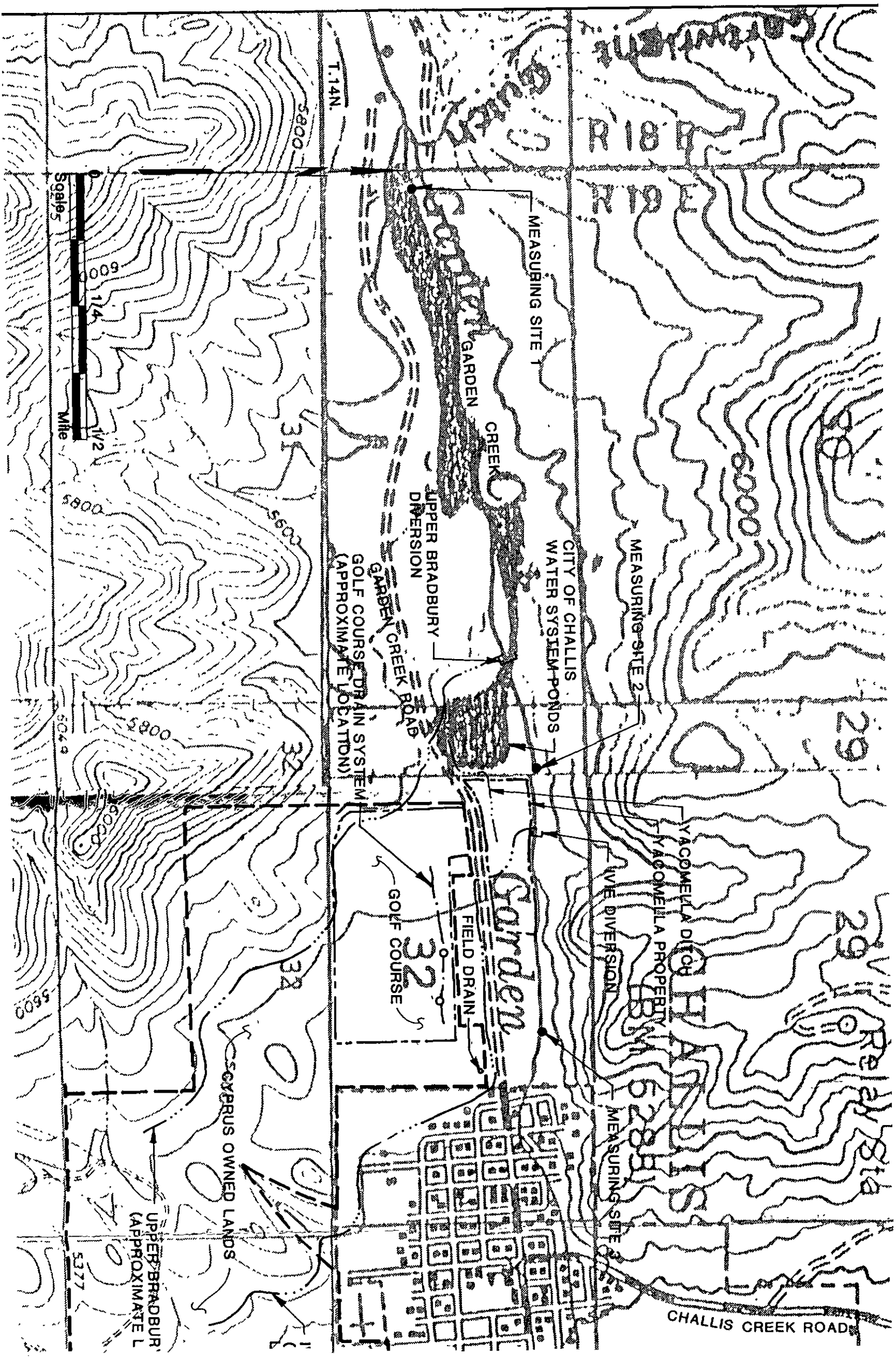


FIGURE 4B

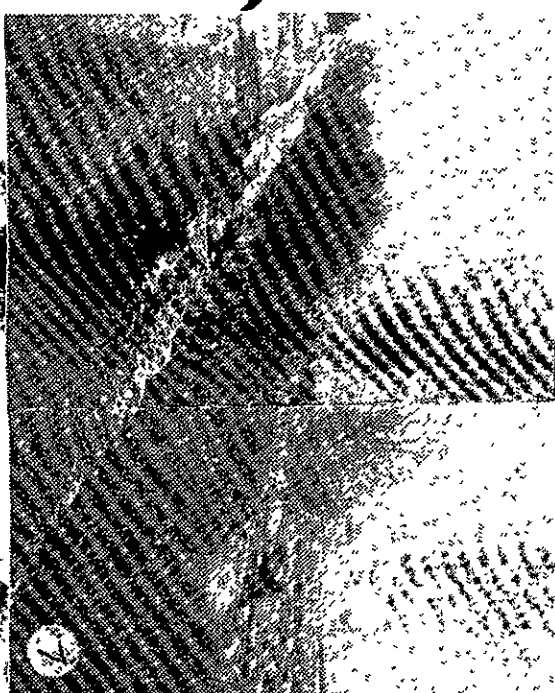
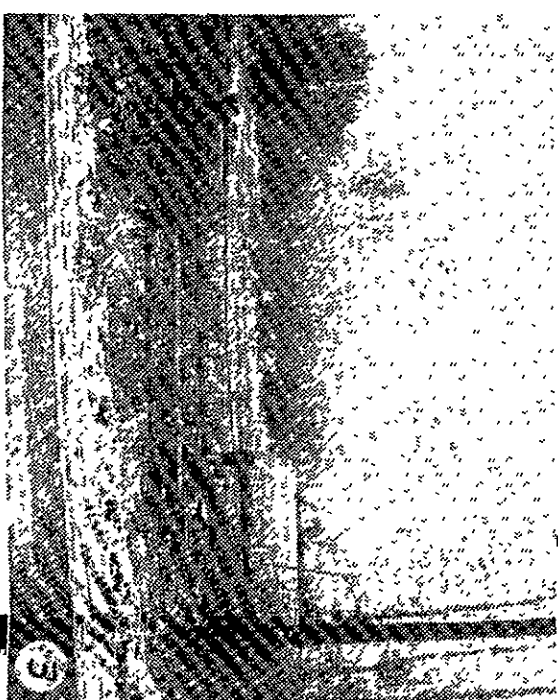
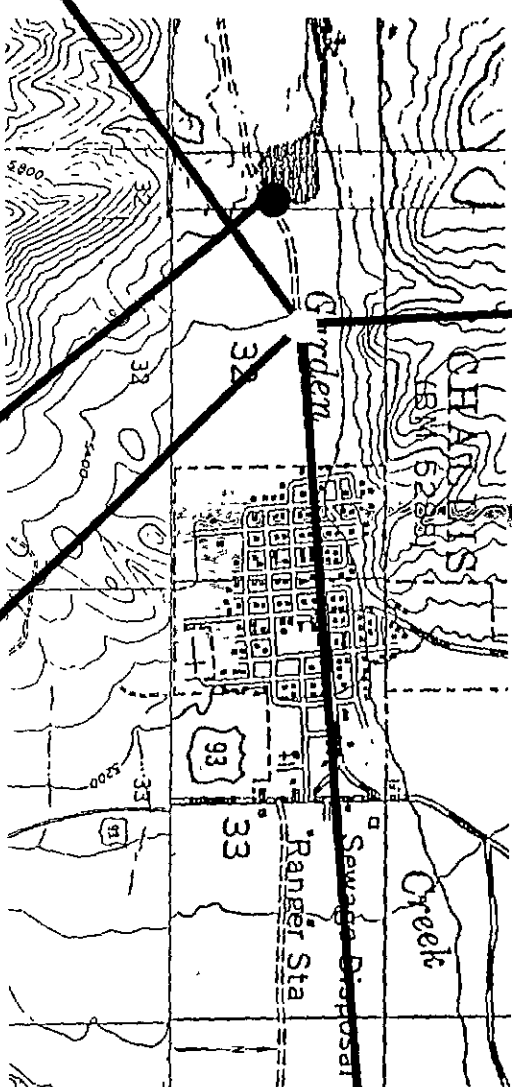
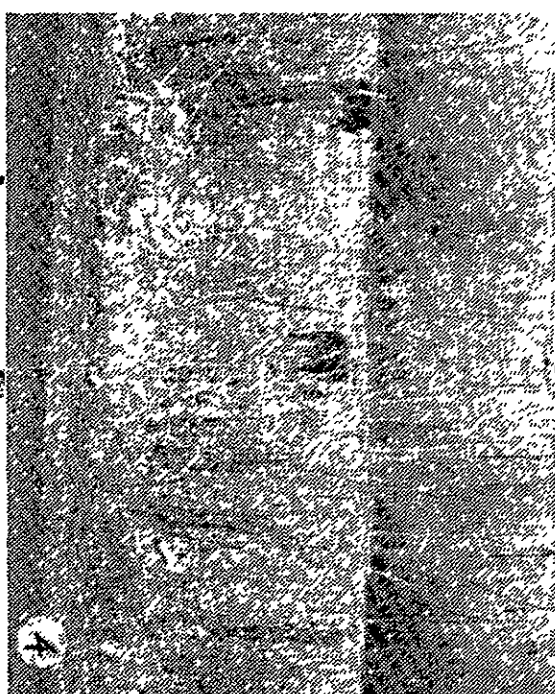
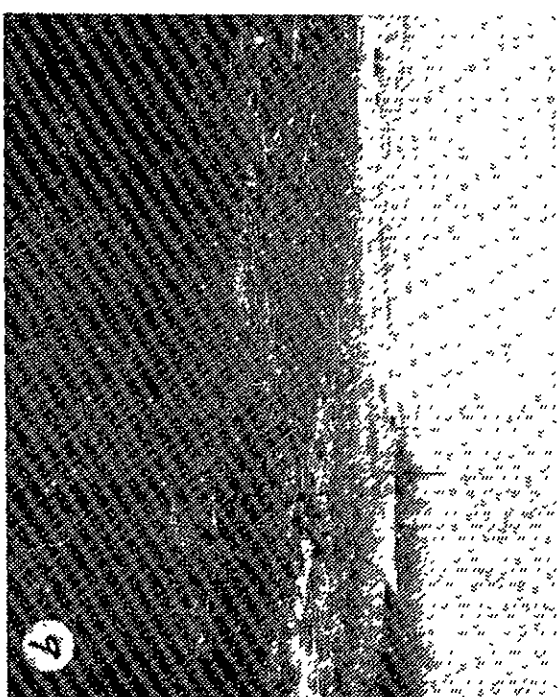


FIGURE 4C

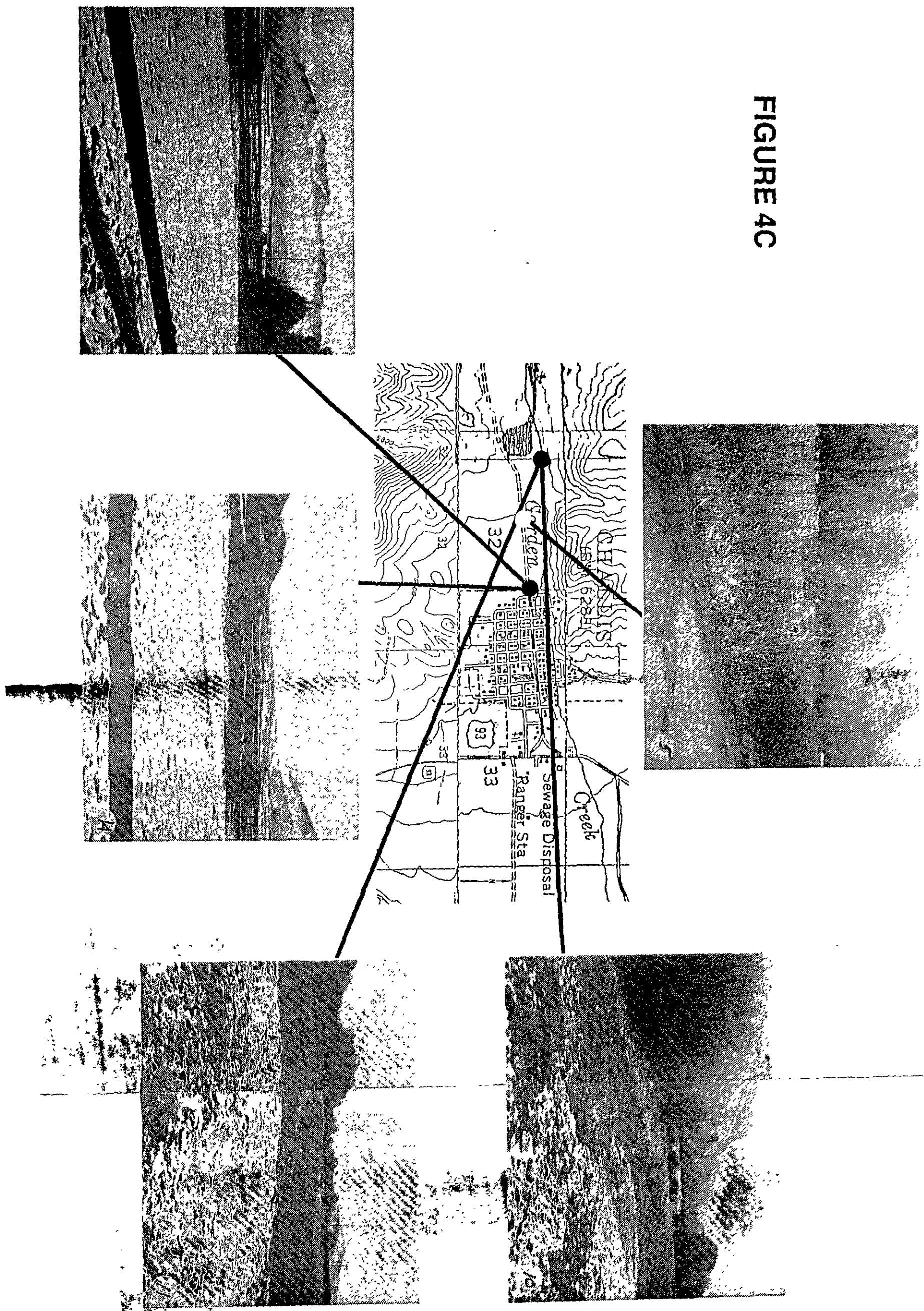
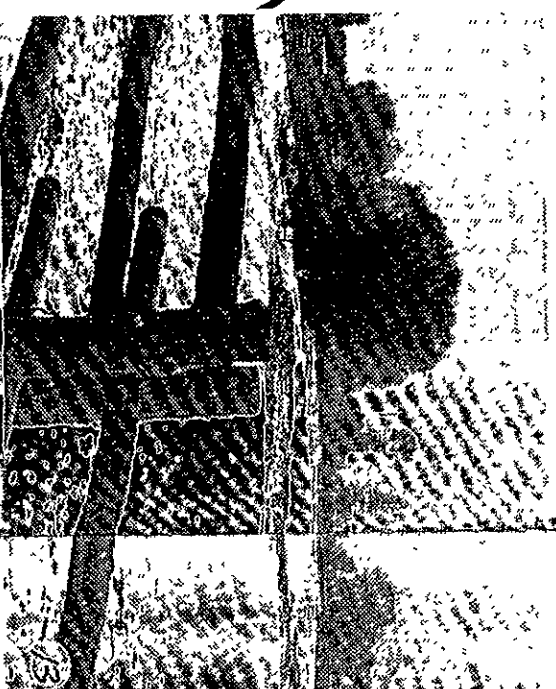
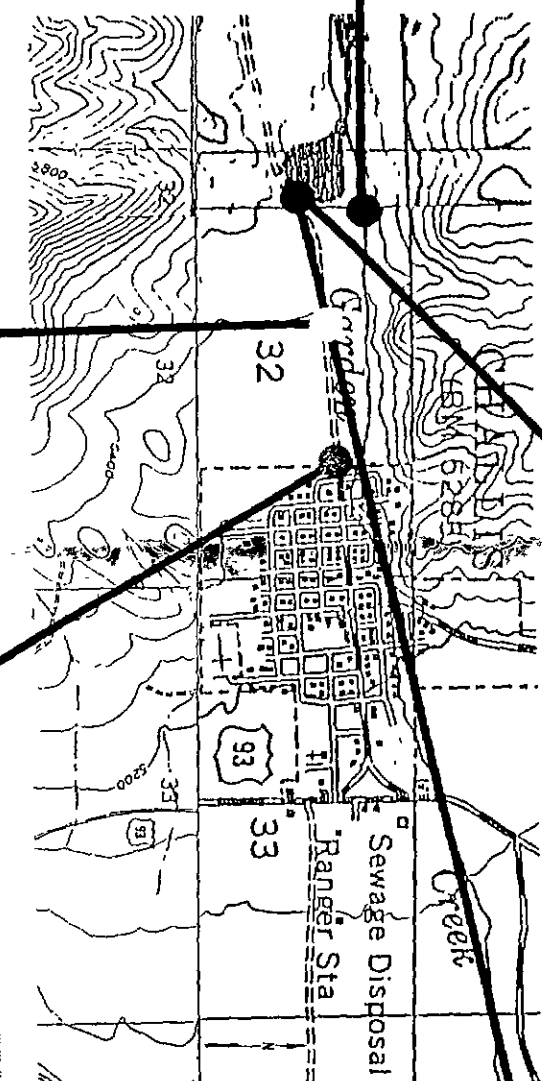
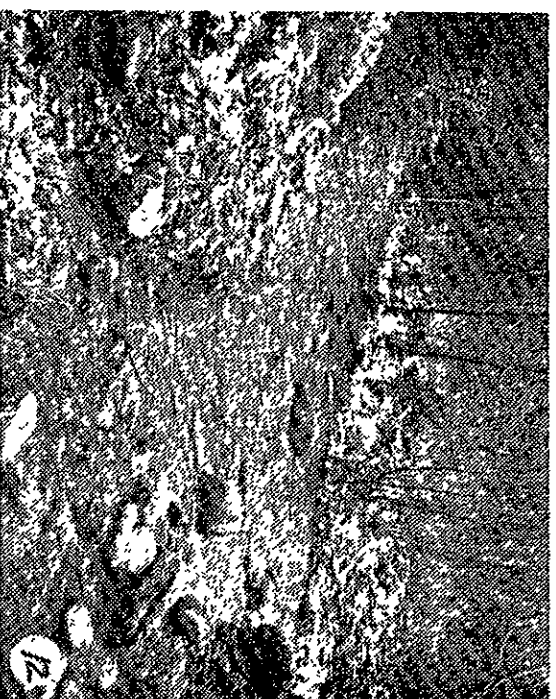


FIGURE 4A



- August 1, 1985 correspondence to the Mayor and City Council of Challis, Idaho from Kent Foster of the Holden, Kidwell, Hahn & Crapo law firm. (Appendix D)
- April 13, 1987 correspondence to Betty Horne, Clerk of the City of Challis From Kent Foster of the Holden firm with attached memorandum Decision in the Keppner, et ux. v. Department of Water Resources, et al. case. (Appendix E)
- Several miscellaneous documents dated in the 1930's pertaining to the transfer of the Village of Challis's water right on Garden Creek. (Appendix F)
- Several miscellaneous documents from IDWR files pertaining to flow measurements taken along Garden Creek and irrigation diversions along Garden Creek. (Appendix E)

I also contacted and interviewed several individuals regarding historical land use and irrigation practices, including:

- Mr. David Bergey, Cyprus.
- Ms. Charolette Curtis, IDWR, Boise, Idaho.
- Mr. Bert Doughty, Cyprus.
- Mr. Gary Funderburg, IDWR, Twin Falls, Idaho.
- Ms. Karen Langersmith, USDA Soil Conservation Service (SCS), Salmon, Idaho.
- Mr. Jim McGowen, Cyprus. Former resident adjacent to subject property.
- Mr. Joe Pyle, Challis water system maintenance supervisor.
- Mr. Ken Stark, Challis Golf Course Grounds Manager.
- Mr. Tony Yacomella, property owner adjacent to subject property.
- Mr. Bill Yacomella, son of Mr. Tony Yacomella.

I measured stream flows in Garden Creek at three locations on November 5, 1991. I was assisted in this effort by Mr. Bert Doughty and Mr. Jim McGowen. The three locations of stream measurement are: Site 1 - SW NW Section 31, T. 14 N. R. 19 E.; Site 2 - NW NW Section 32, T. 14 N. R. 19 E.; and Site 3 - NE NW Section 32, T. 14 N. R. 19 E. (refer to Figure 3). At the time measurements were taken, the only diversion from Garden Creek noted was flow into the City of Challis water system, between measuring sites No 1 and 2, in the NW 1/4 NW 1/4 Section 32, T. 14 N. R. 19 E.. However, according to Mr. Joe Pyle, this entire flow was being routed back into Garden Creek adjacent to the City's chlorination building, located upstream from measuring Site 2.

SITE VISIT

I visited the Subject Property on November 5, 1991, accompanied by Mr. Bert Doughty and Mr. Jim McGowen. As part of this visit, I inspected Garden Creek at several locations, including measuring Sites 1, 2, and 3, adjacent to Tony Yacomella's property just east of the City's water treatment facility, and one location on the west end of Challis within the city limits (refer to Figure 3). I inspected three water diversions along this reach of

Garden Creek, including the upper Bradbury ditch, the City's water diversion, and the Ivie ditch. I also inspected the upper Bradbury ditch on the west and south sides of the City's water treatment facility, then followed it to where it crosses the Garden Creek road, including Yacomella's diversion headgate and supply ditch, which routes water from the upper Bradbury ditch onto his property.

With the approval of Bill Yacomella, I traversed Tony Yacomella's property between the Garden Creek road and Garden Creek. I noted several small ditches that traverse his property west to east, as well as several drain pipes laid over these ditches to route surface water down gradient. I also observed the Ivie ditch as it crosses Yacomella's property.

Yacomella's property is managed as pasture (refer to Figure 3). The vegetation consists of grass hay, with large areas of deciduous shrub vegetation, such as willow, alder, dogwood, and rose hip. The northern half of this property appeared to have been cultivated, as the surface was relatively smooth. The southern half, however, appeared hummocky, as though the ground has not been cultivated recently. Cattle were grazing the property during my site visit.

I also walked through the Challis golf course, beginning near the western boundary and proceeding in an easterly direction (refer to Figure 3). I inspected the drain system described by Mr. Ken Stark, which consists of an approximately three foot deep trench, in which perforated pipe and gravel were placed. In some areas, the trench is filled, in others, approximately one foot of trench is not filled. The drain pipes run from west to east, and dump into two small ponds, one up gradient from the other. The lower pond has what appears to be a drain pipe exiting to the east. The drain pipe is buried in a trench. It continues to the east property line, where it apparently ends.

The golf course vegetation consists of grass turf, with no vegetation that would indicate the presence or lack of a high groundwater table. However, Ken Stark told me that during development of the golf course, water was present at the surface in many areas of the property, especially during irrigation season. He also stated that prior to constructing the drain system, several locations of the golf course property was covered with "swamp grass", growing in semi-flooded areas.

I inspected the property to the east of the golf course, which is not owned by Cyprus. This pasture consists of tall grass vegetation, which appeared to not have been cultivated. At the northeastern edge of this parcel, a drain system (identified as Field Drain on Figure 3) surfaced and the flow from the drain entered the Ivie ditch, which was dry upstream of this location. As I walked from north to south along the eastern border of this parcel, it appeared the flow in the Ivie ditch increased, although I could not locate additional pipe drain outlets.

IRRIGATION PRACTICES

Existing irrigation practices in the N 1/2 Section 32, T. 14 N. R. 19 E., covered under decreed water rights 72-00110 and 72-00111, were evaluated during my site visit. According to Tony Yacomella, his property on the north side of the Garden Creek road receives surface irrigation water from two sources: the upper Bradbury ditch, and irrigation wastewater from the irrigated fields up-gradient of the City's water treatment ponds. The wastewater is piped over the upper Bradbury ditch near Yacomella's diversion (Refer to Figure 3). This water is routed across Yacomella's fields using a surface ditch delivery system including pipes to convey surface water over the Ivie ditch. These ditches run down gradient west to east. The uncultivated field on the south half of this parcel appears hummocky, which is presumably a result of cattle grazing during periods when the surface soils are saturated with irrigation or runoff water. The north half of this parcel

is not hummocky, probably as a result of receiving lesser amounts of surface irrigation or runoff water, and/or grazing/cultivation practices.

The golf course parcel located in the N 1/2 Section 32, T. 14 N. R. 19 E., is currently irrigated using a pressurized sprinkler system. Water is supplied from the upper Bradbury ditch. Sprinkler irrigation began sometime during the summer of 1990. It is my understanding that historically, the golf course area was flood irrigated using water from the upper Bradbury ditch. This practice was discontinued within the last five years. The land owner up-gradient from the golf course flood irrigates from time to time. When this occurs, a portion of the golf course becomes very soggy, according to Ken Stark. It is not known if this is a result of surface water or groundwater, or both, moving down gradient. When the upstream landowner was told of the impact his irrigation water had on the golf course, he stopped this irrigation practice, and the golf course areas that were soggy dried up to their pre-existing condition.

HYDROLOGIC EVALUATION

Based on my site visit, interviews, and review of technical data, I have evaluated the hydrologic regime occurring on the Subject Property.

Soils

Existing soil information for the area, including the Tony Yacomella and golf course properties was provided by Karen Langersmith (Appendix C). According to the SCS, the lands to the north of Garden Creek adjacent to Yacomella's are well drained with good permeability. The soils on Yacomella's property and part of the golf course (refer to Figure 3) are poorly drained with moderate permeability. The soils on the lands on the southern portion of the golf course and to the south of the golf course are well drained, with moderate permeability. The soils on the land to the east of the golf course are excessively drained, with moderate permeability.

Well driller's reports (Appendix A) from IDWR were reviewed to help establish the makeup of surface and deeper soils in the vicinity of and including the Tony Yacomella and golf course parcels. The information obtained from these logs indicate the presence of clay soils in this area, usually underlain by gravels and sands. In some locations, the clay is overlain with boulders and gravels.

Surface Water

Garden Creek flows along the north side of the lands covered under the decreed rights 72-00110 and 72-00111 (refer to Figure 3). The creek at this location has down cut five to ten feet below adjacent ground. Stream flow measurements taken during my site visit were recorded in three locations, as described above (refer to Figure 3). Velocity measurements were obtained with a Teledyne Gurly Pigmy meter, and flows calculated using a unit width increment method (± 10 percent accuracy). Approximate flows were: Site 1 - 11.0 cubic feet per second (cfs); Site 2 - 8.8 cfs; and Site 3 - 6.6 cfs. The flow at Site 3 appeared noticeably smaller than at Site 1. As previously stated, at the time of measurements, the only diversion from Garden Creek noted was flow into the City of Challis water system, in between measuring Sites 1 and 2. However, this flow was routed back into Garden Creek upstream from measuring Site 2. These stream flow measurements indicate that this particular section of Garden Creek is a losing reach, when irrigation is not occurring on adjacent fields.



According to both Bill Yacomella and Joe Pyle, during low flow periods in the summer Garden Creek is dry immediately downstream from the City's diversion structure (refer to Figure 3). However, there is sufficient water in Garden Creek by the time it reaches the Ivie ditch headgate that irrigation water can be diverted at this location. Flow measurements taken on Garden Creek in August, 1935, May, July, September and November, 1979, and April, May, July, and September, 1980 by IDWR indicate Garden Creek is a gaining stream between the following locations: upstream from the City's diversion and where Garden Creek flows under the Challis Creek road (refer to Figure 3). These flow measurements were taken during and after the irrigation season. It should be noted that this reach of Garden Creek is a different reach of stream than where I took flow measurements during my site visit. The reach I measured began upstream from where IDWR's reach began, and ended downstream from where IDWR's reach began, but upstream from where IDWR's ended. Therefore, IDWR's data indicating that a portion of Garden Creek is a gaining reach cannot be directly compared to the data I collected indicating that a portion of Garden Creek is a losing reach, because two different sections of Garden Creek were evaluated.

It appears that irrigation wastewater and runoff occurring on the north side of the Garden Creek road would generally drain to the east, until it encountered a physical obstruction, such as the Ivie ditch, or other irrigation or drain ditches. When this occurs, this surface water is routed wherever the ditch takes it, such as to the southeast in the case of the Ivie ditch. However, when irrigation water runoff occurs immediately adjacent to Garden Creek, the local topography may route it directly to Garden Creek. Some of the water collected in the Ivie ditch or other irrigation or drain ditches may seep into the underlying soils.

Groundwater

Groundwater in the vicinity of the Subject Property appears to be influenced by two sources at two different piezometric elevations. According to the well logs I reviewed, the static water level in most wells nearby is greater than fifteen feet below ground surface (Appendix A), apparently influenced by a deeper aquifer. However, I did see groundwater seeping from field drain pipes into the small ponds on the golf course (refer to Figure 3), and seeping into the Ivie ditch from adjacent ditch banks. Based on the information supplied by Bill Yacomella and Joe Pyle regarding water availability to the Ivie ditch, historical flow measurements in Garden Creek, and the soils data, water is apparently held by the poorly drained soils, with a piezometric surface elevation near the ground surface. This "groundwater" source is probably surface irrigation water.

CONCLUSIONS

Based on my site visit, review of documents, and interviews, I offer the following opinions regarding the surface water/groundwater interaction occurring on the Subject Property.

1. There appears to be two distinct types of soils present in this area: one type which is well drained and highly permeable, and one type which is poorly drained and moderately permeable. The zone where these soils meet appears to be along Garden Creek adjacent to Tony Yacomella's parcel, the western limit of the City of Challis, and the base of the hills on the south side of the golf course. The poorly drained soils, which are located on Tony Yacomella's and a portion of the Challis golf course parcels, have a high water holding capacity (refer to Appendix C), and retain irrigation and surface runoff water, probably for long periods of time. Any irrigation water or surface runoff applied to these soils prior to their becoming saturated is probably retained within these soils, then released down gradient,

primarily to the east parallel to Garden Creek, slowly over time. These soils probably do not dry out at depths greater than approximately one foot, due to the annual application of surface irrigation water. The vegetation growing on Tony Yacomella's parcel indicates that the soils at depths of one to two feet retain water throughout the growing season.

2. Surface water applied to Tony Yacomella's parcel will probably remain on-site for an extended period of time, until the soil becomes saturated. Once this occurs, additional surface water will sheet flow down gradient, to the east. Some of this water will be picked up by the Ivie ditch and routed to the southeast, away from Garden Creek. It is possible that a small amount of surface water could get diverted by a topographical feature(s) back into Garden Creek, however, no such features were observed.

IDWR's historical stream measurements taken along Garden Creek indicate that the reach between a location just upstream from the City's diversion and where Garden Creek crosses under Challis Creek Road is a gaining reach. However, between where Garden Creek road crosses Garden Creek downstream to measuring site 3, my stream measurements indicate that Garden Creek is a losing reach. An explanation could be the reach I measured is indeed losing flow to well drained, high permeability soils under the creek, and some of this flow is returning to the creek downstream from measuring site 3, but upstream from Challis Creek Road. Since IDWR's historical measurements were taken at only an upstream and downstream location, with no intermediate location, there is no indication where along the creek the inflow is occurring.

3. Once the poorly drained soils on the Yacomella and golf course parcels become saturated, the water they contain will tend to move down gradient to the east parallel to Garden Creek, over time. Because of their low capacity to hydraulically transmit water, this will probably occur very slowly. This water will probably surface where there are either low topographical features, such as the Ivie ditch or Garden Creek, or where drain pipe systems carry the water to a discharge location, such as the golf course drain system. It is more likely that the water from the Yacomella property west of the Ivie ditch and the water from the golf course property will be intercepted by the Ivie ditch than by Garden Creek (refer to Figure 3).
4. Surface irrigation water applied to Subject Property parcels located in the S 1/2 Section 32; and Section 33 and Section 34, T. 14 N. R. 19 E. will probably not influence flows in Garden Creek. The soils within this area are well drained with good to moderate permeability. These parcels are not located topographically up gradient of Garden Creek. Irrigation waters applied to these parcels would probably drain to the east, generally parallel to Garden Creek, towards the Salmon River. Furthermore, the application of irrigation water to these parcels as proposed would probably not affect flows in Garden Creek.

Without knowing the actual piezometric contours of the area, and extensive flow measurements of the creek, it is not possible to be absolutely certain of surface irrigation water influence on Garden Creek. In order to obtain this degree of certainty, a number of monitoring wells would have to be placed on the Subject Property and adjacent parcels, and an extensive flow measurement program would have to be undertaken. This level of effort could cost tens of thousands of dollars to install and monitor.

This completes my written testimony of my hydrologic investigation regarding the transfer of the above mentioned water rights by Cyprus.

Appendix A



Appendix A

5-11-55

007

7. WATER LEVEL

Sta: water level 20 feet below land surface
 Flowing? ☐ Yes ☐ No G.P.M. flow _____
 Artesian closed-in pressure _____ p.s.i.
 Controlled by: ☐ Valve ☐ Cap ☐ Plug
 Temperature _____ of Quality _____

8. WELL TEST DATA

☐ Pump ☐ Bailer ☒ Air ☐ Other

9. LITHOLOGIC LOG

Hole Diam	Depth		Material	Water	
	From	To		Yes	No
6	0	10	Hand-dug, Gravel, Dry		
	10	40	Clay & Gravel, Wet		
	40	60	Gravel & sand		
	60	80	Hand-dug		

--	--	--	--

Casing schedule: ☒ Steel ☐ Concrete ☐ Other

Was casing drive shoe used? ☒ Yes ☐ No
Was a packer or seal used? ☐ Yes ☒ No
Perforated? ☒ Yes ☐ No

How perforated? ☐ Factory ☐ Knife ☒ Torch

Size of perforation 1/4 inches by 1/4 inches

Number	From	To
<u>100</u> perforations	<u>40</u> feet	<u>60</u> feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter Slot size Set from feet to feet

Diameter Slot size Set from feet to feetGravel packed? ☐ Yes ☐ No ☐ Size of gravel Placed from _____ feet to _____ feet
Surface at _____ Meters below _____ ft.

Surface seal depth Material used in seal: ☐ Cement grout
☐ Budding clay ☐ Wall coating

Sealing procedure used: ☐ Puddling clay ☐ Wall cuttings
☐ Slurry pit ☐ Temp. surface sealing

Sealing procedure used: ☒ Slurry pit ☐ Temp. surface casting
☐ Overlays to seal dent

Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent

Weld

☐ Cemented between strata

Describe access port _____

11. DRILLERS CERTIFICATION

Sketch map location must agree with written location.

1/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name 127-2011 Firm No. 334

Address Bld 122 18-41-2 Date 7-27-80

Signed by (Firm Official) [Signature]

and
(Operator) Kenneth Westman

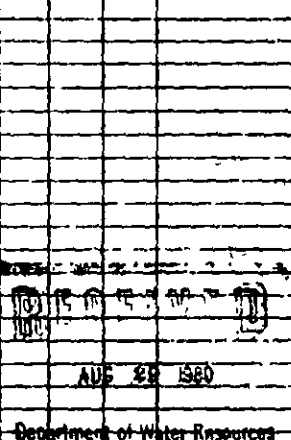
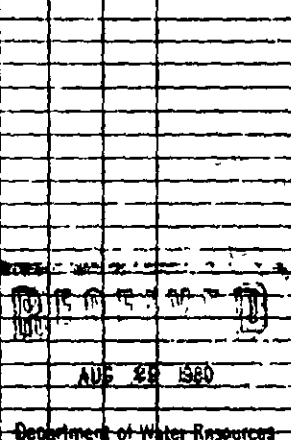
County Carter
NE & NW & Sec 92 T. 14 N. R. 10 E.W.

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

Test well

Test used

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

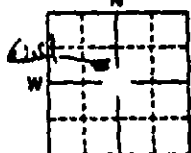
1. WELL OWNER Name <u>Cypress Hills Corp.</u> Address <u>PO Box 755 Challis, Ida</u> Owner's Permit No. <u>331</u>	7. WATER LEVEL Static water level <u>surface</u> feet below land surface. Flowing? ☒ Yes ☐ No G.P.M. flow <u>1 gal/hr</u> Artesian closed-in pressure _____ p.s.i. Controlled by: ☐ Valve ☒ Cap ☐ Plug Temperature _____ of Quality _____																																										
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____	8. WELL TEST DATA ☐ Pump ☐ Bailor ☒ Air ☐ Other _____																																										
3. PROPOSED USE ☐ Domestic ☐ Irrigation ☒ Test ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection ☐ Other _____ (specify type) _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>Discharge G.P.M.</th> <th>Pumping Level</th> <th>Hours Pumped</th> </tr> <tr> <td style="text-align: center;">90</td> <td style="text-align: center;">180 ft</td> <td style="text-align: center;">1</td> </tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </table>	Discharge G.P.M.	Pumping Level	Hours Pumped	90	180 ft	1																																				
Discharge G.P.M.	Pumping Level	Hours Pumped																																									
90	180 ft	1																																									
4. METHOD DRILLED ☒ Rotary ☒ Air ☐ Hydraulic ☐ Reverse rotary ☐ Cable ☐ Dug ☐ Other _____	9. LITHOLOGIC LOG <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">Hole Diam.</th> <th colspan="2">Depth</th> <th rowspan="2">Material</th> <th rowspan="2">Water Yes No</th> </tr> <tr> <th>From</th> <th>To</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>0</td> <td>20</td> <td>Boulders + gravel</td> <td>✓</td> </tr> <tr> <td></td> <td>20</td> <td>34</td> <td>clay & gravel</td> <td>✓</td> </tr> <tr> <td></td> <td>34</td> <td>95</td> <td>gravel + sand</td> <td>✓</td> </tr> <tr> <td></td> <td>95</td> <td>100</td> <td>Red Volcanic Rock</td> <td>✓</td> </tr> <tr> <td></td> <td>100</td> <td>135</td> <td>shale</td> <td>✓</td> </tr> <tr> <td></td> <td>135</td> <td>168</td> <td>Volcanic</td> <td>✓</td> </tr> <tr> <td></td> <td>168</td> <td>180</td> <td>shale</td> <td>✓</td> </tr> </tbody> </table>	Hole Diam.	Depth		Material	Water Yes No	From	To	6	0	20	Boulders + gravel	✓		20	34	clay & gravel	✓		34	95	gravel + sand	✓		95	100	Red Volcanic Rock	✓		100	135	shale	✓		135	168	Volcanic	✓		168	180	shale	✓
Hole Diam.	Depth		Material	Water Yes No																																							
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6	0	20	Boulders + gravel	✓																																							
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	135	168	Volcanic	✓																																							
	168	180	shale	✓																																							
5. WELL CONSTRUCTION Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____ <table style="width: 100%;"> <tr> <th>Thickness</th> <th>Diameter</th> <th>From</th> <th>To</th> </tr> <tr> <td>350 inches</td> <td>6 inches</td> <td>2 feet</td> <td>100 feet</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> Was casing drive shoe used? ☒ Yes ☐ No Was a packer or seal used? ☐ Yes ☒ No Perforated? ☒ Yes ☐ No How perforated? ☐ Factory ☐ Knife ☒ Torch Size of perforation <u>1/8</u> inches by <u>4</u> inches <table style="width: 100%;"> <tr> <th>Number</th> <th>From</th> <th>To</th> </tr> <tr> <td>160 perforations</td> <td>80 feet</td> <td>100 feet</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table> Well screen installed? ☐ Yes ☒ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☒ Yes ☐ No Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth <u>18</u> Material used in seal: ☐ Cement grout ☐ Puddling clay ☐ Well cuttings Sealing procedure used: ☐ Slurry pit ☒ Temp. surface casing ☒ Overbore to seal depth Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent ☐ Weld ☐ Cemented between strata Describe access port <u>none</u>	Thickness	Diameter	From	To	350 inches	6 inches	2 feet	100 feet													Number	From	To	160 perforations	80 feet	100 feet							 Subdivision Name _____ Lot No. _____ Block No. _____ County <u>Custer</u> NE 1/4 & NW 1/4 Sec. 33, T. 14 N, R. 19 E, W.										
Thickness	Diameter	From	To																																								
350 inches	6 inches	2 feet	100 feet																																								
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6. LOCATION OF WELL Sketch map location must agree with written location.  Subdivision Name _____ Lot No. _____ Block No. _____ County <u>Custer</u> NE 1/4 & NW 1/4 Sec. 33, T. 14 N, R. 19 E, W.	10. DRILLERS CERTIFICATION I, We certify that all minimum well construction standards were complied with at the time the rig was removed. Firm Name <u>Wimington Drilling</u> Firm No. <u>334</u> Address <u>Box 177 Challis</u> Date <u>8-3-80</u> Signed by (Firm Official) <u>Wimington Drilling</u> and (Operator) <u>Wimington Drilling</u>																																										

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

WELL DRILLER'S REPORT

* state law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

Test well

1. WELL OWNER Name <u>Cappas Mining Corp.</u> Address <u>Challis, Idaho</u> Owner's Permit No. <u>334</u>		7. WATER LEVEL Static water level <u>10</u> feet below land surface. Flowing? ☐ Yes ☒ No G.P.M. flow _____ Artesian closed-in pressure _____ p.s.i. Controlled by: ☐ Valve ☐ Cap ☐ Plug Temperature _____ OF Quality _____																																			
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) <u>Plugged</u> <u>4 10 sacks cement</u>		8. WELL TEST DATA ☐ Pump ☐ Bailer ☒ Air ☐ Other _____ Discharge G.P.M. <u>40 gals</u> Pumping Level <u>300</u> Hours Pumped <u>2</u>																																			
3. PROPOSED USE ☐ Domestic ☐ Irrigation ☒ Test ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection ☐ Other _____ (specify type)		9. LITHOLOGIC LOG <table border="1"><thead><tr><th rowspan="2">Hole Diam.</th><th colspan="2">Depth</th><th rowspan="2">Material</th><th colspan="2">Water</th></tr><tr><th>From</th><th>To</th><th>Yes</th><th>No</th></tr></thead><tbody><tr><td>6"</td><td>0</td><td>10</td><td>Sandstone & gravel</td><td></td><td></td></tr><tr><td></td><td>10</td><td>40</td><td>clay & flinted sand</td><td></td><td></td></tr><tr><td></td><td>40</td><td>60</td><td>sand & gravel</td><td></td><td></td></tr><tr><td></td><td>60</td><td>300</td><td>sandstone</td><td></td><td></td></tr></tbody></table>		Hole Diam.	Depth		Material	Water		From	To	Yes	No	6"	0	10	Sandstone & gravel				10	40	clay & flinted sand				40	60	sand & gravel				60	300	sandstone		
Hole Diam.	Depth		Material		Water																																
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4. METHOD DRILLED ☒ Rotary ☒ Air ☐ Hydraulic ☐ Reverse rotary ☐ Cable ☐ Dug ☐ Other _____																																					
5. WELL CONSTRUCTION Casing schedule: ☐ Steel ☐ Concrete ☐ Other _____ Thickness _____ inches Diameter _____ inches From _____ feet To _____ feet Was casing drive shoe used? ☒ Yes ☐ No Was a packer or seal used? ☐ Yes ☒ No Perforated? ☒ Yes ☐ No How perforated? ☐ Factory ☐ Knife ☒ Torch Size of perforation <u>1/8</u> inches by <u>4</u> inches Number _____ perforations From _____ feet To _____ feet _____ perforations _____ feet _____ feet _____ perforations _____ feet _____ feet Well screen installed? ☒ Yes ☐ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☐ Yes ☐ No ☐ Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth _____ Material used in seal: ☐ Cement grout ☐ Puddling clay ☐ Well cuttings Sealing procedure used: ☐ Sherry pit ☐ Temp. surface casing ☐ Overbore to seal depth Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent Weld _____ ☐ Cemented between struts Describe access port <u>none</u>																																					
6. LOCATION OF WELL Sketch map location must agree with written location.  Subdivision Name _____ Lot No. _____ Block No. _____ County <u>Custer</u> <u>NE 1/4 Sec. 22, T. 14 N. R. 19 E.</u>		10. Work started <u>2-18-80</u> finished <u>2-20-80</u>																																			
		11. DRILLERS CERTIFICATION I/We certify that all minimum well construction standards were compiled with at the time the rig was removed. Firm Name <u>Smith and Boring</u> Firm No. <u>334</u> Address <u>P.O. Box 122 Challis</u> Date <u>2-26-80</u> Signed by (Firm Official) <u>Samuel Westing</u> and (Operator) <u>John Westing</u>																																			

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORTUSE TYPEWRITER OR
BALLPOINT PEN

State law requires that this report be filed with the Director, Department of Water Resources, within 30 days after the completion or abandonment of the well.

1. WELL OWNER Name <u>Birk J. Jennings</u> Address <u>Quincy Ave</u> Owner's Permit No. _____		7. WATER LEVEL Static water level <u>38</u> feet below land surface. Flowing? ☐ Yes ☐ No G.P.M. flow _____ Artesian closed in pressure _____ p.s.i. Controlled by: ☐ Valve ☐ Cap ☐ Plug Temperature _____ OF Quality <u>Good</u> Describe artesian or temperature zones below.																															
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)		8. WELL TEST DATA ☐ Pump ☐ Bailor ☒ Air ☐ Other _____ Discharge G.P.M. <u>20</u> Pumping Level _____ Hours Pumped _____																															
3. PROPOSED USE ☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection ☐ Other _____ (specify type)		9. LITHOLOGIC LOG <table border="1"><thead><tr><th rowspan="2">Bore Diam.</th><th colspan="2">Depth</th><th rowspan="2">Material</th><th rowspan="2">Water Yes No</th></tr><tr><th>From</th><th>To</th></tr></thead><tbody><tr><td>6</td><td>0</td><td>10</td><td>Loess</td><td>X</td></tr><tr><td>10</td><td>10</td><td>60</td><td>Clay</td><td>X</td></tr><tr><td>60</td><td>60</td><td>100</td><td>Clay & sandstone</td><td>X</td></tr><tr><td>100</td><td>100</td><td>150</td><td>Loess & sandstone</td><td>X</td></tr></tbody></table>		Bore Diam.	Depth		Material	Water Yes No	From	To	6	0	10	Loess	X	10	10	60	Clay	X	60	60	100	Clay & sandstone	X	100	100	150	Loess & sandstone	X			
Bore Diam.	Depth		Material		Water Yes No																												
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5. WELL CONSTRUCTION Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____ <table border="1"><thead><tr><th>Thickness</th><th>Diameter</th><th>From</th><th>To</th></tr></thead><tbody><tr><td>150 inches</td><td>6 inches</td><td>1 foot</td><td>110 feet</td></tr><tr><td>_____ inches</td><td>_____ inches</td><td>_____ feet</td><td>_____ feet</td></tr><tr><td>_____ inches</td><td>_____ inches</td><td>_____ feet</td><td>_____ feet</td></tr><tr><td>_____ inches</td><td>_____ inches</td><td>_____ feet</td><td>_____ feet</td></tr></tbody></table> Was casing drive shoe used? ☒ Yes ☐ No Was a packer or seal used? ☐ Yes ☐ No Perforated? ☒ Yes ☐ No How perforated? ☐ Factory ☐ Knife ☒ Torch Size of perforation <u>1/8</u> inches by <u>4</u> inches Number _____ From _____ To _____ _____ perforations _____ feet _____ feet _____ perforations _____ feet _____ feet _____ perforations _____ feet _____ feet Well screen installed? ☐ Yes ☒ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☐ Yes ☐ No ☐ Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth <u>18</u> Material used in seal: ☐ Cement grout ☒ Bentonite ☐ Pudding clay ☐ _____ Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent Weld ☐ Cemented between strata Describe access port _____		Thickness	Diameter	From	To	150 inches	6 inches	1 foot	110 feet	_____ inches	_____ inches	_____ feet	_____ feet	_____ inches	_____ inches	_____ feet	_____ feet	_____ inches	_____ inches	_____ feet	_____ feet												
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N																																	
W				E																													
S																																	
		11. DRILLERS CERTIFICATION I/We certify that all minimum well construction standards were complied with at the time the rig was removed. Firm Name <u>W. J. Jennings</u> Firm No. <u>5774</u> Address <u>4663 Loc 1790</u> Date <u>5-21-57</u> Signed by (Firm Official) <u>W. J. Jennings</u> and (Operator) <u>W. J. Jennings</u>																															

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

DEC 22 1984

[illegible]

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

WELL OWNER
Name Mr. Tapp
Address Box 218 Charlie
Owner's Permit No. _____
Department of Water Resources
Southern District Office

7. WATER LEVEL

Static water level 12 feet below land surface 0
Flowing? ☐ Yes ☐ No G.P.M. flow _____
Temperature _____ °F: Quality Good
Artesian closed-in pressure _____ p.s.i.
Controlled by ☐ Valve ☐ Cap ☐ Plug

2. NATURE OF WORK

☒ Newborn ☐ Deceased ☐ Replacement
☐ Abandoned (describe method of abandoning)

2. WELL TEST DATA

☐ Pump ☒ Baller ☐ Other

Discharge (C.F.M.)	Draw Down	Hours Pumped
100	10	1
200	20	2
300	30	3
400	40	4
500	50	5
600	60	6
700	70	7
800	80	8
900	90	9
1000	100	10

3. PROPOSED USE

☐ Other (Specify Type) _____

☐ Waste Disposed by _____

LITHOLOGIC LOG

1990

From	To	Time	Remarks	Yr
6:00	6:15	15	...	
6:15	6:30	15	...	
6:30	6:45	15	...	
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1:00	1:15	15	...	
1:15	1:30	15	...	
1:30	1:45	15	...	
1:45	2:00	15	...	
2:00	2:15			

A METHOD OF ROLLER

☐ Cable ☒ Factory ☐ Post ☐ Other

▲ WELL CONSTRUCTION

Diameter of hole 6 inches Total depth 90 feet
 Gravel schedule ☒ Steel ☐ Concrete
 Inside thickness _____ feet _____
2 1/2 inches _____ inches _____ feet 4 1/2 feet
 _____ inches _____ inches _____ feet _____ feet
 _____ inches _____ inches _____ feet _____ feet
 _____ inches _____ inches _____ feet _____ feet
 _____ inches _____ inches _____ feet _____ feet
 Who using drive slug used? ☒ Yes ☐ No
 Was a packer or seal used? ☐ Yes ☐ No
 Performance? ☐ Yes ☒ No
 How performed? ☐ Factory ☐ Kells ☐ Torch
 Size of perforation _____ inches by _____ inches
 _____ perforations _____ feet _____ feet
 _____ perforations _____ feet _____ feet
 _____ perforations _____ feet _____ feet
 Well screen installed? ☐ Yes ☐ No
 Manufacturer's name _____
 Model No. _____
 Diameter _____ Slot size _____ Set from _____ feet to _____ feet
 Diameter _____ Slot size _____ Set from _____ feet to _____ feet
 Gravel packed? ☐ Yes ☐ No Size of gravel _____
 Gravel from _____ feet to _____ feet
 Material used in seal ☐ Cement grout
☐ Packing clay ☐ Wall cuttings
☐ Gravel or coarse sand ☐ Gravelly surface casing
☐ Overbore to seal depth

LOCATION OF WELL

Search area location must agree with return location

County Custer

31 14 19 0

EW

Work started 1-23-78 finished 1-24-78

2.1. DRILLERS CERTIFICATION

Firm Name Hestington Firm No. 50
Address C-177 Crookings Date 1-20
Signed by (Firm Official) Glen H. Hestington
and
(Character)

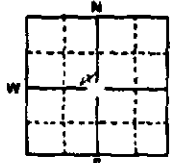
USE ADDITIONAL SHEETS IF NECESSARY. FORWARD THE WHITE COPY TO THE DEPARTMENT

USE TYPEWRITER OR
BALL POINT PEN

State of Idaho
Department of Water Administration

WELL DRILLER'S REPORT

State law requires that this report be filed with the State Reclamation Engineer
within 30 days after completion or abandonment of the well.

1. WELL OWNER Name <u>John Robinson</u> Address <u>Chula Vista</u> Owner's Permit No. _____		7. WATER LEVEL Static water level <u>62</u> feet below land surface Flowing? ☐ Yes ☒ No G.P.M. flow _____ Temperature <u>57</u> ° F Quality _____ Artesian closed in pressure _____ p.s.i. Controlled by ☐ Valve ☐ Cap ☐ Plug																																									
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____		8. WELL TEST DATA ☐ Pump ☐ Bailor ☐ Other <u>none</u> Discharge G.P.M. _____ Draw Down _____ Hours Pumped _____																																									
3. PROPOSED USE ☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal ☐ Industrial ☐ Stock		9. LITHOLOGIC LOG <table border="1"><thead><tr><th rowspan="2">Hole Diam.</th><th colspan="2">Depth</th><th rowspan="2">Material</th><th colspan="2">Water</th></tr><tr><th>From</th><th>To</th><th>Yes</th><th>No</th></tr></thead><tbody><tr><td></td><td>0</td><td>15</td><td>soil</td><td></td><td></td></tr><tr><td></td><td>15</td><td>30</td><td>clay + rock</td><td></td><td></td></tr><tr><td></td><td>30</td><td>66</td><td>rock - solid</td><td></td><td></td></tr><tr><td></td><td>66</td><td>70</td><td>crushed - (gravel)</td><td></td><td></td></tr><tr><td></td><td>70</td><td>85</td><td>rock - sand water</td><td></td><td></td></tr></tbody></table>		Hole Diam.	Depth		Material	Water		From	To	Yes	No		0	15	soil				15	30	clay + rock				30	66	rock - solid				66	70	crushed - (gravel)				70	85	rock - sand water		
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6. LOCATION OF WELL Sketch map location must agree with written location  County <u>Custer</u> <u>SE</u> 1/4 NW 1/4 Sec. <u>31</u> T. <u>14</u> N. R. <u>19</u> E		10. Work started <u>3-13-72</u> finished <u>3-18-72</u>																																									
		11. DRILLER'S CERTIFICATION This well was drilled under my supervision and this report is true to the best of my knowledge. <u>Lambert Well Drilling</u> <u>57</u> Driller's or Firm's Name Number <u>Box 301 Mackay, Id.</u> Signed By <u>Boyd Fairbank</u> <u>3-20-72</u> Date																																									

USE ADDITIONAL SHEETS IF NECESSARY

FORWARD THE WHITE, BLUE, AND PINK COPIES TO THE DEPARTMENT

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER Name <u>Tom Greenwell</u> Address <u>Charlie Lolo</u> Owner's Permit No. _____	7. WATER LEVEL Static water level <u>50</u> feet below land surface Pumping: Yes ☒ No ☐ G.P.M. flow _____ Temperature _____ F Quality <u>Good</u> Artesian closed in pressure _____ psi Controlled by ☐ Valve ☐ Cap ☐ Plug																																				
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____	8. WELL TEST DATA ☐ Pump ☐ Bailer ☒ Other <u>air test</u> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Discharge G.P.M.</th> <th>Draw Down</th> <th>Hours Pumped</th> </tr> </thead> <tbody> <tr> <td><u>20 gal/min</u></td> <td></td> <td></td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Discharge G.P.M.	Draw Down	Hours Pumped	<u>20 gal/min</u>																																
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6. LOCATION OF WELL Sketch map location must agree with written location. Subdivision Name _____ Lot No. _____ Block No. _____ County <u>CUSTER</u> <u>SW 1/4 Sec 32, T. 14 N, R. 19 E</u>																																					
10. Work started <u>6-4-79</u> finished <u>6-8-79</u>	11. DRILLER'S CERTIFICATION Firm Name <u>Washburn Drilling</u> Firm No. <u>534</u> Address <u>Box 179 Charlie</u> Date <u>6-8-79</u> Signed by (Firm Official) <u>Washburn Drilling</u> and <u>George H. Washburn</u>																																				

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 14N 19E 32

WELL LOG

[illegible]

WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

Signed _____

By E Lloyd Sherry

Dated June 14, 1963

License No. 187

WELL LOG

WELL DRILLER'S STATEMENT

Signed W. H. Lambrecht

By _____

Dated Nov. 7, 1965.

License No 157

Appendix B



Appendix B

UNITED STATES DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION
GROUND WATER BRANCH

GROUND-WATER RECONNAISSANCE IN BOUND VALLEY,
CUSTER COUNTY, IDAHO

By E. G. Crosthwaite

Prepared for the U.S. Bureau of Reclamation

U.S. Geological Survey

Open-file report

Boise, Idaho
October 1962

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Geology and water-bearing character of the rocks	6
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ILLUSTRATION

Figure 1. Geologic and well location map	In pocket
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GROUND-WATER RECONNAISSANCE IN ROUND VALLEY,
CUSTER COUNTY, IDAHO

By E. G. Crosthwaite

Abstract

Round Valley in central Idaho contains alluvial deposits of Pleistocene and Recent age which yield adequate supplies of ground water for stock and domestic wells. The alluvial deposits are underlain by Challis Volcanics of Oligocene or Early Miocene age and a few wells obtain domestic and stock water from the basalt, latite, andesite, and rhyolite which are the principal rocks in the Challis. Very crude estimates indicate that the average annual recharge to the alluvium and Challis Volcanics from precipitation and irrigation is 50,000 acre-feet.

Geologic and well data suggest that sufficient ground water might be obtained for irrigation supplies at some places.

Introduction

Round Valley is one of the few areas along the Salmon River in central Idaho which is large enough to be suitable for farming. Much of the course of the Salmon River is in a deeply entrenched canyon or narrow valley with the adjacent mountains rising to altitudes of 9,000 to 10,000 feet. Round Valley is 3 to 6 miles wide and about 8 miles long (fig. 1).

Figure 1.—Geologic and well location map.

The Salmon River Mountains bound the valley on the west and the Lost River Range on the east.

The altitude of the valley ranges from about 4,800 feet to a little above 5,300 feet above sea level. The axis of the valley trends a little west of north. Salmon River enters the valley from the southwest, flows slightly east of north to the east side of the valley and leaves at the northeast corner. Warm Springs Creek and some small ephemeral streams drain the southeast part of the valley. Garden and Challis Creeks drain the west side of the valley.

Garden Creek has built an alluvial fan where it enters Round Valley but Challis Creek has no significant fan. Warm Springs Creek has contributed a large amount of gravel to Round Valley but this part of the valley is a remnant in the mountains and the alluvial deposits do not have the surface configuration of an alluvial fan. The west side of Round Valley between Challis and Garden Creek is a steep alluvial slope while the central part of the valley is a swampy stream terrace a few feet above the Salmon River.

The Village of Challis, with a population of about 800, is the county seat of Custer County and is the only settlement in the valley. Access to Round Valley is by U.S. Routes 93 and 93A.

Agriculture is the principal occupation in the valley although some mining is done in the surrounding area. Lumbering is of minor importance and there is a small sawmill at Challis. Raising livestock and feed for livestock are the major agricultural activities. Some potatoes are grown both for consumption and for seed.

According to the county agent (L. T. Stevenson, personal communication, May 21, 1962) about 3,300 acres is irrigated including land that is subirrigated in the lowland along Salmon River and some land which receives a single irrigation from high water during the spring snowmelt and runoff. This also includes land along the central part of Warm Springs Creek valley and scattered land along Salmon River upstream 2 or 3 miles from the junction of U.S. Routes 93 and 93A which are not in the area of this report. The principal irrigated areas in Round Valley are along the alluvial slopes north of Challis, and in the southeast part of the valley across the river from Challis, but a small area is irrigated on the Garden Creek fan. Challis Creek is the source of irrigation water for the alluvial slope north of Challis but almost every year the supply is inadequate for late season needs. The same situation exists in the area irrigated from Garden Creek where the irrigated area is much smaller. The remainder of the irrigated area has an adequate water supply from Salmon River.

The U.S. Bureau of Reclamation has considered a dam in Sec. 2, T. 14 N., R. 18 E., on Challis Creek, to store water for late season use and to develop some new land. The following table shows the distribution of land in the considered project (U.S. Bureau of Reclamation, written communication, July 24, 1962).

Area	Acres irrigated	Non irrigated but suitable for development	Total acres
Challis Creek			
Below dam	2,330	150	2,480
Above dam	168	2	170
Garden Creek	105	20	125
Total	2,603	172	2,775

Alluvial filled valleys such as Round Valley may contain aquifers which will yield water in sufficient quantity for irrigation use. This reconnaissance was made to evaluate the ground-water resources of the Round Valley (Challis area) for the Bureau of Reclamation. Field work was done in May 1962 and consisted of interviewing well owners and a well driller and making a brief geologic reconnaissance. Two short aquifer tests were made on pumped wells. The cooperation of Clarence H. Cole, well driller at Challis, and well owners is gratefully acknowledged.

The U.S. Weather Bureau has maintained temperature records for 40 years and precipitation records for 45 years at Challis. The mean annual temperature is 44.1°F and ranges from 18.7°F in January to 67.9°F in July. Extremes range from 103°F to minus 33°F. There is an average of about 110 days between the last 32°F in the spring and 32°F in the autumn and about 140 days between 28°F. Precipitation averages 7.09 inches and has ranged from 2.62 inches in 1935 to 10.49 inches in 1925. The average precipitation by months is as follows:

Jan.	0.49	May	1.04	Sept.	0.61
Feb.	.34	June	1.27	Oct.	.45
March	.35	July	.64	Nov.	.33
April	.54	Aug.	.54	Dec.	.49

Snow survey data from the Soil Conservation Service, U.S. Dept. of Agriculture (Nelson and others, 1962) indicate that precipitation at high altitudes in the Salmon River Mountains exceeds 24 inches. April 1 snow measurements averaged 24 inches of water content at Mill Creek Summit in sec. 8, T. 13 N., R. 17 E. for the period 1943-62. The altitude of the snow course is 8,870 feet above sea level.

Streamflow is measured on Challis Creek in sec. 2, T. 14 N., R. 18 E. The average flow for the period 1943-60 was 45.2 cfs (cubic feet per second) or 32,720 acre-feet per year. The discharge has ranged from 508 cfs on June 1, 1956 to 4.7 cfs on March 11, 1960. The drainage area above the gage is approximately 85 square miles and the mean altitude is 7,830 feet. The drainage basin yields about 0.6 acre-foot per acre as surface water flow.

Flow of the Salmon River is measured at a gaging station 9 miles south of Challis. Average discharge was 1,450 cfs (1,050,000 acre-feet per year) for the period October 1928 to September 1960. Extremes were 15,400 cfs on May 25, 1956 and 160 cfs on December 14, 1940.

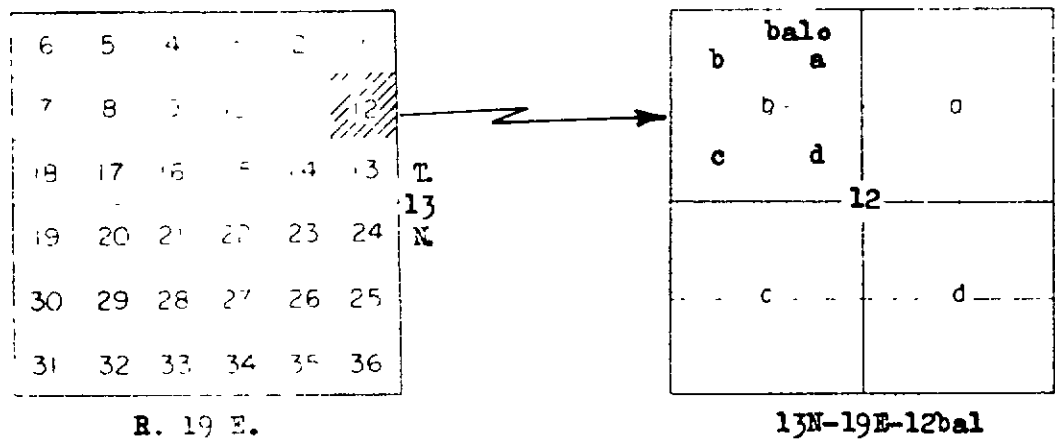
Well-numbering system

The well-numbering system used in Idaho by the Geological Survey indicates the locations of wells within the official rectangular subdivisions of the public lands, with reference to the Boise base line and meridian. The first two segments of a number designate the township and range. The third segment gives the section number, followed by two letters and a numeral, which indicate the quarter section, the 40-acre tract, and the serial number of the well within the tract. Quarter sections are lettered a, b, c, and d in counterclockwise order, from the northeast quarter of each section (see diagram). Within the quarter sections 40-acre tracts are lettered in the same manner. Well 13N-19E-12ba1 is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 12, T. 13 N., R. 19 E. and is the well first visited in that tract.

Records of wells are given in a table at the end of this report.

Geology and water-bearing character of the rocks

The geology of Round Valley and the adjacent mountains was described by Ross (1937), and much of the following information is from his report. The mountains surrounding the valley consists of the Challis Volcanics of Eocene(?), Oligocene and early Miocene(?) age (Ross, 1961). The Kinnikinnick Quartzite of Late Ordovician age (Ross, 1947) is exposed in one small area on the east side of the valley (fig. 1). The geologic map and



Sketch showing well numbering system

cross section of Ross (1937, plate 1) suggest that most of the valley is underlain by the Challis Volcanics. That formation also crops out in a prominent ridge in secs. 10 and 15, T. 14 N., R. 19 E. The Challis Volcanics consist of latite, andesite, basalt, and the Yankee Fork Rhyolite and Germer Tuffaceous Members. Latite and andesite are exposed along the southwest, south, and east sides of Round Valley, basalt is exposed along the northwest and north sides of the valley and in the ridge mentioned above, and the Germer Tuffaceous Member is exposed on the northeast side (fig. 1). The Yankee Fork Rhyolite Member caps the ridge north of Challis and the bluff along the northeast side of the valley. The basalt consists of flows of dark colored rocks in part of andesitic composition with inconspicuous phenocrysts of feldspar. The latite-andesite member is a diversified aggregate of flows, somewhat lighter colored than the basalt member, with numerous small phenocrysts of feldspar. The Germer Tuffaceous Member is a medium- to fine-grained series of sediments composed mostly of fragments of crystals and glass shards of volcanic origin. There are a few beds of clay and silt and, especially near the base, conglomerate. Ross (1937, p. 56) estimates that the total thickness near Challis exceeds 1,000 feet; the base is not exposed. The rhyolite flows of the Yankee Fork Rhyolite Member are usually light brown to red in color and contain phenocrysts of quartz and feldspar. Ross (1937, p. 60-61) reports that north of Challis the rhyolite is somewhat more than 300 feet thick.

The water-bearing characteristics of the Challis Volcanics are poorly known. Wells 14N-18E-12ba1, 14N-19E-15db1, 14N-19E-9ac1, 13N-19E-11ad1, 14N-19E-32ab2, and 13N-19E-11dd1, which obtain water from the Challis Volcanics, are adequate for domestic and stock purposes. The first three wells probably produce from the basalt member and the last two from the latite-andesite member. Well 14N-19E-32ab2 yielded less than 100 gpm with 100 feet of drawdown during a pumping test. Well 13N-19E-11dd1, which was drilled for irrigation, may have bottomed in the latite-andesite member. At the time the well was visited it had not been tested.

Several small springs in the drainage of Challis and Garden Creeks apparently issue from the basalt and latite-andesite members. A spring in the SW $\frac{1}{4}$ of section 28, T. 14 N., R. 19 E. at the north edge of Challis was flowing about 10-15 gpm on May 23, 1962. Although the rocks are covered with alluvium, the water apparently flows to the surface from the base of the Yankee Fork Rhyolite Member which overlies the Germer Tuffaceous Member at this locality (fig. 1).

The extrusive volcanic rocks contain joints and other fractures but very few vesicles formed by expanding gas when the rock was emplaced. The jointing is highly variable but joints are of sufficient frequency and size to yield water to domestic and stock wells.

Rocks of the Challis Volcanics have been warped into a shallow syncline whose axis approximately coincides with the axis of Round Valley (Ross, 1937, p. 83 and pl. 1). This structure is favorable for the occurrence of artesian pressures. Well 14N-19E-32ab1 flows a small

amount of water but only because a trench has been dug from the well head to intersect the land surface at a lower elevation. No artesian pressure was detected in the wells inventoried during this study.

There are extensive deposits of alluvium overlying the Challis Volcanics at most places in Round Valley and these deposits extend up the valleys of the streams tributary to Salmon River. Ross (1937, p. 69-72, pl. 1) divides the alluvial deposits in Round Valley into 3 units (fig. 1) older alluvium, younger alluvium, and flood-plain alluvium. Older alluvium of Pleistocene age flanks the Challis Volcanics on the west and southeast sides of the valley. It appears to be mostly alluvial fan material, but may be in part remnants of high level terraces, and is composed of material ranging in size from silt and clay to boulders. The surface ranges from rough and uneven to broadly rolling. A gravelly soil is the surficial layer at many places.

At lower elevations younger alluvium lies on the older alluvium (fig. 1). In general the younger alluvium consists of clay, silt, sand, and small gravel. The surface is smoother than the surface of the older alluvium and the few streams crossing it have only shallow channels.

The flood-plain alluvium occupies a relatively flat terrace a few feet above the Salmon River and Challis Creek and is separated from the younger alluvium by an escarpment 25 to 50 feet high. Several creeks and sloughs rise in the flood plain and discharge into Salmon River. Reportedly, there are no definite springs; the creeks rise in swampy land and their flow increases progressively downstream. Two of the "drains" rise in swampy parts of the younger alluvium.

All of the wells inventoried, with the exception of those in the Challis Volcanics, obtain water from the alluvial deposits. The alluvial deposits yield adequate supplies to domestic and stock wells. The driller reports bailing 20 to 50 gpm during development of most wells. Drawdowns ranged from 3 to 20 feet. Many wells are completed by cutting $\frac{1}{4}$ x6-inch slots in the casing opposite water-bearing gravel and sand. Pumping of sand was not reported or observed during the study.

Two small scale aquifer tests were made on wells 14N-19E-32abl and 14N-19E-33abl at the upper and lower end of the village of Challis respectively. Well 14N-19E-32abl is in younger alluvium and well 14N-19E-33abl is in older alluvium. The aquifers had transmissibilities on the order of 4,000 gpd per foot.^{1/} The aquifer sampled by well 14N-19E-33abl probably has a higher transmissibility than shown by the aquifer test because much of the drawdown of the water level during pumping appeared to be caused by large entrance losses; specifically, the perforations in the well casing were largely obstructed and much of the water entered the well from below the bottom of the well casing.

With the exception of wells 14N-19E-32ab2 and 13N-19E-12dcl no attempt has been made to develop large capacity irrigation wells. Data from domestic and stock wells suggest that specific capacities, yield in gallons per minute per foot of drawdown, range from 2 to 15. The specific capacity of a well varies with the duration of pumping and to some extent with the pumping rate. With the exception of the 5 wells drilled into the

^{1/} See Mundorff and others, 1960, Ground water for irrigation in the Snake River basin; U.S. Geol. Survey open-file report for definition and discussion of transmissibility and other aquifer properties.

Challis Volcanics none of the wells penetrate the full saturated thickness of the alluvium.

At McNabbs Point where the Salmon River leaves Round Valley, the river has cut a deep narrow canyon in basalt of the Challis Volcanics. The narrow gap suggests that the bedrock floor of Round Valley probably is not lower than an altitude of about 4,800 feet above sea level, the same as the altitude of the river surface in the gap. If this is true the maximum thickness of the alluvium probably would not exceed 400 feet and in the area of the considered Challis Project might not exceed 300 feet. The maximum saturated thickness probably would not exceed 200 to 250 feet.

Recharge and discharge

Recharge to the Challis Volcanics is by precipitation on the outcrop areas and underflow from adjacent and higher rocks older than the Challis Volcanics. Discharge is by mass underflow moving into the alluvium. Total underflow probably is moderate but per unit area it probably is very small. The following discussion serves only to suggest the order of magnitude of recharge to the Challis Volcanics and to the alluvium and cannot be regarded as being accurate. Considering only the drainage basin of Challis Creek above the gage, precipitation probably averages 24 inches. Surface runoff is 7 inches, evapotranspiration probably is about 15 inches. Thus, recharge is roughly 2 inches on an area of 85 square miles or about 10,000 acre-feet a year. This estimate of ground-water yield agrees well with the relationship between precipitation and water yield developed by Mundorff and others (1960, p. 51-53, fig. 10). Drill holes at the gaging station on Challis Creek indicate that the alluvium is not more than 25

feet thick and is less than 200 feet wide. Underflow in the alluvium probably is only a few hundred acre-feet a year.

The U.S. Bureau of Reclamation (1958, p. 15) estimated that runoff in Mill Creek, a tributary to Challis Creek below the gage, averaged 31 percent of the runoff in Challis Creek. It is arbitrarily assumed that recharge is about 30 percent of the recharge in the Challis Creek drainage above the gaging station or about 3,000 acre-feet.

The Garden Creek drainage area above Challis is about 45 percent as large as the Challis Creek drainage area above the gaging station and assuming that recharge in Garden Creek is 45 percent of the recharge in Challis Creek, recharge would be 5,000 acre-feet. This total for the three areas of about 150 square miles of drainage area is less than 20,000 acre-feet of ground-water recharge.

The remainder of the drainage area, other than the Salmon River, that is tributary to Round Valley is estimated to be 250 square miles. Much of this area is east of Round Valley and in the rain shadow of Salmon River Mountains. Only the highest part of the range receives a substantial amount of precipitation. The only perennial stream is Warm Springs Creek which receives its flow from warm springs. Again, arbitrarily applying the ratio of the Challis Creek area to the remainder of the drainage area and assuming that only half as much precipitation is available for recharge a value of about 15,000 acre-feet is obtained. The rounded value of total annual recharge to the Challis Volcanics is 25,000 acre-feet of 35 cfs.

The rate of precipitation on the valley floor is very low, only slightly more than 7 inches at Challis (p. 5) of which 70 percent falls from April to October inclusive when the ground is not frozen. Because it is sandy and gravelly the alluvium has a low water holding capacity; thus even though the rate of precipitation is low some water probably becomes recharge. Blaney and Criddle (1949, p. 9) estimated that it takes about $6\frac{1}{2}$ inches of precipitation to sustain the type of sparse vegetation that is native to the area. This suggests that about 1 inch might become ground-water recharge or about 2,000 acre-feet on 25,000 acres.

The U.S. Bureau of Reclamation (1958, p. 19) estimates that the gross diversion requirement is 9.80 acre-feet to irrigate land served by Challis Creek. Some years that amount is not available to irrigate lands from Challis and Garden Creeks, but the lands served from Salmon River have an adequate supply. An average of 9 acre-feet per acre seems to be a reasonable value to assume for the annual diversions. This amounts to 30,000 acre-feet on 3,300 acres of land. About 85 percent of the farmed area is in alfalfa and pasture and 15 percent in grain and potatoes (U.S. Bureau of Reclamation, 1958, p. 36). Jensen and Criddle (1952, p. 12) computed the annual irrigation requirements for pasture and alfalfa as 16.1 inches (average of the 2 crops) and grain and potatoes as 13.9 inches (average of 2 crops) in the Challis area. This is about 4,500 acre-feet on 3,300 acres. Thus, net recharge from irrigation is on the order of 25,000 acre-feet (30,000 - 3,300, rounded).

It is believed that underflow into Round Valley along the Salmon River is not very large because just before it enters the valley the river flows in a deep narrow valley similar to that at McNabbs Point.

In summary, the crude estimates suggest that average annual recharge to the Challis Volcanics is 25,000 acre-feet, all from precipitation. Recharge to the alluvial deposits includes about 2,000 acre-feet from precipitation and 25,000 acre-feet from irrigation. Thus total recharge in the area is about 50,000 acre-feet.

Geologic conditions suggest that most of the ground water discharges into the Salmon River above McNabbs Point.

The discharge of ground water in the swampy area on the terrace along the river varies with the season. Flow from the sloughs is least in April but the discharge begins to increase in May and the increase continues into the late summer and early autumn. Thereafter the flow decreases until the following spring.

Salmon River reaches its peak discharge about the last part of May or the first part of June and high water in the river undoubtedly affects the water table beneath the terrace. However, much of the water-table rise is caused by irrigation and underflow from Challis, Garden, and Warm Springs Creek, and minor drainages. Reportedly after irrigation was started in sections 1, 2, 11, and 12, T. 13 N., R. 19 E. in the early 1940's parts of section 35, T. 14 N., R. 19 E. and section 2, T. 13 N., R. 19 E. became waterlogged in late summer so that crops could not be harvested. Also, water is at the surface in the SW $\frac{1}{4}$ of section 10 and the NW $\frac{1}{4}$ of section 15, T. 14 N., R. 19 E. at an elevation of 150 to 200 feet above the Salmon River. The areas are swampy in the early spring and the discharge increases steadily during the summer.

The reservoir site

An important factor in reservoir location is the possibility of water loss by seepage into the rocks of the reservoir basin or beneath the dam. Most of the reservoir basin is covered by alluvium, slope wash, and talus. These materials transmit water. However, the alluvium at the dam site is not extensive (p. 11) and a dam founded on bedrock eliminates any possibility of leakage through alluvium.

The basalt member of the Challis Volcanics which underlies the reservoir area contains joints and other fractures and yields small supplies of water to wells (p. 8). The joints at the surface of the formation tend to be choked with material from the overlying alluvial deposits and this material restricts to some extent movement of water into the joints. There are no interconnected openings in the basalt other than joints and other fractures. The yield of wells and the character of the formation suggests that no appreciable loss of water would be expected from a reservoir constructed at the considered site.

Summary and conclusions

The Challis Volcanics yields water to domestic and stock wells but because of inadequate data it is not known if they will yield large supplies to irrigation wells. The alluvium yields a plentiful supply to domestic and stock wells, but like the Challis Volcanics it never has been adequately tested for an irrigation supply. Crude estimates suggest that as much as 50,000 acre-feet of ground water is moving annually from the Challis Volcanics and alluvium into Salmon River.

The chances of obtaining on the order of 1 cubic foot per second from the alluvium from a properly constructed large diameter well probably are sufficient to warrant drilling a test well. A suitable location for such a test well would be in the area south of Challis Creek, west of U.S. Route 93, north of the Challis Airport, and east of the county road leading north out of Challis. The well should extend through the alluvium to the Challis Volcanics.

Irrigation wells probably would be successful on the terrace along the Salmon River, but much of the problem there is excess water and not a shortage of surface water. Dug or dredged wells or pits probably would be adequate.

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Logs of wells

The following well logs were obtained from Clarence H. Cole, well driller, Challis, Idaho. The terminology has been modified for uniformity and clarity.

14N-18E-12bal. Jess Pearson

Material	Thickness	Depth
	(feet)	(feet)
Boulders and clay	25	25
Gravel, soft and rock (Challis Volcanics)	19	44

14N-19E-9acl. Joe Blackburn

Soil	4	4
Clay and rock	23	27
Rock with small amount of gravel	13	40
Rock and clay	6	46
Clay and gravel	31	77
Clay	3	80
Rock, green (Challis Volcanics)	22	102

14N-19E-15db1. Piero Piva

Material	Thickness	Depth
	(feet)	(feet)
Soil and rock	6	6
Clay, blue	1	7
Clay and small gravel	12	19
Gravel, coarse	3	22
Rock, soft (Challis Volcanics)	8	30
Rock, hard (Challis Volcanics)	43	73

Cased with 6-inch casing to 27 feet.

14N-19E-16cc2. C. B. Stark, Jr.

Soil and clay	105	105
Sand, gravel, and clay	4	109
Clay and small rock (some water at 105 ft.)	6	115
Clay and gravel	27	142
Sand, gravel, and clay	5	147
Gravel; water	5	152

6-inch casing perforated with 40 slots between 137 and 150 feet.

14N-19E-21a1. Piva Bros.

Material	Thickness	Depth
	(feet)	(feet)
Clay, sandy	10	10
Gravel and clay	5	15
Gravel and small amount of clay	8	23
Sand	4	27
Gravel, fine	8	35

6-inch casing perforated with 50 slots between 14 and 34 feet.

14N-19E-26bd2. Lynn Wilson

Soil and clay	9	9
Boulders and clay	13	22
Gravel	24	46

6-inch casing perforated with 22 slots between 35 and 44 feet.

14N-19E-32ab1

Soil and clay	7	7
Clay and rock	3	10
Rock and clay; some water	20	30
Boulders	3	33

14N-19E-33bal. Lawrence Bradbury

Material	Thickness	Depth
	(feet)	(feet)
Gravel, boulders, and clay	24	24
Clay and gravel	4	28
Clay	7	35
Clay and gravel	9	44
Gravel	6	50
Clay, red, and gravel	5	55
Clay, red, and coarse gravel	10	65
Clay, red, sandy	27	92

13N-19E-12dcl. Glenn Hunt

Soil	2	2
Rock, gravel, and clay	48	50
Gravel with streaks of clay	20	70
Gravel and clay; some water at 107 feet	40	110
Gravel, fine, loose	27	137
Gravel, tighter formation	24	161
Clay and gravel	12	173
Sand, soft	4	177
Clay and gravel	15	192
Clay, soft, and gravel	5	197
Clay and gravel	17	214

16-inch casing perforated with 193 slots from 108 to 187.

Cased to 187 feet.

Table 1. Records of wells in

Type of well: D, drilled; Dr, driven; Du, dug.

Character of aquifer: S, sand; G, gravel; CV, Challis Volcanics.

Pump: P, piston; J, jet; Sub, submersible; N, none.

Well number	Owner	Year drilled	Type of well	Depth of well (feet below land surface)	CASING	
					Dia.	Depth (feet)
14N-18E-						
12bal	Jess Pearson	1962	D	44	6	24
36	Alex Klug	1961	D	40	6	22
14N-19E-						
8bcd	Sylvester Dobbs	-	D	-	-	-
9abl	Evelyn Tibbitts	1954	Dr	30	2	30
9acl	Joe Blackburn	1960	D	102	6	102
9bcd	Mrs. Ethel Phillips	-	D	65	6	-
10dal	do	1940 ⁺	Du,D	50	36-6	50
15dbl	Piero Piva	1961	D	73	6	27
16bal	R. M. Kimble	-	D	65 ⁺	6	65 ⁺
16bdL	Wendell Kimble	-	D	-	-	-
16cdL	C. D. Stark, Jr.	-	D	200	6	-
16cc2	do	1959	D	152	6	152
17adL	C. A. Green	1946	D	147	6	147
20aal	Mrs. Ethel Philips	-	D	220	4	220
21aal	Piva Bros.	1960	D	35	6	35

Round Valley, Custer County, Idaho

Use of water: D, domestic; S, stock; I, irrigation; U, unused.

Remarks: L, log given in table; Yield, reported by driller;
drawdown data generally not available.

WATER LEVEL			PUMP			Remarks
Charac-	Depth				Use	
ter of	to	Date	Type	H.P.	of	
aquifer	water				water	
	(feet)					
CV	3.7	5/22/62	N		D	L., bailed 10 gpm.
CV	8	1/ /61	-	-	D,S	L., bailed 12 gpm.
S,G	-	-	P	1/6	D,S	
S	4	-	J	-	D	
CV	40	3/ -/60	J	3/4	D,S	L., bailed 25 gpm.
-	-	-	J	1/2		
S,G	30	-	J	1/2	D,S	
CV	-	-	J	-	D,S	L., bailed 18 gpm.
S,G	15	-	J	1/2	D,S	
do	-	-	P	1	D,S	
do	-	-	N	-	U	
do	117	12/ -/59	Sub	1	D,S	L., bailed 20 gpm.
do	140	-	P	3	D,S	
S,G	189.7	5/23/62	N	-	U	
do	14	1/ -/60	C	-	S	L., bailed 45 gpm.

Table E. Records of wells in Round

Well number	Owner	Year drilled	Type of well	Depth of well (feet below land surface)	CASING	
					Dia.	Depth (feet)
14N-19E—Continued						
21bal	Marion Piva	1947	D	156	6	156
22aal	Kenneth Bradbury	1940	D	45	6	30
25bcd	C. B. Stark, Jr.	-	D	80	6	-
26abl	Allan Ellis	-	Du	-	-	-
26bcd	Worth Empey	1935+	D	80	4	80
26bd1	Lynn Wilson	-	D	50	6	-
26bd2	do	1962	D	46	6	44
27ad1	do	-	D	-	6	-
27cd1	Bruno Piva	1955	D	135	6-5	135
28cd1	Raymond Gossi	-	D	192	6	-
32abl	Tony Yacomella	1961	D	33	8	33
32ab2	Lawrence Bradbury	1954	D	265	18-16	165
33abl	U.S. Forest Service	1937+	D	70	6	70
33acd	Lawrence Bradbury	1959	D	105	8	105
33bal	do	1961	D	92	6	65½
34bb1	Sawmill	1962	D	-	-	-
36cd1	Garth Chivers	-	D	60	6	-

Valley, Custer County, Idaho—Continued

WATER LEVEL		PUMP				
Charac-	Depth				Use	
ter of	to	Date	Type	H.P.	of	Remarks
aquifer	water				water	
	(feet)					
G	100	-	Sub	3/4	D,S	
S,G	6	-	P	-	D,S	
S,G	-	-	P	1	D	
do	4	5/22/62	J	1/2	D	
do	20	-	J	1/2	D,S	
do	20	-	P	1/4	D,S	
G	17	1/20/62	N	-	U	L., bailed 50 gpm.
S,G	19.1	5/22/62	P	0	U	
do	70	-	S	3/4	D,S	
do	100	-	S	1	D,S	
G	2.0	5/23/62	J	1/2	D	L., yield 12 gpm with 6 ft. drawdown.
CV	3	-	J	-	D,S,I	
S,G	8.0	5/23/62	T	1 1/2	D	
do	30	1959	S	5	S	
do	25	11/ /61	S	1 1/2	D	L., bailed 25 gpm.
S,G	37.7	5/22/62	-	-		Well not completed.
do	-	-	J	1/2	D,S	

Table 1. Records of wells in Round

Well number	Owner	Year drilled	Type of well	Depth of well (feet below land surface)	CASING	
					Dia.	Depth (feet)
13N-19E-						
1bd1	Wm. Hammond	1950 ⁺	D	90	6	-
1dcl	Johnson Bros.	1940 ⁺	D	90	6	-
1ddl	George Luizenger	1940 ⁺	D	120	6	-
2abl	Frank Burstedt	1935 ⁺	D	32	6	32
1lad1	G. C. Westergard	1954 ⁺	D	86	6	60
1lddl	Hugh Johnson & Son	do	D	300	8	110
12bal	G. C. Westergard	-	D	90	6	-
12dcl	Glenn Hunt	1962	D	214	16	-

Valley, Custer County, Idaho—Continued

Charac- ter of aquifer	WATER LEVEL		PUMP		Use of water	Remarks
	Depth to water (feet)	Date	Type	H.P.		
S,G	-	-	J	-	D,S	
do	60	-	J	3/4	D,S	
-			P	-	D,S	
-	15	-	J	1/2	D	
CV	-	-	J	-	D	
do	-	-	J	-	D,S	
S,G	-	-	P	0	U	
-	106.7	5/24/62	N	-	U	L., drilled for irrigation.

Appendix C



Appendix C

RECEIVED

DEC 27 1991

OFFICE

JAMES M. MONTGOMERY
CONSULTING ENGINEERS, INC.

United States
Department of
Agriculture

Soil
Conservation
Service

201 N. Church St.
Salmon, ID 83467
(208) 756-3859

Mr. Scott Benowitz
Montgomery Engineers
161 Mallard Dr.
Boise, ID 83706

December 24, 1991

Dear Scott:

Enclosed are copies of the soils maps for the area just west of Challis. We were able to get some good soils descriptions on the golf course and further up the drainage in a deep erosional cut. I am also sending copies of the form 5's for the Dawtonia and Yearian series as well as the map unit descriptions. If I can be of further assistance to you, please feel free to contact me.

Sincerely,



Karen Langersmith
Soil Survey Project Leader

MOD - Bayhorse, low precipitation-Dawtonia, low precipitation complex, 15 to 40 percent slopes

COMPOSITION

Bayhorse low precipitation soils and similar inclusions - 45 percent

Dawtonia low precipitation soils and similar inclusions - 40 percent

Contrasting inclusions - 15 percent

BAYHORSE, LOW PRECIPITATION SOIL

Position on landscape:

ridgetops

Elevation: 5,200 to 6,300 feet

Aspect:

south-facing

west-facing

Climatic data: (average annual)

precipitation - about 8 inches

air temperature - about 34 degrees F

frost-free period - about 80 days

Typical profile:

0 to 2 inches - brown gravelly loam

2 to 6 inches - yellowish brown very gravelly loam

6 to 12 inches - brown very gravelly loam

12 inches - hard andesite bedrock

Depth class:

shallow (10 to 20 inches)

Drainage class:

well drained

Permeability:

moderately slow

Available water capacity: 1.5 to 2.5 inches

Potential rooting depth: 12 to 20 inches

Restriction to rooting depth: bedrock at a depth of 12 to 20 inches

Runoff:

medium

Hazard of erosion by water:

moderate

DAWTONIA, LOW PRECIPITATION SOIL

Position on landscape:

ridges

Elevation: 5,200 to 6,300 feet

north-facing

east-facing

Climatic data: (average annual)

precipitation - about 8 inches

air temperature - about 39° degrees F

frost-free period - about 75 days

Typical profile:

0 to 10 inches - yellowish brown very gravelly loam

10 to 37 inches - light yellowish brown very gravelly loam

37 to 60 inches - yellowish brown very gravelly loam

Depth class:

very deep (more than 60 inches)

Drainage class:

well drained

Permeability:

moderately slow

Available water capacity: 4 to 5 inches

Potential rooting depth: 60 or more inches

Runoff:

medium

Hazard of erosion by water:

moderate

INCLUDED AREAS

Inclusions:

rock outcrop (10 percent)

rubble land (5 percent)

MAJOR USES

Current uses:

rangeland

MAJOR MANAGEMENT FACTORS

Soil-related factors:

gravel, cobbles, and stones on the surface

slope

depth to bedrock in some areas

RANGELAND

Dominant vegetation in potential natural plant community:
Bayhorse, low precipitation and Dawtonia, low precipitation
soils - Wyoming big sagebrush and Salmon wildrye

General management considerations:

Suitability for rangeland seeding:

suitable

Rangeland improvements by seeding of adapted species is
limited by:

slope

low annual precipitation

Suitable management practices:

Brush management:

prescribed burning

chemical spraying

mechanical treatment

Brush management is suitable only in areas that have slopes of less than 30 percent.

Seeding time is critical because of low annual precipitation:

Pipeline installation is difficult because: Bayhorse, low precipitation soils are shallow to hard bedrock

INTERPRETIVE GROUPS

Capability classification:

Bayhorse, low precipitation soil -

V1e, nonirrigated

Dawtonia, low precipitation soil -

V1e, nonirrigated

Range site:

Bayhorse, low precipitation soil - 012XY0171

Dawtonia, low precipitation soil - 012XY0171

XHS - Orthids-Rubble Land-Rock Outcrop complex, 50 to 80 percent slopes

COMPOSITION

Orthids soils and similar inclusions - 45 percent
Rubble Land soils and similar inclusions - 25 percent
Rock Outcrop soils and similar inclusions - 15 percent

Contrasting inclusions - 15 percent

ORTHIDS

Position on landscape:
mountains

Elevation: 4,000 to 7,000 feet

Climatic Data: (average annual)
precipitation - 7 to 12 inches
air temperature - 37 to 44 degrees
frost-free period - 50 to 100 days

Typical profile:
0 to 2 inches - brown very cobbly loam

2 to 6 inches - grayish brown very gravelly loam

6 to 16 inches - pale brown very gravelly loam

16 to 37 inches - pale brown extremely gravelly loam

37 to 60 inches - pinkish gray extremely gravelly coarse sandy loam

Depth classes:
moderately deep to very deep (20 to 60 more inches)

Drainage class:
well drained

Permeability:
moderate or moderately rapid

Available water capacity: 2 to 6 inches

Potential rooting depth: 20 to 60 or more inches

Runoff:
rapid

Hazard of erosion by water:
severe

RUBBLE LAND

Position on landscape:
mountains

Rubble land is areas of angular cobbles, stones and boulders derived from and occurring at the bases of rock outcrops, cliffs, mountains or very steep rock slopes.

Elevation: 4,000 to 8,000 feet

ROCK OUTCROP

Position on landscape:
mountains

Rock outcrop includes areas of bare rock of various geologic origin. It is cliffs, outcrops, and other exposed areas.

Elevation: 4,000 to 8,000 feet

INCLUDED AREAS

Inclusions:

Soils with dark surface layers in protected areas and at the base of scree slopes. (10 percent)

Soils in drainageways that are more productive because they receive additional moisture. (5 percent)

MAJOR USES

Current uses:
wildlife habitat,
watershed,
recreation

MINOR USES

Current uses:
rangeland

MAJOR MANAGEMENT FACTORS

Soil-related factors:

boulders in some areas,
stones on surface in some areas,
depth to bedrock in some areas,
rock outcrops in some areas,
slope,
low annual precipitation

RANGELAND

General management considerations:

Suitability for rangeland seeding: not suitable

The included soils in and along drainageways provide most of the available forage.

The use of forage by livestock is limited by:
boulders in some areas,
stones on surface in some areas,
rock outcrops in some areas,
slope

INTERPRETIVE GROUPS

Capability classification:

VIII

SPJ - Zer gravelly loam, warm, 2 to 15 percent slopes

COMPOSITION

Zer warm soils and similar inclusions - 85 percent

Contrasting inclusions - 15 percent

ZER, WARM SOIL

Position on landscape:
fan terraces

Elevation: 5,000 to 5,700 feet

Climatic data: (average annual)
precipitation - about 8 inches
air temperature - about 39 degrees F
frost-free period - about 70 days

Typical profile:
0 to 3 inches - pale brown gravelly loam
3 to 6 inches - yellowish brown gravelly loam
6 to 10 inches - light yellowish brown very gravelly loam
10 to 20 inches - very pale brown very gravelly loam
20 to 60 inches - very pale brown extremely gravelly sandy loam

Depth class:
very deep (more than 60 inches)

Drainage class:
well drained

Permeability:
moderate

Available water capacity: 3 to 5 inches

Potential rooting depth: 60 or more inches

Actual rooting depth: limited by discontinuity at 20 inches

Runoff:
slow

Hazard of erosion by water:
slight

INCLUDED AREAS

Inclusions:
Snowslide soils with shadscale saltbush and Indian ricegrass on convex positions (5 percent)

soils in drainageways that are more productive because they receive additional moisture. (10 percent)

MAJOR USES

Current uses:

rangeland
irrigated hayland
irrigated cropland

MAJOR MANAGEMENT FACTORS

Soil-related factors:

slope in some areas
low annual precipitation
summer frost potential in some areas
cool temperatures in some areas

RANGELAND

Dominant vegetation in potential natural plant community:
Wyoming big sagebrush and Salmon wildrye

General management considerations:

Suitability for rangeland seeding:
unsuitable

HAYLAND, PASTURELAND AND CROPLAND

Suitable crops:

irrigated -
alfalfa
pasture
small grain crops

General management considerations:

Irrigation is needed for crops.

The most suitable irrigation system is sprinkler.

The short growing season limits production of crops.

Crop selection and potential yields will be restricted at elevations above 5,500 feet because of summer frost potential and cool temperatures

INTERPRETIVE GROUPS

Capability classification:

Vlle, nonirrigated

Range site: 012XY017I

DNF-Dawtonia-Frailton complex, 20 to 50 percent slopes

COMPOSITION

Dawtonia soils and similar inclusions - 45 percent

Frailton soils and similar inclusions - 40 percent

Contrasting inclusions - 15 percent

DAWTONIA SOIL

Position on landscape:
foothills

Elevation: 5,000 to 6,000 feet

Climatic data: (average annual)
precipitation - about 9 inches
air temperature - about 43 degrees F
frost-free period - about 75 days

Typical profile:
0 to 4 inches - brown gravelly loam
4 to 8 inches - yellowish brown very gravelly loam
8 to 15 inches - pale brown very gravelly loam
15 to 60 inches - light yellowish brown extremely gravelly
loam

Depth class:
very deep (more than 60 inches)

Drainage class:
well drained

Permeability:
moderate

Available water capacity: 4 to 5 inches

Potential rooting depth: 60 or more inches

Runoff:
medium

Hazard of erosion by water:
moderate

FRAILTON SOIL

Position on landscape:
mountainsides

Elevation: 5,000 to 6,000 feet

Climatic data: (average annual)
precipitation - about 9 inches
air temperature - about 40 degrees F
frost-free period - about 75 days

Typical profile:
0 to 6 inches - light olive brown gravelly loam
6 to 11 inches - dark brown extremely flaggy loam
11 inches - fractured, layered tuff

Depth class:
shallow (10 to 20 inches)

Drainage class:
well drained

Permeability:
moderate

Available water capacity: 1 to 2 inches

Potential rooting depth: 10 to 20 inches

Restriction to rooting depth: soft bedrock at a depth of 10 to 20 inches

Runoff:
medium

Hazard of erosion by water:
severe

INCLUDED AREAS

Inclusions:
Soils in drainageways that are more productive because they receive additional moisture. (5 percent)

Soils like Frailton that are moderately deep to soft bedrock (10 percent)

MAJOR USES

Current uses:
rangeland

MAJOR MANAGEMENT FACTORS

Soil-related factors:

available water capacity in some areas,
depth to bedrock in some areas,
slope in some areas,
low annual precipitation

RANGELAND

Dominant vegetation in potential natural plant community:
Wyoming big sagebrush and bluebunch wheatgrass

General management considerations:

Suitability for rangeland seeding: suitable

Rangeland improvements by seeding of adapted species is limited by:

available water capacity in some areas,
depth to bedrock in some areas,
slope in some areas,
low annual precipitation

Suitable management practices:

Brush management:

prescribed burning,
chemical spraying,
mechanical treatment

Brush management is suitable only in areas that have slopes of less than 30 percent.

Seeding time is critical because of low annual precipitation.

Installing pipelines is difficult because the soil is shallow to soft bedrock (Frailton soil)

INTERPRETIVE GROUPS

Capability classification:

Dawtonia soil -
VIIe, nonirrigated

Frailton soil -
VIIe, nonirrigated

ULTRAS: 12

REV. FORM. 5-67

TYPIC CALCICORTHIDS, LOAMY-SKELETAL, MIXED, FRIGID

THE SNOWSLIDE SERIES CONSISTS OF VERY DEEP, WELL DRAINED SOILS DEVELOPED IN ALLUVIUM, AND SLOPE ALLUVIUM FROM MIXED SOURCES ON FAN TERRACES AND FOOTHILLS. VEGETATION IS SHADSCALE AND GRASS. ELEVATION IS 4000 TO 4500 FEET. AAF IS 6 TO 8 INCHES. FFS IS 50 TO 100 DAYS. TYPICALLY THE SURFACE IS PALE BROWN GRAVELLY LOAM ABOUT 2 INCHES THICK. THE UPPER 12 INCHES OF THE SUBSTRATUM IS LIGHT GRAY EXTREMELY COARSE LOAM. THE NEXT 34 INCHES IS PALE BROWN EXTREMELY GRAVELLY LOAM. THE LOWER PART TO A DEPTH OF 60 INCHES IS VERY PALE BROWN GRAVELLY LOAM. SLOPES ARE 1 TO 40 PERCENT.

LANDSCAPE AND CLIMATE PROPERTIES					
ANNUAL AIR TEMPERATURE	FROST FREE DAYS	ANNUAL PRECIPITATION	ELEVATION (FT)	DRAINAGE CLASS	SLOPE (CT)
	50-100	6-8	4000-6500	W	1-40

ESTIMATED SOIL PROPERTIES											
DEPTH (IN.)	USDA TEXTURE	UNIFIED	AASHTO	FRACT. >10 IN. (PCT)	FRACT. 3 IN. (PCT)	PERCENT OF MATERIAL LESS THAN 3" PASSING SIEVE NO.					CLAY (CT)
						4	10	40	100		
0-9	GR-L	GM-GC, CL-ML, ML, GM	A-2, A-4	0	0	55-75	50-75	30-60	30-55	11-18	
0-9	GRV-L	GM-GC, GM	A-2, A-1	0	0	30-60	30-50	15-40	10-35	11-18	
9-21	CBX-L, GRV-L	GM	A-2, A-1		15-55	30-45	30-40	25-40	20-35	11-15	
21-55	GRX-L, GRX-SL, GRV-SL	GM, GP-GM	A-1		0-10	15-40	15-35	10-30	5-15	5-10	
55-60	GR-L	GM	A-4		0-10	50-70	50-70	35-60	35-50	11-15	

DEPTH (IN.)	LIQUID LIMIT	PLASTICITY INDEX	MOIST BULK DENSITY (G/CM3)	PERMEABILITY (IN/HR)	AVAILABLE WATER CAPACITY (IN/IN)	SOIL REACTION (PH)	SALINITY (MMHOS/CM)	SAR	CEC (ME/100G)	CAC03 (CT)	GYP SUM (CT)
0-9	20-30	NP-10	1.60-1.65	0.6-2.0	0.11-0.14	7.9-8.4	4		12		
0-9	20-30	NP-10	1.60-1.65	0.6-2.0	0.09-0.11	7.9-8.4	4		12		
9-21	20-25	NP-5	1.60-1.65	0.6-2.0	0.09-0.11	7.9-8.4	4-8		12		
21-55	-	NF	1.55-1.60	0.6-2.0	0.03-0.05	7.4-8.4	8-16		5-10		
55-60	20-25	NP-5	1.60-1.65	0.6-2.0	0.11-0.14	7.9-8.4	8-16				

DEPTH (IN.)	ORGANIC MATTER (PCT)	SHRINK-SWELL POTENTIAL	EROSION: WIND	WIND EROD. INDEX	CORROSIVITY: STEEL	CONCRETE
0-9	1	LOW	1.24	1 8	-	HIGH LOW
0-9	1	LOW	1.17	1 8	-	
9-21		LOW	1.17			
21-55		LOW	1.05			
55-60		LOW	1.32			

FLOODING			HIGH WATER TABLE		CEMENTED PAN	BEDROCK	SUBSIDENCE	HYD	POTENTIAL
FREQUENCY	DURATION	MONTHS	DEPTH (FT)	MONTHS	DEPTH (IN)	HARDNESS (IN)	INITIAL	TOTAL	GRP: FROST ACTION
NONE			6.0			60			B: LOW

SANITARY FACILITIES		CONSTRUCTION MATERIAL	
SEPTIC TANK ABSORPTION FIELDS	1-8%: MODERATE-PERCS SLOWLY 8-15%: MODERATE-PERCS SLOWLY,SLOPE 15+%: SEVERE-SLOPE	ROADFILL	1-15%: GOOD 15-25%: FAIR-SLOPE 25+%: POOR-SLOPE
SEWAGE LAGOON AREAS	1-2%: MODERATE-SEEPAGE,LARGE STONES 2-7%: MODERATE-SEEPAGE,SLOPE,LARGE STONES 7+%: SEVERE-SLOPE	SAND	IMPROBABLE-SMALL STONES
SANITARY LANDFILL (TRENCH)	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	GRAVEL	IMPROBABLE-THIN LAYER
SANITARY LANDFILL (AREA)	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	TOPSOIL	1-15%: POOR-SMALL STONES,AREA RECLAIM 15+%: POOR-SMALL STONES,AREA RECLAIM,SLOPE
DAILY COVER FOR LANDFILL	1-15%: POOR-SEEPAGE,SMALL STONES 15+%: POOR-SEEPAGE,SMALL STONES,SLOPE	WATER MANAGEMENT	
		FOND RESERVOIR AREA	1-3%: MODERATE-SEEPAGE 3-8%: MODERATE-SEEPAGE,SLOPE 8+%: SEVERE-SLOPE
BUILDING SITE DEVELOPMENT			
SHALLOW EXCAVATIONS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	EMBANKMENTS DICES AND LEVEES	SEVERE-SEEPAGE
DWELLINGS WITHOUT BASEMENTS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	EXCAVATED PONDS AQUIFER FED	SEVERE-NO WATER
DWELLINGS WITH BASEMENTS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	DRAINAGE	DEEP TO WATER
SMALL COMMERCIAL BUILDINGS	1-4%: SLIGHT 4-8%: MODERATE-SLOPE 8+%: SEVERE-SLOPE	IRRIGATION	1-3%: DROUGHTY,EXCESS SALT 3+%: DROUGHTY,SLOPE,EXCESS SALT
LOCAL ROADS AND STREETS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	TERRACES AND DIVERSIONS	1-8%: LARGE STONES 8+%: SLOPE,LARGE STONES
LAWNS, LANDSCAPING AND GOLF FAIRWAYS	1-2% GR: MODERATE-SMALL STONES,DROUGHTY 2-15%GR:MODERATE-SMALL STONES,DROUGHTY,SLOPE 15+% GR: SEVERE-SLOPE 1-15% GRV: SEVERE-SMALL STONES 15+% GRV: SEVERE-SMALL STONES,SLOPE	GRASSED WATERWAYS	1-2%: LARGE STONES,DROUGHTY 2+%: LARGE STONES,SLOPE,DROUGHTY

RECREATIONAL DEVELOPMENT		
CAMP AREAS	1-8% GR: MODERATE-SMALL STONES,DUSTY	1-6%: SEVERE-SMALL STONES
	8-15% GR: MODERATE-SLOPE,SMALL STONES,DUSTY	6-11: SEVERE-SLOPE,SMALL STONES
	15+% GR: SEVERE-SLOPE	
	1-15% GRV: SEVERE-SMALL STONES	
	15+% GRV: SEVERE-SLOPE,SMALL STONES	
PICNIC AREAS	1-8% GR: MODERATE-SMALL STONES,DUSTY	1-15% GR: MODERATE-DUSTY
	8-15% GR: MODERATE-SLOPE,SMALL STONES,DUSTY	15-25% GR: MODERATE-SLOPE,DUSTY
	15+% GR: SEVERE-SLOPE	25+% GR: SEVERE-SLOPE
	1-15% GRV: SEVERE-SMALL STONES	1-25% GRV: SEVERE-SMALL STONES
	15+% GRV: SEVERE-SLOPE,SMALL STONES	25+% GRV: SEVERE-SLOPE,SMALL STONES

[illegible][illegible]

WINDBREAKS									
CLASS-DETERMINING PHASE	SEED	LEGUME	WILD	HARDW	CONIFER	SHRUBS	WETLAND	SHALLOW	OPENLD
NONE									

WILDLIFE HABITAT SUITABILITY									
CLASS-DETERMINING PHASE	SEED	LEGUME	WILD	HARDW	CONIFER	SHRUBS	WETLAND	SHALLOW	OPENLD
1-5% IRR	FAIR	FAIR	IV. POOR	-	-	IV. POOR	POOR	IV. POOR	POOR
1-3% NIIR	IV. POOR	IV. POOR	IV. POOR	-	-	IV. POOR	POOR	IV. POOR	IV. POOR
3-40%	IV. POOR	IV. POOR	IV. POOR	-	-	IV. POOR	IV. POOR	IV. POOR	IV. POOR

POTENTIAL NATIVE PLANT COMMUNITY (RANGELAND OR FOREST UNDERSTORY VEGETATION) (%)									
COMMON PLANT NAME	PLANT SYMBO	PERCENTAGE COMPOSITION (DRY WEIGHT) BY CLASS DETERMINING PHASE	DRY	LOW PPT	1-40%				
INDIAN RICEGRASS	ORHY	15	5	10					
NEEDLEANDTHREAD	STCO4	10	-	-					
SANDBERG BLUEGRASS	POSA1C	5	15	5					
BOTTLEBRUSH SQUIRRELTAIL	STHY	10	10	5					
OTHER PERENNIAL GRASSES	PPGG	5	5	10					
OTHER PERENNIAL FORBS	PPFF	5	10	10					
SHADSCALE	ATCO	30	-	20					
BUD SAGEBRUSH	ARSP5	5	-	5					
OTHER SHRUBS	SSSS	10	5	5					
SAND DROPSEED	SPCR	5	-	20					
BLUEBUNCH WHEATGRASS	AGSF	-	5	-					
WINTERFAT	EULA5	-	5	-					
LOW SAGEBRUSH	ARAR3	-	10	-					
NUTTALL TANSY	TAND*	-	10	-					
ERINGED SAGEBRUSH	ABEB4	-	25	-					
POTENTIAL PRODUCTION (LBS./AC. DRY WT):									
FAVORABLE YEARS		400	275	400					
NORMAL YEARS		350	100	225					
UNEAVORABLE YEARS		200	75	150					

FOOTNOTES

A DRY, 012X009IZ, SALINE GR 8 PFT; LOW PPT, 012X006IZ, WINDSWEPT 8-11 PFT; 1-40%, 012XY041I \$GR 7-10 PFT, 012XY041I GR 7-10

14 FEB 91 - sent to SD (NP)

ID0087

SOIL INTERPRETATIONS RECORD

WHITEKNOB SERIES

MLRA(S): 12 11

REV. KGPB, NP, 8-90

Revised 2/91, LW

WFA, WKA, B, WFA

XEROLIC CALCITHIDS, SANDY-SKELETAL, MIXED, FRIGID

THE WHITEKNOB SERIES CONSISTS OF VERY DEEP SOILS FORMED IN ALLUVIUM FROM MIXED GEOLOGIC MATERIALS ON FAN TERRACES. VEGETATION IS SAGEBRUSH, SALTBRUSH AND GRASS. TYPICALLY THE SURFACE IS LIGHT BROWNISH GRAY LOAM. THE SUBSOIL IS LIGHT BROWNISH GRAY LOAM. THE UPPER PART OF THE SUBSTRATUM IS LIGHT GRAY EXTREMELY GRAVELLY SANDY LOAM. THE LOWER PART IS GRAY EXTREMELY GRAVELLY SAND.

LANDSCAPE AND CLIMATE PROPERTIES					
ANNUAL AIR TEMPERATURE	FROST FREE DAYS	ANNUAL PRECIPITATION	ELEVATION (FT)	DRAINAGE CLASS	SLOPE (PCT)
32-45	70-110	7-11	4800-6000	SE	0-12

ESTIMATED SOIL PROPERTIES										
DEPTH (IN.)	USDA TEXTURE	UNIFIED	AASHTO	IFRACT. >10 (PCT)	IFRACT. 10-30 (PCT)	PERCENT OF MATERIAL LESS THAN 3" PASSING SIEVE NO. 4 (PCT)	10 (PCT)	40 (PCT)	200 (PCT)	CLAY (PCT)
0-5	GR-L	GM-GC, SC-SM	A-4	0	0	55-80	50-75	45-65	35-50	10-18
0-5	IL	CL-ML	A-4	0	0	180-100	75-100	60-70	50-70	10-18
5-10	L, GR-L	CL-ML, GM-GC	A-4	0	0-10	55-100	50-100	40-75	35-70	10-18
10-18	GRV-L, GRV-SL, GRX-SL	GM, GP-GM	A-1, A-2	0	0-20	10-60	10-50	10-40	5-30	5-10
18-60	GRV-S, GRX-LCOS, GRX-S	GP, GP-GM	A-1	0	0-50	10-40	5-35	0-25	0-10	3-8
60-100	GRV-L, GRV-SL, GRX-SL	GM, GP-GM	A-2	0	0-10	150-60	40-75	35-50	20-35	10-18

DEPTH (IN.)	LIQUID LIMIT	PLASTICITY INDEX	MOIST BULK DENSITY (G/CM3)	PERMEABILITY (IN/HR)	AVAILABLE WATER CAPACITY (IN/IN)	SOIL REACTION (PH)	SALINITY (MMHOS/CM)	SAR	CEC (ME/100G)	CACO3 (PCT)	GYPSUM (PCT)
0-5	20-25	5-10	1.50-1.55	0.6-2.0	0.11-0.14	7.4-8.4	<2	-	\$40-150	\$0.5-10	-
0-5	20-25	5-10	1.50-1.55	0.6-2.0	0.14-0.17	7.4-8.4	<2	-	\$110-150	\$0.5-10	-
5-10	20-25	5-10	1.50-1.60	0.6-2.0	0.11-0.17	7.4-8.4	<2	-	\$8-15	\$0.5-10	-
10-18	15-20	NP-5	1.40-1.50	2.0-6.0	0.05-0.10	7.4-8.4	<2	-	\$5-7	\$15-25	-
18-60	10-15	NP-5	1.40-1.50	>20	0.03-0.05	7.4-8.4	<2	-	\$2-5	\$15-25	-
60-100	20-25	NP-10	1.35-1.45	0.6-2.0	0.11-0.17	7.4-8.4	<2	-	\$8-22	\$15-25	-

DEPTH (IN.)	ORGANIC MATTER	SHRINK-SWELL POTENTIAL (PCT)	EROSION INDEX	WIND EROSION INDEX	WIND EROSION INDEX	CORROSIVITY	STEEL	CONCRETE
0-5	1-2	LOW	1.17	1	7	38	HIGH	LOW
0-5	1-2	LOW	1.32	1	4L	86		
5-10	.5-1	LOW	1.28					
10-18	.5-1	LOW	1.10					
18-60	.5-1	LOW	1.05					
60-100	1-2	LOW	1.15	2	6	48		

FLOODING	HIGH WATER TABLE	CEMENTED PAN	BEDROCK	SUBSIDENCE	HYD. POTENTIAL
DEPTH	DEPTH	DEPTH	DEPTH	DEPTH	DEPTH
FREQUENCY	DURATION	MONTHS	MONTHS	MONTHS	MONTHS
NONE		>60		>60	B, LOW

SANITARY FACILITIES		CONSTRUCTION MATERIAL	
SEPTIC TANK	\$ SEVERE-POOR FILTER		\$ FAIR-LARGE STONES
ABSORPTION	\$	ROADFILL	\$
FIELDS	\$		\$
	\$		\$
SEWAGE	\$ 0-7%: SEVERE-SEEPAGE		\$ PROBABLE
LAGOON	\$ 7+%: SEVERE-SEEPAGE, SLOPE	SAND	\$
AREAS	\$		\$
	\$		\$
SANITARY	\$ SEVERE-TOO SANDY, LARGE STONES		\$ PROBABLE
LANDFILL	\$	GRAVEL	\$
(TRENCH)	\$		\$
	\$		\$
SANITARY	\$ 0-8%: SLIGHT		\$ POOR-TOO SANDY, SMALL STONES, AREA RECLAIM
LANDFILL	\$ 8-12%: MODERATE-SLOPE	TOPSOIL	\$
(AREA)	\$		\$
	\$		\$
DAILY	\$ POOR-SEEPAGE, TOO SANDY, SMALL STONES		\$
COVER FOR	\$		\$
LANDFILL	\$		\$
	\$		\$
BUILDING SITE DEVELOPMENT		WATER MANAGEMENT	
SHALLOW	\$ SEVERE-CUTBANKS CAVE	POND	\$ 0-8%: SEVERE-SEEPAGE
EXCAVATIONS	\$	RESERVOIR	\$ 8+%: SEVERE-SEEPAGE, SLOPE
	\$	AREA	\$
	\$		\$
	\$	EMBANKMENTS	\$ SEVERE-SEEPAGE
	\$	DIKES AND	\$
	\$	LEVEES	\$
	\$		\$
DWELLINGS	\$ 0-8%: MODERATE-LARGE STONES	EXCAVATED	\$ SEVERE-NO WATER
WITHOUT	\$ 8-12%: MODERATE-SLOPE, LARGE STONES	PONDS	\$
BASEMENTS	\$	AQUIFER FED	\$
	\$		\$
DWELLINGS	\$ 0-8%: MODERATE-LARGE STONES		\$ DEEP TO WATER
WITH	\$ 8-12%: MODERATE-SLOPE, LARGE STONES	DRAINAGE	\$
BASEMENTS	\$		\$
	\$		\$
SMALL	\$ 0-4%: MODERATE-LARGE STONES		\$ 0-3%: LARGE STONES, DROUGHTY
COMMERCIAL	\$ 4-8%: MODERATE-SLOPE, LARGE STONES	IRRIGATION	\$ 3+%: SLOPE, LARGE STONES, DROUGHTY
BUILDINGS	\$ 8+%: SEVERE-SLOPE		\$
	\$		\$
LOCAL	\$ 0-8%: MODERATE-LARGE STONES		\$ 0-8%: LARGE STONES, TOO SANDY
ROADS AND	\$ 8-12%: MODERATE-SLOPE, LARGE STONES	TERRACES	\$ 8+%: SLOPE, LARGE STONES, TOO SANDY
STREETS	\$	AND	\$
	\$	DIVERSIONS	\$
	\$		\$
LAWNS,	\$ 0-8% L: MODERATE-DROUGHTY		\$ 0-8%: TOO ARID, LARGE STONES
LANDSCAPING	\$ 8-12% L: MODERATE-DROUGHTY, SLOPE	GRASSED	\$ 8+%: TOO ARID, LARGE STONES, SLOPE
AND GOLF	\$ 0-8% GR: MODERATE-SMALL STONES, DROUGHTY	WATERWAYS	\$
FAIRWAYS	\$ 8-12% GR: MODERATE-SMALL STONES, DROUGHTY, SLOPE		\$
	\$		\$

RECREATIONAL DEVELOPMENT			
CAMP AREAS	\$ 0-8% L: MODERATE-DUSTY		\$ 0-2% L: MODERATE-SMALL STONES,DUSTY
	\$ 8-12% L: MODERATE-SLOPE,DUSTY		\$ 2-6% L: MODERATE-SLOPE,SMALL STONES,DUSTY
	\$ 0-8% GR: MODERATE-SMALL STONES,DUSTY		PLAYGROUNDS \$ 6+% L: SEVERE-SLOPE
	\$ 8-12% GR: MODERATE-SLOPE,SMALL STONES,DUSTY		\$ 0-6% GR: SEVERE-SMALL STONES
	\$		\$ 6+% GR: SEVERE-SLOPE,SMALL STONES
PICNIC AREAS	\$ 0-8% L: MODERATE-DUSTY		\$ MODERATE-DUSTY
	\$ 8-12% L: MODERATE-SLOPE,DUSTY		PATHS
	\$ 0-8% GR: MODERATE-SMALL STONES,DUSTY		AND
	\$ 8-12% GR: MODERATE-SLOPE,SMALL STONES,DUSTY		TRAILS
	\$		\$
	\$		\$

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CLASS- DETERMINING PHASE	CAPABILITY AND YIELDS PER ACRE OF CROPS AND PASTURE						HIGH LEVEL MANAGEMENT									
	CAPA- BILITY		ALFALFA HAY (TONS)	BARLEY (BU)	OATS (BU)	PASTURE (AUM)	POTATOES, IRISH (CWT)									
	NIRR	IIR	NISS	IIS	NIRR	IIR	NIRR	IIR	NIRR	IIR	NISS	IIR	NIRR	IIR	NIRR	IIR
0-12%	6S	4S	4		100	90	8.0	200								

[illegible]

FOOTNOTES

A IDAHO RANGE SITES, LOW PPT 012XY003I; MOIST 012XY004I; WARM 011BY019ID.

WFA, WKA, WPA WKB

Wb2 - Whiteknob-Snowslide complex, 2 to 6 percent slopes

COMPOSITION

Whiteknob soils and similar inclusions - 60 percent

Snowslide soils and similar inclusions - 20 percent

Contrasting inclusions - 20 percent

WHITEKNOB SOIL

Position on landscape:

outwash fans,
fan terraces

Elevation: 5,700 to 6,500 feet

Climatic data: (average annual)

*precipitation - about 9 inches

*air temperature - about 39 degrees F

*frost-free period - about 75 days

Slope features:

plane to convex

Typical profile:

*0 to 4 inches - pale brown gravelly loam

*4 to 7 inches - brown very gravelly loam

*7 to 11 inches - pale brown very gravelly sandy loam

*11 to 19 inches - light gray, extremely gravelly loamy
coarse sand

*19 to 37 inches - very pale brown extremely gravelly loamy
coarse sand

*37 to 60 inches - light yellowish brown extremely gravelly
loamy coarse sand

Depth class:

very deep (more than 60 inches)

Drainage class:

somewhat excessively drained

Permeability:

moderate

Available water capacity: 2.5 to 3.5 inches

Potential rooting depth: 60 or more inches

Runoff:
slow

Hazard of erosion by water:
slight

SNOWSLIDE SOIL

Position on landscape:
fan terraces

Elevation: 4,500 to 6,500 feet

Climatic data: (average annual)
precipitation - about 7 inches
air temperature - about 39 degrees F
frost-free period - about 75 days

Slope features:
plane to convex

Typical profile:
*0 to 3 inches - pale brown gravelly loam
*3 to 9 inches - brown very gravelly loam
*9 to 21 inches - light gray extremely gravelly loam
*21 to 30 inches - pale brown extremely gravelly sandy loam
*30 to 38 inches - light yellowish brown extremely gravelly
loam
*38 to 55 inches - pale brown extremely gravelly loam
*55 to 60 inches - very pale brown gravelly loam

Depth class:
very deep (more than 60 inches)

Drainage class:
well drained

Permeability:
moderate

Available water capacity: 3 to 5 inches

Potential rooting depth: 60 or more inches

Runoff:
slow

Hazard of erosion by water:
slight

INCLUDED AREAS

Inclusions:
Sparmo soils. (10 percent)

Ringle soils. (5 percent)

Soils in drainageways that are more productive because they receive additional moisture. (5 percent)

MAJOR USES

Current uses:
rangeland

Potential uses:
irrigated hayland
irrigated pastureland
irrigated cropland

MAJOR MANAGEMENT FACTORS

Soil-related factors:
slope in some areas,
low annual precipitation,
summer frost potential in some areas,
cool temperatures in some areas

RANGELAND

Dominant vegetation in potential natural plant community:
Whitknob - Wyoming big sagebrush and bluebunch wheatgrass
Snowslide - Wyoming big sagebrush and bluebunch wheatgrass

Rangeland improvements by seeding of adapted species is limited by:
low annual precipitation

Suitable management practices:

Brush management:
prescribed burning
chemical spraying
mechanical treatment

HAYLAND, PASTURELAND AND CROPLAND

Suitable crops:

irrigated -
grass-legume hay,
alfalfa,
pasture,
small grain crops

General management considerations:

The short growing season limits production of crops.

Irrigation is needed for crops because of low available water capacity.

Crop selection and potential yields will be restricted at elevations above 5,500 feet because of summer frost potential and cool temperatures.

The Snowslide soil has low production potential for several years after initial cultivation because of its low organic matter content.

Suitable management practices:

The most suitable irrigation system is sprinkler.

INTERPRETIVE GROUPS

Capability classification:

V1e, nonirrigated
1Ve, irrigated

LOCATION WHITEFNOB

Tentative Series
Rev. CJH/GHL/WDF/H.L.
6/90

WHITEFNOB SERIES

The Whiteknob series consists of very deep, somewhat excessively drained soils formed in mixed alluvium. Whiteknob soils are on fan terraces, stream terraces and dissected terraces. Permeability is moderate in the upper part and rapid in the lower part. Slopes are 0 to 12 percent. The average annual precipitation is about 9 inches and the average annual temperature is about 42 degrees F.

TAXONOMIC CLASS: Sandy-skeletal, mixed, frigid Xerollic Calcorthids.

TYPICAL PEDON: A Whiteknob gravelly loam -- in rangeland. (Colors are for dry soil unless otherwise noted).

A -- 0 to 3 inches; light brownish gray (10YR 6/2) gravelly loam, dark grayish brown (10YR 4/2) moist; weak thin platy structure parting to moderate fine granular; soft, very friable, nonsticky and slightly plastic; many very fine and fine and few medium roots; many very fine and fine interstitial pores; 15 percent gravel; strongly effervescent; strongly alkaline (pH 8.5); abrupt smooth boundary. (2 to 6 inches thick)

Bk1 -- 3 to 8 inches; pale brown (10YR 6/3) gravelly loam, dark yellowish brown (10YR 4/4) moist; moderate fine and medium subangular blocky structure; slightly hard, friable, nonsticky and slightly plastic; many very fine, common fine, and few medium roots; many very fine and common fine tubular pores; 25 percent gravel; strongly effervescent; moderately alkaline (pH 8.2); clear smooth boundary. (0 to 8 inches thick)

Bk2 -- 8 to 12 inches; pale brown (10YR 6/3) very gravelly loam, brown (10YR 4/3) moist; moderate fine and medium subangular blocky structure; slightly hard, firm, nonsticky and slightly plastic; many very fine and fine roots; many very fine and fine interstitial pores; 40 percent gravel; lime and silica coatings on undersides and some sides of coarse fragments; strongly effervescent; moderately alkaline (pH 8.3); clear wavy boundary. (0 to 9 inches thick)

2Bkq1 -- 12 to 20 inches; light brownish gray (10YR 6/2) extremely gravelly loamy coarse sand, dark grayish brown (10YR 4/2) moist; single grain; loose; nonsticky and nonplastic; few very fine and fine roots; many fine and medium interstitial pores; 65 percent gravel; lime and silica coatings and pendants 1 to 2 mm thick on all sides of coarse fragments; violently effervescent; moderately alkaline (pH 8.0) gradual smooth boundary. (9 to 12 inches thick)

2Bkq2 -- 20 to 40 inches; grayish brown (10YR 5/2) extremely gravelly loamy coarse sand, dark grayish brown (10YR 4/2) moist; single grain; loose, nonsticky and nonplastic; few very fine and fine roots; many fine and medium interstitial pores; 70 percent gravel; lime and silica coatings 1 to 2 mm thick on coarse fragments; strongly effervescent; moderately alkaline (pH 8.0) gradual smooth boundary. (0 to 27 inches thick)

TYPE LOCATION: Butte County, Idaho; about 2.4 miles east of Leslie, Idaho, about 1,500 feet north and 870 feet west of the southeast corner of section 1, T.6N., R.25E. ^

RANGE IN CHARACTERISTICS:

Average annual soil temperature - 41 to 47 degrees F.
Average summer soil temperature - 59 to 66 degrees F.
Depth to calcic horizon - 4 to 13 inches
Depth to contrasting sand and gravel - less than 20 inches

Control section averages:

Percent coarse fragments - 35 to 40

A horizon:

value - 5 or 6 dry, 3 or 4 moist
chroma - 2 or 3 dry or moist
coarse fragments - ^ 0 to 30 percent ^
reaction - mildly to strongly alkaline

Bt horizon:

value - 5 or 6 dry, 3 through 5 moist
chroma - ^ 2 through 4 dry or moist ^
reaction - mildly to strongly alkaline
texture - L, GR-L

2Bkq horizons:

value - ^ 5 through ^ 7 dry, 4 through 6 moist
chroma - ^ 1 through 4 dry or moist ^
calcium carbonate equivalent - 15 to ^ 30 ^percent
reaction - moderately or strongly alkaline
texture - GRV-L, GRV-SL, GRX-SL, GRV-S, GRX-LCOS, GRX-S

COMPETING SERIES: None in the same family. Similar soils are the Arbus, Whitecloud, and Zer series. Zer soils have loamy-skeletal particle-size control sections. Whitecloud

and Arbus series have a calcium carbonate equivalent of 40 percent or more in the textural control section.

GEOGRAPHIC SETTING: Whiteknob soils are on fan terraces, stream terraces and dissected terraces. These soils formed in mixed alluvium. Slopes are 0 to 12 percent. Elevations are 4,800 to 6,500 feet. The climate is cold and moist in winter and spring, and dry in summer. Average annual precipitation is 7 to 11 inches. Average annual air temperature is 39 to 44 degrees F. The frost-free period is 70 to 110 days.

GEOGRAPHICALLY ASSOCIATED SOILS: These are the Sparmo (T), Medicine (T), and Zer soils. Sparmo soils are on outwash fans and fan terraces and have coarse loamy particle-size control sections. Medicine soils are on alluvial fans and have contrasting particle size classes. Zer soils are on terraces and have loamy-skeletal particle-size control sections.

DRAINAGE AND PERMEABILITY: Somewhat excessively drained. Slow or medium runoff. Moderate permeability in the upper part and very rapid in the lower part.

USE AND VEGETATION: Mostly used as range and irrigation for hay, pasture, small grain. The principal native vegetation is Wyoming big sagebrush, bluebunch wheatgrass, and Indian ricegrass.

DISTRIBUTION AND EXTENT: East-central Idaho. These soils are of moderate extent.

SERIES ESTABLISHED: Jefferson County, Idaho. 1975.

REMARKS: Diagnostic horizons and features recognized in this pedon are:

Ochric epipedon - The zone from 0 to 3 inches.

Calcic horizon - The zone from 10 to 18 inches (the B₁ horizon).

Particle-size control section - the zone from 10 to 40 inches (the B₁ and the B₂

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U.S.A.

LOCATION SNOWSLIDE

Tentative Series
Rev. GAH/WDF
3/90

SNOWSLIDE SERIES

The Snowslide series consists of very deep, well drained soils formed in alluvium and slope alluvium from mixed geologic material. Snowslide soils are on foothills and fan terraces. Permeability is moderate. Slopes are 1 to 40 percent. The average annual precipitation is about 7 inches and the average annual temperature is about 39 degrees F.

TAXONOMIC CLASS: Loamy-skeletal, mixed, frigid Typic Calciorthids.

TYPICAL PEDON: Snowslide very gravelly loam -- on a 2 percent, smooth northwest-facing slope at an elevation of 5,300 feet in rangeland. (Colors are for dry soil unless otherwise noted. When described on April 20, 1977, the soil was moist to 10 inches and dry below this depth.)

A1--0 to 3 inches; pale brown (10YR 6/3) very gravelly loam, dark brown (10YR 4/3) moist; weak thin and medium platy structure; soft, very friable, slightly sticky and slightly plastic; few very fine and common fine roots; common very fine and few fine and medium vesicular pores; 40 percent pebbles; strongly effervescent; moderately alkaline (pH 8.0); clear smooth boundary. (2 to 4 inches thick)

A2--3 to 9 inches; brown (10YR 5/3) very gravelly loam, dark brown (10YR 4/3) moist; weak medium and coarse subangular blocky structure; soft, very friable, slightly sticky and slightly plastic; common very fine and few fine and medium roots; common very fine interstitial pores; 20 percent pebbles, 15 percent cobbles; slightly effervescent; lime occurs as few fine and medium soft concretions; moderately alkaline (pH 8.0); clear smooth boundary. (4 to 6 inches thick)

Bk1--9 to 21 inches; light gray (10YR 7/2) extremely cobbly loam, very pale brown (10YR 7/3) moist; massive; slightly hard, very friable, slightly sticky and slightly plastic; few very fine roots; common very fine and few fine interstitial pores; 30 percent pebbles, 35 percent cobbles; lime is disseminated throughout horizon; violently effervescent; moderately alkaline (pH 8.4); clear wavy boundary. (6 to 14 inches thick)

Bk2--21 to 30 inches; pale brown (10YR 6/3) extremely gravelly sandy loam, dark brown (10YR 3/3) moist; massive; slightly hard, very friable, slightly sticky and slightly plastic; common very fine and few fine roots; many very fine and common fine interstitial pores; 85 percent pebbles; lime is disseminated throughout horizon; violently effervescent; mildly alkaline (pH 7.6); clear wavy boundary. (8 to 14 inches thick)

Bk3--30 to 38 inches; light yellowish brown (10YR 6/4) extremely gravelly loam, dark brown (10YR 4/3) moist; massive; slightly hard, very friable, slightly sticky and slightly plastic; few very fine roots; common very fine and fine interstitial pores; 90 percent pebbles; lime occurs as filaments and soft masses; violently effervescent; moderately alkaline (pH 8.0); abrupt smooth boundary. (6 to 15 inches thick)

Bk4--38 to 55 inches; pale brown (10YR 6/3) extremely gravelly loam, dark brown (10YR 4/3) moist; massive; slightly hard, very friable, slightly sticky and slightly plastic; common very fine roots; common very fine and fine interstitial pores; 90 percent pebbles; strongly effervescent; moderately alkaline (pH 8.0); abrupt smooth boundary. (6 to 15 inches thick)

2Bt5--55 to 60 inches; very pale brown (10YR 7/3) gravelly loam, light yellowish brown (10YR 6/4) moist; massive; slightly hard, very friable, slightly sticky and slightly plastic; common fine tubular pores; 25 percent pebbles; violently effervescent; moderately alkaline (pH 8.0).

TYPE LOCATION: Custer County, Idaho; about 250 feet south and 1,700 feet east of the northwest corner of section 32, 1.13N., R.20E.

RANGE IN CHARACTERISTICS

Average annual soil temperature - 39 to 43 degrees F.;
Depth to secondary carbonates - 0 to 3 inches;
Depth to calcic horizon - 7 to 12 inches;

Particle-size control section:
clay content - 12 to 18 percent;
rock fragment content - 50 to 90 percent;
reaction of the profile - mildly through strongly alkaline

A horizon:
value - 5 through 7 dry, 4 or 5 moist;

Bk horizons:

value - 5 through 8 dry, 4 or 5 moist;

chroma - 2 through 4 dry or moist;

texture - GRX-L, GRX-SL, CBX-L, GRX-S, GRX-LCOS, GRV-L, GRV-SIL, GRV-SL

COMPETING SERIES: These are the Cambarge (T), Garita, and Vermillion (T) series. Cambarge soils have very gravelly sandy 11C horizons at 26 to 40 inches. Garita soils have 18 to 35 percent clay in the textural control section. Vermillion soils are moderately deep to bedrock.

GEOGRAPHIC SETTING: Snowslide soils are on foothills and fan terraces. These soils formed in alluvium and slope alluvium weathered from mixed geologic sources. Slopes are 1 to 40 percent. Elevations are 4,000 to 6,500 feet. The climate is cold and moist in winter and spring, and dry in summer. Average annual precipitation is 6 to 8 inches. Average annual soil temperature is 37 to 41 degrees F. The frost-free period is 50 to 100 days.

GEOGRAPHICALLY ASSOCIATED SOILS: These are the Dacore (T), Dawtonia (T), Farvant (T), Leatherman (T), Mogg (T), Ringle (T), Simeroi (T), and Whitecloud (T) soils. Whitecloud and Ringle soils are on fan terraces and have sandy-skeletal texture control section. Dacore and Dawtonia soils are on mountains and foothills and have argillic horizons. Leatherman soils are on fan terraces and are shallow to a duripan. Farvant soils are on foothills and are shallow to paralithic contact. Mogg soils are on foothills and mountains and are shallow to bedrock. Simeroi soils are on fan terraces, foothills and mountains and have an aridic moisture regime that borders on xeric. They also have more organic carbon in the surface layer than Snowslide soils.

DRAINAGE AND PERMEABILITY: Well drained. Slow or runoff. Moderate permeability.

USE AND VEGETATION: Rangeland. The principal native vegetation is shadscale, Indian ricegrass, bottlebrush squirreltail, and bud sagebrush.

DISTRIBUTION AND EXTENT: East-central Idaho. These soils are of moderate extent.

SERIES PROPOSED: Custer County, Utah. 1981.

REMARKS: Diagnostic horizons and features recognized in this pedon are:

Calcic horizon - The zone from 9 to 38 inches (Bk1, Bk2, and Bk3 horizons)

Particle-size control section - the zone from 10 to 40 inches (part of the B₁1, the B₁2, B₁3, and part of the B₁4 horizons).

B₁q horizon present in some pedons.

2B₁ horizon absent in some pedons.

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ADVANCE COPY

ADVANCE COPY Yn1 - Yearian very stony loam, 1 to 4 percent slopes
SUBJECT TO CHANGE

COMPOSITION

Yearian soil and similar inclusions - 80 percent

Contrasting inclusions - 20 percent

YEARIAN SOIL

Position on landscape:
stream terraces,

Elevation: 4,000 to 5,500 feet

Climatic data: (average annual)
*precipitation - about 12 inches
*air temperature - about 39 degrees F
*frost free period - about 80 days

Slope features:
plane to concave

Typical profile:
*0 to 2 inches - dark brown very stony loam

*2 to 12 inches - dark grayish brown very cobbly loam

*12 to 39 inches - light brownish gray and light gray very
gravelly loam and very gravelly sandy
loam

*39 to 60 inches - light gray extremely gravelly sandy loam

Depth class:
very deep (more than 60 inches)

Drainage class:
poorly drained

Permeability:
moderately rapid

Available water capacity: 4 to 6 inches

Potential rooting depth for water tolerant plants:
60 or more inches

Runoff:
slow

Hazard of erosion by water:
slight;

Depth to fluctuating water table: 18 to 36 inches

Hazard of flooding: occasional (flooded 5 to 50 times in 100 years)

Duration:
brief (2 to 7 days)

INCLUDED AREAS

Inclusions:
Soils like Yearian that are sandy and have more than 35 percent gravel and cobbles in the subsoil on all positions. (10 percent)

Soils that are moderately well drained on convex positions. (10 percent)

MAJOR USES

Current uses:
pasture

MAJOR MANAGEMENT FACTORS

Soil-related factors:
gravel, cobbles and stones in most areas,
stones in soil,
wetness,
flooding

PASTURELAND

General management considerations:
The gravel, cobbles and stones on or near the surface of the soil limit tillage. Stones in the surface layer causes rapid wear of tillage equipment.

Coarse fragments on the surface make seedbed preparation difficult.

This map unit is very poorly suited to shaping and grading because of the very shallow depth to gravel, cobbles and stones.

Wetness limits the choice of plants, the period of cutting or grazing, and the use of equipment.

INTERPRETIVE GROUPS

Capability classification:
Vw, nonirrigated and irrigated

**ADVANCE COPY
SUBJECT TO CHANGE**

DEB-Dawtonia gravelly loam, 4 to 8 percent slopes

COMPOSITION

Dawtonia soils and similar inclusions - 90 percent

Contrasting inclusions - 10 percent

DAWTONIA SOIL

Position on landscape:
fan terraces

Elevation: 5,500 to 6,000 feet

Climatic data: (average annual)
precipitation - about 9 inches
soil temperature - about 43 degrees F
frost-free period - about 80 days

Typical profile:
0 to 4 inches - brown gravelly loam

4 to 12 inches - yellowish brown very gravelly loam

12 to 24 inches - pale brown very gravelly loam

24 to 37 inches - pale brown extremely gravelly loam

37 to 60 inches - light yellowish brown extremely gravelly
loam

Depth class:
very deep (more than 60 inches)

Drainage class:
well drained

Permeability:
moderate

Available water capacity: 4 to 6 inches

Potential rooting depth: 60 or more inches

Runoff:
slow

Hazard of erosion by water:
slight

INCLUDED AREAS

Inclusions:

Soils like Dawtonia on tops of fan terraces and on minor inset fan terraces that have slopes of more than 15 percent. (10 percent)

MAJOR USES

Current uses:

rangeland

Potential Uses: (where slopes are less than 12 percent)

irrigated hayland,
irrigated pastureland,
irrigated cropland

MAJOR MANAGEMENT FACTORS

Soil-related factors:

slope in some areas,
low annual precipitation,
summer frost potential,
cool temperatures

RANGELAND

Dominant vegetation in potential natural plant community:

Wyoming big sagebrush and bluebunch wheatgrass

General management considerations:

Suitability for rangeland seeding: suitable

Rangeland improvements by seeding of adapted species is limited by: none

Suitable management practices:

Brush management:

prescribed burning,
chemical spraying,
mechanical treatment

Seeding time is critical because of low annual precipitation.

HAYLAND, PASTURELAND AND CROPLAND

Suitable crops:

irrigated -
grass-legume hay,
alfalfa,
pasture,
small grain crops

General management considerations:

The short growing season limits production of crops.

Irrigation is needed for crops.

Crop selection and potential yields will be restricted by summer frost potential and cool temperatures.

Suitable management practices:

The most suitable irrigation system is sprinkler.

GEOGRAPHIC MANAGEMENT FACTORS

Location: T.17N., R.25E., Section 22

Dominant vegetation in potential natural plant community:
black sagebrush and bluebunch wheatgrass

INTERPRETIVE GROUPS

Capability classification:

Ive, irrigated
Vie, nonirrigated

**ADVANCE COPY
SUBJECT TO CHANGE**

DBC-Dawtonia-Dawtonia, cold complex, 5 to 25 percent slopes

COMPOSITION

Dawtonia soils and similar inclusions - 75 percent

Dawtonia cold soils and similar inclusions - 20 percent

Contrasting inclusions - 5 percent

DAWTONIA SOIL

Position on landscape:

sides and protected positions of dissected fan terraces

Elevation: 5,800 to 6,000 feet

Climatic data: (average annual)

precipitation - about 9 inches

air temperature - about 43 degrees F

frost-free period - about 75 days

Typical profile:

0 to 4 inches - brown gravelly loam

4 to 12 inches - yellowish brown very gravelly loam

12 to 24 inches - pale brown very gravelly loam

24 to 37 inches - pale brown extremely gravelly loam

37 to 60 inches - light yellowish brown extremely gravelly
loam

Depth class:

very deep (more than 60 inches)

Drainage class:

well drained

Permeability:

moderate

Available water capacity: 4 to 6 inches

Potential rooting depth: 60 or more inches

Runoff:

slow and medium

Hazard of erosion by water:

slight and moderate

DAWTONIA, COLD SOIL

Position on landscape:

ridgetops of dissected fan terraces and wind swept positions

Elevation: 5,800 to 6,300 feet

Climatic data: (average annual)

precipitation - about 9 inches

air temperature - about 41 degrees F

frost-free period - about 60 days

Typical profiles:

0 to 9 inches - pale brown very gravelly loam

9 to 60 inches - very pale brown extremely gravelly loam

Depth class:

very deep (more than 60 inches)

Drainage class:

well drained

Permeability:

moderate

Available water capacity: 4 to 5 inches

Potential rooting depth: 60 or more

Runoff:

slow and medium

Hazard of erosion by water:

slight and moderate

INCLUDED AREAS

Inclusions:

soils on concave positions with clayey subsoils (5 percent)

MAJOR USES

Current uses:

rangeland

Potential Uses: (where slopes are less than 12 percent)

irrigated hayland

irrigated pastureland

irrigated cropland

MAJOR MANAGEMENT FACTORS

Soil-related factors:
slope in some areas
low annual precipitation
summer frost potential
cool temperatures

RANGELAND

Dominant vegetation in potential natural plant community:

Dawtonia soil - Wyoming big sagebrush and bluebunch
wheatgrass

Dawtonia, cold soil - fringed sagebrush, bluebunch
wheatgrass, Nuttall tansy and bluegrass

General management considerations:

Suitability for rangeland seeding:
suitable

Rangeland improvements by seeding of adapted species is
limited by:
low annual precipitation

Suitable management practices:

Brush management: (Dawtonia soil)
prescribed burning
chemical spraying
mechanical treatment

Brush management: (Dawtonia, cold soil)
chemical spraying
mechanical treatment

Seeding time is critical because of low annual
precipitation:

HAYLAND, PASTURELAND AND CROPLAND

Suitable crops:
irrigated -
grass-legume hay
alfalfa
pasture
small grain crops

General management considerations:
The short growing season limits production of crops.

Irrigation is needed for crops.

Crop selection and potential yields will be restricted by:
summer frost potential and cool temperatures

Suitable management practices:
The most suitable irrigation system is sprinkler.

GEOGRAPHIC MANAGEMENT FACTORS

Location: T.17N., R.25E., Section 27

Dominant vegetation in potential natural plant community:
shadscale saltbush, fringed sagebrush and bluebunch
wheatgrass on 10 percent of this map unit

INTERPRETIVE GROUPS

Capability classification:
Dawtonia soil -
V1e, nonirrigated

Dawtonia, cold soil -
V1e, nonirrigated
I1Ve, irrigated

FLOODING			HIGH WATER TABLE		CEMENTED PAN		BEDROCK		SUBSIDENCE		HYD. POTENTIAL	
FREQUENCY	DURATION	MONTHS	DEPTH (FT)	IN	DEPTH (IN)	HARDNESS	DEPTH (IN)	HARDNESS	INITIAL	TOTAL	GRP	FROST ACTION
NONE			>6.0					60				E. LOW

SANITARY FACILITIES		CONSTRUCTION MATERIAL	
SEPTIC TANK ABSORPTION FIELDS	1-8%: MODERATE-PERCS SLOWLY 9-15%: MODERATE-PERCS SLOWLY, SLOPE 15+%: SEVERE-SLOPE	ROADFILL	1-15%: GOOD 15-25%: FAIR-SLOPE 25+%: POOR-SLOPE
SEWAGE LAGOON AREAS	1-2%: MODERATE-SEEPAGE 2-7%: MODERATE-SEEPAGE, SLOPE 7+%: SEVERE-SLOPE	SAND	IMPROBABLE-SMALL STONES
SANITARY LANDFILL (TRENCH)	1-8%: SLIGHT 9-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	GRAVEL	PROBABLE
SANITARY LANDFILL (AREA)	1-9%: SLIGHT 9-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	TOPSOIL	1-15%: POOR-SMALL STONES-AREA RECLAIM 15+%: POOR-SMALL STONES-AREA RECLAIM, SLOPE
DAILY COVER FOR LANDFILL	1-15%: POOR-SEEPAGE, SMALL STONES 15+%: POOR-SEEPAGE, SMALL STONES, SLOPE	WATER MANAGEMENT	
BUILDING SITE DEVELOPMENT		POND RESERVOIR AREA	1-3%: MODERATE-SLEPAGE 3-8%: MODERATE-SEEPAGE, SLOPE 8+%: SEVERE-SLOPE
SHALLOW EXCAVATIONS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	EMBANKMENTS DIPS AND LEVEES	SEVERE-SEEPAGE
DWELLINGS WITHOUT BASEMENTS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE SLOPE	EXCAVATED PONDS AQUIFER FED	SEVERE-NO WATER
DWELLINGS WITH BASEMENTS	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15+%: SEVERE-SLOPE	DRAINAGE	DEEP TO WATER
SMALL COMMERCIAL BUILDINGS	1-4%: SLIGHT 4-8%: MODERATE-SLOPE 8+%: SEVERE SLOPE	IRIGATION	1-4% OR LARGER: DROUGHTY 4-8% OR LARGER: SLOPE, DROUGHTY 8-15% OR LARGER: DROUGHTY, SOIL FLOWING 15% OR LARGER: DROUGHTY, SOIL FLOWING
LOCAL ROADS AND STREET	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15%: SEVERE SLOPE	IRRIGATION AND OTHERS	1-4% OR LARGER: LARGE STONES 4-8% OR LARGER: LARGE STONES 8-15% OR LARGER: LARGE STONES, SOIL FLOWING 15% OR LARGER: LARGE STONES, SOIL FLOWING
LAND RECLAMATION	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15%: SEVERE SLOPE	WATER RESERVOIR	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15%: SEVERE SLOPE
LAND RECLAMATION	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15%: SEVERE SLOPE	WATER RESERVOIR	1-8%: SLIGHT 8-15%: MODERATE-SLOPE 15%: SEVERE SLOPE

RECREATIONAL DEVELOPMENT			
CAMP AREAS	1-8% GR: MODERATE-SMALL STONES,DUSTY		1-5%: SEVERE-SMALL STONES
	8-15% GR: MODERATE-SLOPE,SMALL STONES,DUSTY		6+%: SEVERE-SLOPE,SMALL STONES
	15+% GR: SEVERE-SLOPE	PLAYGROUNDS	
	1-15% GRV,ST: SEVERE-SMALL STONES		
	15+% GRV,ST: SEVERE-SLOPE,SMALL STONES		
PICNIC AREAS	1-8% GR: MODERATE-SMALL STONES,DUSTY		1-15% GR,ST: MODERATE-DUSTY
	8-15% GR: MODERATE-SLOPE,SMALL STONES,DUSTY	PATHS	15-25% GR,ST: MODERATE-SLOPE,DUSTY
	15+% GR: SEVERE-SLOPE	AND	25+% GR,ST: SEVERE-SLOPE
	1-15% GRV,ST: SEVERE-SMALL STONES	TRAILS	1-25% GRV: SEVERE-SMALL STONES
	15+% GRV,ST: SEVERE-SLOPE,SMALL STONES		25+% GRV: SEVERE-SLOPE,SMALL STONES

[illegible][illegible][illegible]

WINDBREAKS

CLASS-DETERMINING PHASE	SPECIES	HT	SPECIES	HT	SPECIES	HT	SPECIES	HT
IRR 1-12%	COTONEASTER	5	UTAH JUNIPER	18	SIERRA PINE	40	PONDEROSA PINE	24
	LILAC	10	GOLDEN WILLOW	30	TATARIAN HONEYSUCKLE	10	BLUE SPRUCE	20
	SIBERIAN PEASHRUB	10	SCOTCH PINE	24	LOMBARDY POPLAR	40	ROCKY MT. JUNIPER	20

WILDLIFE HABITAT SUITABILITY

CLASS-DETERMINING PHASE	POTENTIAL FOR HABITAT ELEMENTS	POTENTIAL AS HABITAT FOR:
	GRAIN & GRASS & WILD HARDWOOD CONIFER SHRUBS WETLAND SHALLOW OPENLD WOODLD WETLAND RANGELD	SEED LEGUME HERB TREES PLANTS PLANTS WATER WILDLIFE WILDLIFE WILDLIFE WILDLIFE
1-10%	POOR FAIR FAIR - - FAIR	V. POOR V. POOR FAIR V. POOR FAIR
20+%	V. POOR V. POOR FAIR - - FAIR	V. POOR V. POOR POOR - V. POOR FAIR

POTENTIAL NATIVE PLANT COMMUNITY (RANGELAND OR FOREST UNDERSTORY VEGETATION) (B)

COMMON PLANT NAME	PLANT SYMBOL	PERCENTAGE COMPOSITION (BY WEIGHT)	BY CLASS DETERMINING PHASE
		1-55%	COLD
BLUEBUNCH WHEATGRASS	AGSF	40	5
WYOMING BIG SAGEBRUSH	ARTRW*	20	30
CANDYBERRY BLUEGRASS	POSA1C	5	5
PHLOX	PHLOX	5	5
INDIAN RICEGRASS	URHY	5	5
OTHER PERENNIAL GRASSES	FFGG	10	5
OTHER PERENNIAL FORBS	FFFF	5	5
OTHER SHRUBS	SSSS	5	10
SALMON WILDBERRY	ELAMS2*	5	25
SMALLER RICEGRASS	GRSW	-	-
BOTTLEBRUSH SQUIRREL TAIL	SIHY	-	-
NEEDLEANDTHREAD	SIC04	-	-
NUTTALL TANSY	TANU*	-	-
FRINGED SAGEBRUSH	ARFR4	-	-
PERIOGONUM	ERIDG	-	-

POTENTIAL PRODUCTION (LBS./AC. DRY WT.)	FAVORABLE YEARS	NORMAL YEARS	UNFAVORABLE YEARS
	650	100	250
	500	300	200
	300	100	100

FOOTNOTES

* ESTIMATED YIELD BASED ON SPECIMEN IDENTIFICATION.

1. ONLY YOUNG GRAVELLY SOIL 0-11" FEET; 2. ONLY YOUNG FLAGSTONE 0-11" FEET; 3. ONLY YOUNG SANDSTONE 0-11" FEET.

[illegible]

ANNUAL AIR TEMPERATURE		LANDSCAPE AND CLIMATE PROPERTIES		DRAINAGE	
FRONT TREE	BACK TREE	PRECIPITATION	ELEVATION	CLASS	SLOPE
DAYS	DAYS	INCHES	FEET		(%)
35-32	75-100	11-15	4000-5500	E	1-1

[illegible][illegible]

DEPTH (IN.)	ORGANIC MATTER	SHRINK SWELL	EROSION REACIORS	WIND EROD.	WIND EROD.	CORROSIIVITY		
	(%)	POTENTIAL	INDEX	INDEX	INDEX	STEEL	CONCRETE	
0-2	3-4	LOW	1.5	5	8	-	HIGH	LOW
2-12	1-3	LOW	1.0					
12-60	1	LOW	1.0					

FLOODING		HIGH WATER TABLE		CEMENTED SAND	BEDROCK	SUBSIDENCE	HYD	POTENTIAL
DEPTH		KIND	MONTHS	DEPTH	HARDNESS	DEPTH	HARDNESS	INIT. TOTAL GRP. FROST
FREQUENCY	DURATION	MONTHS	(ET)	(IN)	(IN)	(IN)	(IN)	ACTION
OCCASIONAL	BRIEF	APR-JUN	5-3.0	APPARENT	APR-OCT	180	1	C-HIGH

EFFECT OF FLOODING		EFFECT OF FLOODING	
ROADS AND FIELDS		ROADS	
SEWAGE LAGOON AREA	SEVERE-FLOODING, WETNESS	SAND	IMPERVIOUS FLOODING
SANITARY LANDFILL (TRENCH)	SEVERE-FLOODING, WETNESS	GRAVEL	IMPERVIOUS FLOODING
SANITARY LANDFILL (AREA)	SEVERE-FLOODING, WETNESS	TOPSOIL	POOR-SMALL STONES, AREA RECLAIM
DAILY COVER FOR LANDFILL	POOR-SMALL STONES	WATER MANAGEMENT	
		POND RESERVOIR AREA	1-5% MODERATE-SEEPAGE 3-12% MODERATE-SEEPAGE (SLOPE)
BUILDING SITE DEVELOPMENT			
SHALLOW EXCAVATIONS	SEVERE-WETNESS	EMBANKMENTS DIKS AND LEVEES	SEVERE-WETNESS
DWELLINGS WITHOUT BASEMENTS	SEVERE-FLOODING	EXCAVATED PONDS AQUIFER FED	MODERATE-SLOW REFILL
DWELLINGS WITH BASEMENTS	SEVERE-FLOODING, WETNESS	DRAINAGE	1-2% FLOODING, FROST ACTION 3-4% FLOODING, FROST ACTION, SLOPE
SMALL COMMERCIAL BUILDINGS	SEVERE-FLOODING	IRRIGATION	1-5% WETNESS, DROUGHTY 3-4% SLOPE, WETNESS, DROUGHTY
LOCAL ROADS AND STREETS	SEVERE-FLOODING, FROST ACTION	TERRACES AND DIVERSIONS	LARGE STONES, WETNESS
LAWNS, LANDSCAPING AND GOLF FAIRWAYS	SEVERE-SMALL STONES	GRASSED WATERWAYS	LARGE STONES, DROUGHTY

At the same time, the *Journal of the American Medical Association* (JAMA) has been a vocal proponent of the "evidence-based medicine" movement, which emphasizes the use of scientific research to guide clinical practice. This movement has led to the development of clinical practice guidelines, which are designed to standardize the care of patients and improve outcomes. However, the JAMA has also been criticized for its role in the development of these guidelines, with some arguing that it has been too heavily influenced by pharmaceutical companies and other利益相关者 (stakeholders).

Abstract

3. Model the system as a discrete-time system with input $x[n]$ and output $y[n]$.

TABLES
AND
TREATISES

REGIONAL INTERPRETATIONS

CAPABILITY AND YIELDS PER ACRE OF CROPS AND ENSURE (HIGH LEVEL MANAGEMENT)

CLASS-
OF TERMINING
PHASE

CARA -
GILLY

INIEGLIB, INIEC_LIR, INIB_LIR, INIC_LIR, INIE_LIR, INIB_LIR, INIE_LIR, INIE_LIR, INIE_LIR,

FW

WOODLAND SUITABILITY.

CLASS-
DETERMINING
PHASE-----

LCRD

MANAGEMENT PROBLEM:

POTENTIAL PRODUCTIVITY

[SYMBOLS'N'EQUIP.(SFE)LL(WIND)H:PLAN]

COMMON TITLES

SITE:PROD:

TREES TO PLANT

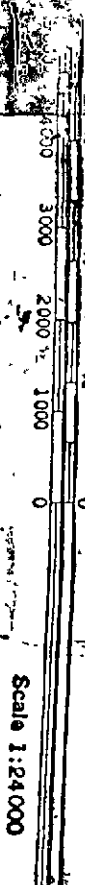
1. HAZARD LIMIT MODEL Y HAZARD COME

LINDKELCLASS

NONE

CFL208406

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Appendix D



Appendix D

Mayor and City Council
City of Challis
August 1, 1985
Page 6

There was a pre-trial conference scheduled on June 17. Apparently the plaintiffs were not ready for it because they asked that it be continued. As we understand it, the Judge will try to reschedule it in August or September. We would like to have the rest of the factual information sufficiently gathered by that time that a date can be set for trial if a trial is necessary. There may be an alternative to holding a trial, such as filing a motion for a summary judgment, but again, the factual material will impact that alternative and we are not prepared to make a recommendation on that item at this time.

As always, we will be happy to visit with any of you who might have questions, and we will look forward to hearing from you as soon as it is convenient.

Yours very truly,



Kent W. Foster

KWF:cl

#6761.00

Enclosures

cc: Charles L. Roos, City Attorney
James C. Herndon

Appendix E



Appendix E

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P O BOX 129
IDAHO FALLS, IDAHO 83402
TELEPHONE 523 0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)

WILLIAM S. HOLDEN
R. VERN KIDWELL, P.A.
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER
J. MICHAEL WHEELER

April 13, 1987

Betty Horne, Clerk
City of Challis
P.O. 587
Challis, Idaho 83226

RE: Keppner vs. City of Challis - Case No. 2690

Dear Betty:

I am enclosing photocopies of the Memorandum Decision and the Amended Memorandum Decision entered by Judge George in the above entitled matter in favor of the City of Challis.

We have prepared a proposed Declaratory Judgment and submitted it to the Judge for his signature. When the Judge signs the judgment and it is entered by the Clerk in Challis, the plaintiffs would then have 42 days in which to appeal this decision if they intend to do so. We will calendar the matter and check up so that we can advise you when that appeal time runs if no appeal is filed in the meantime. If the appeal is filed we will of course let you know immediately.

Yours very truly,



Kent W. Foster

#6761.00
sam/5400e

Enclosure

RECEIVED

APR 14 1987

MAR 30 1987

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

RAY KEPPNER and ESTHER)
KEPPNER, husband and)
wife,)

Plaintiffs,)

-vs-

DEPARTMENT OF WATER RESOURCES,)
State of Idaho and KENNETH)
DUNN, Director of the)
Department of Water Resources,)
State of Idaho; and the CITY)
OF CHALLIS, IDAHO,)

Defendants.)

MEMORANDUM DECISION

Case No. 2690

In 1936 the Village of Challis owned a water right of 2.04 cubic feet per second or 102 Miner's inches with a priority date of October 24, 1977. In 1936 the Village set out to seek a change in point of diversion for a portion of this water right moving it upstream. It was apparently a known fact that in between the proposed upper diversion point and the lower diversion point water entered and supplemented the stream flow by virtue of springs and percolating waters. The formal application to the then Department of Reclamation

sought a transfer of 79 inches to an upper diversion point connecting to the Village pipeline and 23 inches at a lower diversion point. Certain water right holders above the upper diversion including predecessors of plaintiffs Keppners protested this transfer. Apparently the 23 inches was the rise asserted between the two points of diversion and the protestors did not agree that this represented a correct figure. A statement was made that this rise was measured during a low water year. A hearing was held May 21, 1936, attended by affected water users and one Fred Tolman, a field engineer for the Department of Reclamation. At the conclusion of the meeting a stipulation was signed by all the protestants and the language of the stipulation was incorporated in the "Certificate of Water Right, Transferred Right No. 561." That language included the following statement:

. . .the water right hereby transferred. . .will be diverted. . .in the following manner:

An amount of said water equal to the difference between said 2.04 cubic feet per second (102 inches) and the amount of water found to raise between the present intake for the Village reservoir and the present point of diversion for the Arthur Baxter ditch. . .

. . .it is further stipulated and agreed by and between said parties that the duly and regularly

appointed watermaster shall determine the amount of water so raising between said point above mentioned and shall regulate the 2.04 cubic feet per second of the water as heretofore stated.

It is apparent that a measurement of the rise was made on or about August 19, 1935, and was measured as 23 inches and this is the figure that the protestors disagreed with. The full record of this case can be examined and it appears that there was no attempt by any watermaster to reduce the intake at the upper diversion by virtue of any measurement of the rise. Whatever recordations of the amount of intake have been made up to 1980 show that the Village received at least 75 inches. After plaintiff Ray Keppner became watermaster measurements were taken of the rise and based on these measurements, and for the first time in over 40 years, the diverted amount at the upper diversion was reduced.

It is significant that the predecessor protestants stipulated the delegation to the watermaster to measure the rise and consequently make any reduction in the flow at the upper diversion. The Village was not in a position to regulate the flow leaving it up to the watermaster, as the protestors and stipulators left it up to the watermaster, to deliver the water. If any watermaster serving prior to

Mr. Keppner had made a measurement of the rise and had then adjusted the flow accordingly there would have been much less of a case to claim that flow could not be reduced because of laches, forfeiture, or adverse possession. Mr. Keppner is bound by the action or non-action of his predecessors.

The City of Challis urged the Court to hold that plaintiff be estopped by laches from questioning the historic delivery of 79 inches of water at the upper diversion. The case of Hillcrest Irrigation District v Nampa and Meridian Irrigation District, 57 Idaho 403, 66 P.2d 115 (1937), is cited as good authority to hold that the Keppners be estopped because of laches. In Hillcrest there was an application in 1913 to change the point of diversion of 1077 inches of water much further upstream. The change was granted and water diverted upstream for a period of more than 20 years and only after that passage of time was any question raised as to the transfer. The Court stated:

It satisfactorily and conclusively appears that even the (Hillcrest's) title may have been originally questionable or uncertain, nevertheless respondents have stood by, with full knowledge of all the facts, and for more than 20 years, have allowed (Hillcrest) to proceed on the theory that it had valid title to these water rights (and). . . respondents are and should be estopped from questioning (Hillcrest's) title.

The Court further said:

. . .the description has for more than 20 years proven sufficient in practical application to enable the various watermasters to identify it and made diversion from year to year so that in practice there has been no controversy or dispute over the particular water rights or appropriations that were intended to be, and in fact, were transferred. . .

The Hillcrest case is certainly good authority for support of the position taken by the City of Challis if it can be satisfactorily shown that the protestants and their successors stood by with full knowledge of all the facts. What knowledge can we assess against these protestants and their successors:

(1) Full knowledge that by agreement the Village was not to receive all of the 102 inches at their upper diversion, but was to be reduced by the rise generated between the two points of diversion;

(2) Full knowledge that the duly and regularly appointed watermaster was to determine the amount of water so raising and regulate the flow at the upper diversion accordingly;

(3) Constructive knowledge of the delivery of 79 inches at the upper diversion over a period of many years. To bear this out we have the affidavit of Lawrence Bradbury, who served

as secretary of the Water District for almost 25 years, from 1948 to 1973. He states that it was the practice all these 25 years to deliver 79 inches to the City of Challis at the upper diversion. He further states in his affidavit that the City paid its annual assessment on the basis of having received 79 inches of water each year. The diversion of the water to the City was open and visible to all the upper water users.

From such constructive notice it can be concluded that the protestants and their successors knew or should have known the amount of water being diverted and thus it should be held that they had knowledge of such fact. See Pflueger v Hopple, 66 Idaho 152, 156 P.2d 315 (1945). Also Fred Green, who was watermaster at the time of this 1936 stipulation and transfer, remained as watermaster through 1945. He, in a sense through the stipulation, became the agent of the protestors to make any adjustment that would vary the 79 inch delivery. He carried out his duties as Watermaster openly and obviously under such circumstances that the protestors as prudent men were put on inquiry as to the particular fact of the amount of water being diverted. (See Pflueger, *ibid.*)

The plaintiffs contend that the protestors and successors had the right to believe that the watermaster was distributing

the water according to the decrees. That contention is basically true, but it is also true that there is no evidence that the watermaster in delivering 79 inches was doing anything but delivering according to the decree.

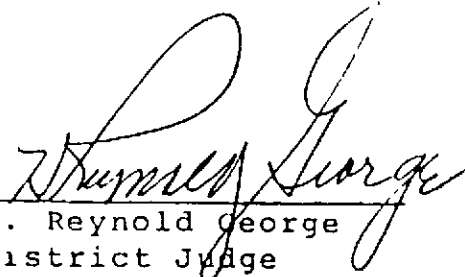
In Mr. Keppner's affidavit he states that in 1979 Gary Funderburg of Water Resources had measurements taken to determine the rise between the City's old and new points of diversion and that this was the first Mr. Keppner realized the City was taking more water than it was entitled to. First Mr. Keppner's possible acquiescence is not material. If there be a sound basis for laches it had taken place long before 1979. Secondly Mr. Keppner is bound by that which was done or not done by his predecessors. Next, there is no evidence that at any time prior to 1979 by measurement was it established that the City was receiving more water than it was entitled to.

The doctrine of laches is a creation of equity and applies where there is a long and continuous knowing acquiescence in another's use and enjoyment of a property right. There may be an estoppel to prevent a continued use and enjoyment of that property right if the rightholder has failed to assert his right at an earlier time and there has resulted a detrimental reliance on the part of the claimant. If we can find the long

and continuous acquiescence can we also find detrimental reliance? That comes through the City's claim that they have expanded their water service to an increased population depending upon the water flow at the upper diversion. The Court gives credence to that claim and finds there is detrimental reliance over this 40-year period.

Based on the findings found in the foregoing language the Court concludes as a matter of law that the plaintiffs through their predecessors are guilty of laches and these predecessors having acquiesced in the continual diversion of approximately 79 inches of water at the upper diversion and the City of Challis is entitled to a declaratory judgment establishing that the City is entitled to the continued diversion of 79 inches.

Dated this 19th day of March, 1987.


H. Reynold George
District Judge

Appendix F



Appendix F

Challis, Idaho
May 21, 1936

At a meeting in the Custer County Court House upon this date
the following named gentlemen were present:

Water Users

Floyd Bradbury
J. E. Bradbury
Alex Klug
George Thompson
Guy Bradbury

Officials of the Villages of Challis

Donald Rowles
John Kirk
J. Jarvis
John Boyd - Clerk
Merle L. Drake - Attorney

The proposed transfer of water known as the Bradbury right, now owned by the Village of Challis, was discussed and all present agreed that the village should transfer all of the Bradbury 102" of water except creek gain below the village point of diversion, the said gain to be determined by the watermaster and administered as stream flow in accordance with provisions of the decree. It was explained that regardless of amount named in transfer of point of diversion, all decreed rights would have to be respected. None objected, and all agreed.

The disposal of water which rises below the proposed new point of diversion and above the original Bradbury diversion point was discussed and the proposal of the Village Board that this item of creek gain might be exchanged with the U. S. Forest Service for an equal amount of water from their storage reservoir situated above the village pipe line was also discussed and no objections raised.

Fred H. Johnson
Field Engineer

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MEMORANDUM

August 19, 1935

Subject GARDEN CREEK

File District No. 3-B

A survey of the waters of Garden Creek as affecting the proposed addition to the municipal supply of Challis, Idaho, was made on the 16th instant, and conditions noted as follows:

The total stream flow at the intake of the city supply pipe was found to be as follows: 42 miner's inches were going into the pipe line, with an estimated loss of 5 inches immediately below which was returning directly back to the stream. At a Cippoletti weir situated about 50 yards below the points of diversion and leakage mentioned above, the stream flow was 76 miner's inches.

Deducting the 10 inches being diverted to the Peck right a short distance below leaves 66 inches total stream flow passing the Peck heading. The amount available at the head of the Banks ditch situated in the lower part of the village included 64 inches being diverted to the Banks right and 25 inches to the U. S. Forest right, or a total of 89 inches, which indicates a stream gain of 23 miner's inches between the pipe line intake and the lower diversions on the creek.

It is understood to be the purpose of the village board to acquire the Adams ranch, so-called, which has the No. 1 priority on Garden Creek and then by changing its point of diversion, dedicate it to municipal uses. By such an arrangement there would be made available at the present pipe line intake upward of 60 miner's inches more water than under the present arrangement. This would result in better service for lawns, gardens, etc., and also greatly increase the safety factor as regards fire protection. As regards the effect upon other water rights, the change would tend to be favorable rather than otherwise, as all remaining rights other than the U. S. Forest Service and the Peck rights divert above the city diversion.

Edw. A. McQuinn
Field Engineer

See attached drawing

WILLIAMS HOLDEN
R VERN KIDWELL P A
FRED J HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
STEPHEN E MARTIN
CHARLES A HOMER
GARY L MEKLE
CURT R THOMSEN
RANDALL K BARTON
MICHAEL D CRAPO

JAMES D HOLMAN
GAYLE A SORENSON
DONALD L HARRIS
BRUCE T SMITH
GREGOR S CHVISUK
RANDALL B REED

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P O BOX 129
IDAHO FALLS, IDAHO 83402

TELEPHONE 523 0620
AREA CODE 208

ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRYL CRAPO (1939-1982)

RECEIVED

AUG 1985

August 1, 1985

Mayor and City Council
City Hall
Challis, Idaho 83226

RE: Keppner vs. Department of Water Resources and
the City of Challis

Gentlemen:

We had hoped to be able to give a more conclusive opinion on the merits of this case when we reported to you, but because we have as yet been unable to gather and examine all of the factual material we think is necessary, this report will have to be somewhat preliminary.

We received from Mr. Jim Bennetts some time ago the file apparently kept by the former city attorney, Deborah Kristal. That file appeared to be incomplete. We have examined its contents thoroughly, and through the assistance of Jim Herndon were able to obtain and have now examined photocopies of the court file and some affidavits which were apparently contained in the City's files. We have also obtained and reviewed the Idaho Department of Water Resource file. We have spoken by telephone with Jim Bennetts, Jim Herndon, Judge Beebe's clerks, Phil Rassier (attorney for Idaho Department of Water Resources), Glen Saxton, and Gary Funderberg (IDWR officials), John McKinney and Myrna South (attorneys for plaintiffs), and have met with Jim Herndon when he delivered the copy of the court file to us.

From our review of the documents and materials in the various files, it appears quite clear that the City holds a right to the use of 2.04 cfs of the waters of Garden Creek with

Mayor and City Council
City of Challis
August 1, 1985
Page 2

a priority date of October 24, 1877, originally decreed to John Q. Adams in the Adams, et al vs. Vandervort, et al decree entered in 1914. It is also clear that in 1936, the point of diversion and place of use for this water right were changed or transferred. The new point of diversion was for only a portion of the water right, and of course is the headworks for the city pipeline which is some distance upstream on Garden Creek from the original point of diversion which was the headgate for the Baxter Ditch. The place of use was presumably changed from the farmland previously served to the land within the City of Challis.

Because of the fact that between the two points of diversion Garden Creek is a gaining stream, a condition was imposed upon the grant of transfer of the point of diversion. In full, that condition is as follows:

THAT THE WATER RIGHT Hereby transferred has heretofore been diverted from the said GARDEN CREEK at a point in the

NW1/4 NW1/4 of Section 33, Township 14 North, Range 19 East, Boise Meridian,

and conducted to the first above described lands through a private ditch known as the Baxter Ditch, and will hereafter be diverted from the same stream in the following manner:

An amount of said water equal to the difference between said 2.04 cubic feet per second (102 inches) and the amount of water found to raise between the present intake for the village reservoir and the present point of diversion for the Arthur Baxter Ditch, as per reservation hereinafter stated, to the tract of land last above described through the Village Pipe Line, with point of diversion in the NW1/4 NW1/4 of Section 32, Township 14 North, Range 19 East, B.M., and

An amount of said water equal to the amount of water found to raise between the present intake for the village reservoir and the present point of diversion for the Arthur Baxter Ditch, as per reservation hereinafter stated, to the tract of land last above described through the ditch with point of diversion in the NE1/4 NE1/4 of Section 32, Township 14 North, Range 19 East, B.M.;

Mayor and City Council
City of Challis
August 1, 1985
Page 3

THAT THE ABOVE Division of the said 2.04 cubic feet per second of the waters of Garden Creek is based upon the following reservation, referred to above, and contained in a stipulation signed by said applicant and former protestants of said Transfer of Water Right:

"That from said 2.04 cubic feet per second of the water of Garden Creek, there shall be deducted at the village's point of diversion an amount of water equivalent to the number of miner's inches raising in the channel of said stream between the present intake for the village reservoir and the present point of diversion for the Arthur Baxter Ditch, providing the quantity of water raising cannot be used to fill decreed or licensed rights below the said point of diversion for the Arthur Baxter ditch because of scarcity of water and in accordance with the decree or licenses.

"IT IS FURTHER STIPULATED AND AGREED By and between said parties that the duly and regularly appointed water master shall determine the amount of water so raising between said points above mentioned and shall regulated the 2.04 cubic feet per second of the water as heretofore stated."

This language seems to us to provide quite clearly that the watermaster thereafter had authority to measure the amount of the gain or water which raised between the two points of diversion and to deduct the amount of that gain from the entire right of 102 inches to determine how much could be delivered at the new upper diversion. The language does not provide any schedule for making such measurements, but it appears that as of that time (1936) the watermaster could legally have done so on a daily or any other regular basis.

However, and this is the most important point, some of the file materials suggest that the watermasters did not adopt such a practice, but for whatever reason, relied upon the one measurement of the gain in stream flow between the two points made by a Department employee named Fred H. Tolman, on August 16, 1935, in the amount of 23 miner's inches. It is alleged that from 1936 until 1981, all watermasters consistently delivered 79 miner's inches at the upper point of diversion into the city pipeline, regardless of the actual gain between the two points. If this is a true fact, and can be established to the satisfaction of the court, then it is our opinion that

Mayor and City Council
City of Challis
August 1, 1985
Page 4

under one or more of several possible equitable theories such as adverse possession, abandonment and forfeiture, estoppel, statute of limitations, and the like, the right of the City to receive 79 miner's inches at the upper diversion has been established.

Unfortunately, the materials we have reviewed from the various files, and the people with whom we have spoken to date, do not, in our judgement, clearly establish such fact. We have reviewed the watermaster records available for this period of time, and while they arguably indicate the watermaster followed the practice described, they are so vague and sketchy, and there are such long time gaps, that they are not conclusive. There are references to old city council meeting minutes which appear helpful, but again are not conclusive.

Some things have occurred to us which we think should probably be done and which might help establish what the actual facts are. Some of these you can help with:

1. From the old watermaster records, it appears there have been six watermasters on Garden Creek since 1936, besides DeRay Keppner. They are, in order of service:

Fred Green
Earl Millick
Earl J. Osborne
Melvin Skein
Clarence Kimpton
Medie Horton

There is no indication from the files that anyone has yet talked with any of them about what their understanding or practice may have been during their term of service. We understand that some are still alive and could be reached. In our discussions with the Department of Water Resource personnel, it appears that not even the Department has approached any of them. Please let us know whether you know of any others who may have served as watermaster, which ones are still alive, how each might be reached, and whether there is any reason that we should not write, call or visit any of them.

2. In addition to watermasters, it seems to us that there should probably be people still alive and available who have knowledge of the practices involved in the delivery of water since 1936 at the upper diversion. This may include present or former city officials, city employees,

Mayor and City Council
City of Challis
August 1, 1985
Page 5

or residents who, because of where they lived or worked, might have relevant knowledge. Please send us a list of any you can think of and give us as much as you can find of the same information we mentioned with respect to the watermasters.

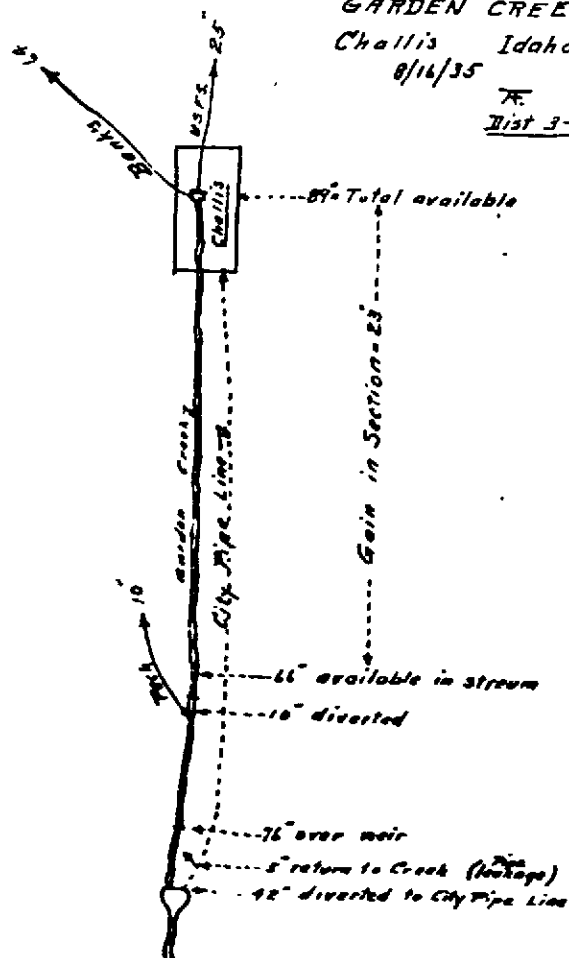
3. Theoretically, each water user is supposed to pay an assessment each year for such things as watermasters' salary. The charge is supposed to relate to the amount of water delivered. Often these records are kept in the court house. Please see if any can be found for the years 1936 through 1981. Often, also, minutes of annual meetings of water users are kept. When watermasters are elected, the votes are supposed to be based on the number of 24 hour second feet delivered during the previous year. Please see if you can find any such records or at least the names of any persons who may have served as secretary or other officers of the water district who might have or be able to locate such records.

The second fact that will be important involves the actions of the City over the years (between 1936 and 1981) in reliance on the delivery of 79 inches at the pipeline. Perhaps the City had population, residence and business growth during this period in reliance on this water supply. If so, we need this information, in the form of statistics if possible, including statistics as to the increases in lots or residences, etc. using the water.

With respect to the proceedings before the court, we filed a Notice of Appearance showing the City retained us and Mr. Herndon. In addition, we prepared a motion for leave to withdraw as counsel and to appoint new counsel of record and obtained Ms. Kristal's signature on it. We have sent it to the court with a proposed order permitting the withdrawal and appoint a new counsel of record for the City. We do not have that order back yet. After reviewing all of the court documents on file, we concluded that the City's answer which was filed in 1982, might appropriately be amended to specifically allege the affirmative defenses we think will probably form the basis for the court decision. We are enclosing a copy of the draft of the motion for leave to file an amended answer and the proposed amended answer for your review. If you have any comments, or if the factual allegations are not accurate, we would appreciate hearing from you. We are reluctant to file these documents until we can verify the factual information so you can see why we are anxious to explore the sources we have suggested.

SURVEY
of
GARDEN CREEK
Challis Idaho
8/16/35

W.
Dist 3-B



STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the matter of an application of

THE VILLAGE OF CHALLIS,
A Municipal Corporation

ORDER GRANTING TRANSFER

For a Transfer of Water Right, in
District No. 3-B, Custer County.

WHEREAS, On the 23rd day of March, 1936, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of the Village of Challis, a municipal corporation, organized and existing under and by virtue of the laws of the State of Idaho, for a Transfer of Water Right, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and

WHEREAS, Written protests against the granting of this application were entered by Messrs. George Thompson, Alex Klug and Floyd Bradbury, prior to the date of hearing, said date of hearing was ordered to be continued to a later date and a formal hearing held in Challis, when and where all parties concerned might appear and be heard. Said continued hearing was held on May 21, 1936, at Challis, where all parties concerned reached a satisfactory agreement as to the said transfer of water right, subject to the approval of the Department of Reclamation of the State of Idaho and requested that the Commissioner of Reclamation disregard all the above mentioned written protests;

NOW, THEREFORE, All protests to the proposed transfer of water right having been withdrawn and the above mentioned agreement being satisfactory to the Department of Reclamation, It is HEREBY ORDERED that the said application be and the same is hereby GRANTED and that a Certificate of Transfer be issued the applicant herein, as provided by the Laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Reclamation of the State of Idaho to be affixed at Boise, Idaho, this 16th day of June, 1936.

R. W. FARIS,
Commissioner of Reclamation

Frederick E. Drager
Frederick E. Drager,
Director of Water Resources

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transferred Right No. 861.

THIS IS TO CERTIFY THAT THE VILLAGE OF CHALLIS is the owner of and using a certain water right, bearing date of priority of October 24, 1877, for 2.04 cubic feet per second of the waters of Garden Creek, in the County of Custer, State of Idaho, decreed to John Q. Adams, by decree of the Judge of the District Court, of the Sixth Judicial District of the State of Idaho, in aid for the county of Custer, in the case of

JOHN Q. ADAMS, et al vs. R. B. VANDERVAULT, et al

said decree bearing date of May 10, 1914, for the purpose of irrigating the following described lands, situate, lying and being in Water District No. 3-B, in the County of Custer, State of Idaho, to-wit:

SW 1/4 NE 1/4, SW 1/4 NE 1/4, NW 1/4 NE 1/4, NW 1/4 NE 1/4,
Section 21, Township 14 North, Range
19 East, B. M.;

THAT THE SAID Decree has been entered in the records of the Department of Reclamation of the State of Idaho, in Book 3 of Decrees, at Page 831; and

THAT THE SAID applicant has become the owner of said lands and water right by means conveyances;

THAT NOW, UPON THE Application of the said VILLAGE OF CHALLIS for a transfer of Water Right, made before the Commissioner of Reclamation of the State of Idaho, and the said application having been granted, the right to the use of 2.04 cubic feet per second of the waters of GARDEN CREEK, upon the lands above described, is hereby abandoned, and that the lands to be irrigated under such right and to which the water right, hereby confirmed, shall become appurtenant, by this Certificate, for irrigation and domestic purposes, are described as follows:

SW 1/4 NE 1/4 of Section 23; NW 1/4 NE 1/4 of Section
23, all in Township 14 North, Range 19 East,
B. M.,

lying and being in the County of Custer, State of Idaho, said water to be limited at any time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, which shall be subject to the reservation hereinafter stated:

2.04 cubic feet per second of the waters of
the Garden Creek, with a date of priority as
of October 24, 1877.

THAT THE WATER RIGHT hereby transferred has heretofore been diverted from the said GARDEN CREEK at a point in the

NW 1/4 NE 1/4 of Section 23, Township 14 North,
Range 19 East, Boise Meridian,

and conducted to the first above described lands through a private ditch known as the Baxter Ditch, and will hereafter be diverted from the same stream in the following manner:

An amount of said water equal to the difference between said 2.04 cubic feet per second (102 inches) and the amount of water found to raise between the present intake for the Village Reservoir and the present point of diversion for the Arthur Baxter Ditch, as per reservation hereinafter stated, to the tract of land last above described through the Village Pipe Line, with point of diversion in the NE 1/4 of section 32, Township 14 North, Range 19 East, B. M., and

An amount of said water equal to the amount of water found to raise between the present intake for the Village Reservoir and the present point of diversion for the Arthur Baxter Ditch, as per reservation hereinafter stated, to the tract of land last above described through the ditch with point of diversion in the NE 1/4 of section 32, Township 14 North, Range 19 East, B. M.;

THAT THE ABOVE Division of the said 2.04 cubic feet per second of the waters of Garden Creek is based upon the following reservation, referred to above, and contained in a stipulation signed by said applicant and former protestants of said Transfer of Water Right:

"That from said 2.04 cubic feet per second of the water of Garden Creek, there shall be deducted at the village's point of diversion an amount of water equivalent to the number of miner's inches raising in the channel of said stream between the present intake for the village reservoir and the present point of diversion for the Arthur Baxter Ditch, providing the quantity of water raising can not be used to fill decreed or licensed rights below the said point of diversion for the Arthur Baxter ditch because of scarcity of water and in accordance with the decree or licenses.

"IT IS FURTHER STIPULATED AND AGREED by and between said parties that the duly and regularly appointed water master shall determine the amount of water so raising between said points above mentioned and shall regulate the 2.04 cubic feet per second of the water as heretofore stated."

THAT THE LAST Above named lands have appurtenant to them an amount of 267 inches of the waters of Garden Creek, with various dates of priority.

THAT THE RIGHT To the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above mentioned as provided by the Laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Reclamation, of the State of Idaho, to be affixed at Boise, Idaho, this 16th day of June, 1936.

R. W. FARIN,
Commissioner of Reclamation

Frederick E. Drager,

Appendix G



Appendix G



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. FINE
Governor

A. HENNING DARR
Deputy

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

MEMO

September 18, 1981

TO: WD 72 B File

FROM: NCY *NOT*

RE: Telephone conversation with Allen Merritt
6.30 p.m. 9/17/81

Merritt called to report results of stream and diversion measurements made in afternoon of 9/17/81 on Garden Creek. Discussion with Joe Peck and other water users, Merritt feels the following listing of rights are those priorities likely to receive water at the present stream flow.

<u>PRIORITY</u>	<u>OWNER</u>	<u>AMOUNT</u>	<u>REMARKS</u>
1877	City of Challis	2.04 cfs	reduced to 79 inches
3/22/78	Sold & unused	-----	-----
5/15/78	Tony Yacamello	1.1 cfs	
5/15/78	Cyprus	2.1 cfs	unused
5/15/78	Bill Jones	.1 cfs	not used
5/15/78	Tony Yacamello	.2 cfs	
3/5/79	Ray Keppner	2.42 cfs	(2 rights)
3/15/79	Peck	1.02 cfs	

Merritt and Funderberg observed the following diversions and creek gains going from mouth of creek upstream:

Creek dry @ highway crossing below city

HWFS taking .37 cfs from gain

Smith taking .12 cfs from gain

P.

Gain to creek from old Barter div. to city div:
 Artesian well drilled 1966 0.5 cfs
 Seepage from city ponds 0.2 cfs
 Seepage thru city diversion 0.06 cfs
 Total 0.76 cfs = 38 inches

City diversion 3000 gals. in 262 secs or 1.53 cfs = 77 inches

Yacumello & Cyprus - 1 ft. Parshall @ 0.58' = 1.75 cfs.

Did not check Keppner diversion on his land, if any

Keppner div. on Peck land, 9" Parshall @ 0.67 ft. head = 1.66 cfs.

Peck - ditch is dry, does want water

I told Allen to not adjust headgates while I compared rights & diversions to our records.

MCY:dc

P.

MEMORANDUM

TO: 72-0047

FROM: D. Puchall *DGP*

DATE: January 14, 1980

RE: Meeting on January 10, 1980

On the above date I attended a meeting in the Harrison-Bondens building regarding the expansion of Challis, Idaho. The construction of a poly-bromus mine in the Challis Area will necessitate a substantial increase in the size of the city, and problems such as water supply are now being addressed.

The meeting was chaired by representatives from a group called Resource Assessment, Inc. Also in attendance were representatives from W-E, CH2M Hill, and the Challis city council. I reported to them our initial findings on an investigation into the quantity of water available to the city under decreed right 72-0047, as follows:

1. Transfer 561 moved the point of diversion for water right 72-0047 from its original position in *WNW* S.33,T14N,R19E to the point of diversion for the city in *WNW* S.32,T14N,R19E.
2. A stipulation signed by the city fathers and local waterusers prior the approval of the transfer stated in essence that the amount of water diverted at the new point of diversion would be 102 inches minus the amount of inflow occurring between the original point of diversion and the city's point of diversion.
3. The amount of inflow in ^{the} reach between the new point of diversion and the old point of diversion has been measured as follows:

8-19-1935	23 inches	(see memo in file)
5-8 -1979	+ 75 inches average (per telecon w/Gary Funderburg)	
5-9 -1979		
7-6 -1979		
7-7 -1979		
9-27-1979		
11-19-1979		

4. One option available to the city ^{may} be to pump the inflow from from its point of availability at the old point of diversion, to the place of use. However, there is a question of forfeiture which must be addressed if this action is attempted through a new transfer.

Representatives from the Challis city council may contact us in the future about this matter.

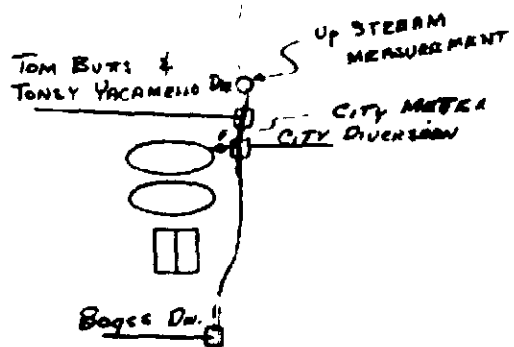
c.c. Gary Funderburg

TOM BUTTS &
TONY VACAMENDO DR

UP STREAM
MEASUREMENT

CITY METKA
CITY DIVERSION

Boys Dr.



A hand-drawn diagram of a river or stream. A vertical line represents the main waterway. To the left of the line, there are two ovals stacked vertically, and below them, a rectangle divided into two vertical sections. To the right of the line, there are two small circles stacked vertically. Labels are written around the diagram: 'TOM BUTTS & TONY VACAMENDO DR' at the top left, 'UP STREAM MEASUREMENT' at the top right, 'CITY METKA' and 'CITY DIVERSION' in the middle right, and 'Boys Dr.' at the bottom left. A dashed line connects the top right label to the first circle on the right. A solid line connects the middle right labels to the second circle on the right. A solid line connects the bottom left label to the rectangle. At the bottom of the main vertical line, there is a small circle and a label 'John Smith Dr'.

John Smith Dr

SAVING



C. A. ROSS
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK E. GALT, State Reclamation Engineer

BOISE

August 14, 1950

Mr. Jack B. Porey
Attorney at Law
Challis, Idaho

Dear Jack:

I am returning your Affidavit for Change of Point of Diversion of Excess Water Right for 25 inches of water with a May 15, 1950 priority from Garden Creek.

In checking over Certificate of Transferred Water Right No. 358, we find that said Certificate does not designate place of diversion to which the water was transferred. However, the application for the transfer, signed by W. W. Adamson, states that the water was transferred to the head of the pipe line which delivers water to the Village of Challis and stated that the diversion point was in the NW 1/4 Section 32, Township 14 North, Range 19 East, B.M.

Transferred Right No. 361, which transferred 2.4 cubic feet per second with reservations, to the head of the pipe line, in said Certificate of Transfer, the point of diversion is stated as being in the NW 1/4 Section 32, Township 14 North, Range 19 East, B.M.

I do not know whether there is a mistake in giving the point of diversion (head of the pipe line); whether it should be in the NW 1/4 of Section 32 or whether it is in the NW 1/4 of Section 32. It may be that the head of the pipe line was extended between the two intervals of time.

Transferred Right No. 358 states that the place of use to which the water was transferred is the NW 1/4 of Section 32 and the NW 1/4 of Section 33, Township 14 North, Range 19 East, B.M. We think that the legality of the point of diversion, however, being not mentioned in the Certificate of Transfer issued by this Department, is valid, as the intent of the applicant in the application clearly states that the point of diversion to which the water was to be transferred was at the head of the pipe line supplying water to the Village of Challis and was stated as being in the NW 1/4 of Section 32. Therefore, we think that as far as the legal status of the transfer is concerned, the present point of diversion is now at the head of the pipe line.

In this case, providing the head of the pipe line has not been changed and the location of same has always been in the NW 1/4 of Section 32, and in case it wasn't necessary to make said 25 inches of water commitment to all the lands in the town site, but only to the NW 1/4 of said

Mr. Jack B. Furey
August 14, 1950
4 Page 2.

Section 32 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, that it would not be necessary to have you to make any further application in regard to this water right.

However, if you wish this 25 inches appurtenant to all the lands in the town site, including the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, it will be necessary for you to make Application for Transfer of Water Right on Form 20 which we are enclosing herewith, and provides for a change in place of use as well as a change of point of diversion. For reference, see Section 42-222 Idaho Code Annotated, as amended.

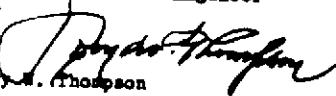
We regret that it becomes necessary to request you to change application forms after the work you have put in preparing the Affidavit. We are enclosing herewith, copies of Transfer No. 358 and Transfer No. 561 which may be of some help to you and which you may keep for your own files.

We also enclose a little sketch map showing the heading of the pipe line, with point of diversion located as given in Transfer No. 561.

With kindest regards, we are

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By


Roy W. Thompson
Supervisor of Water Distribution

RWT:bb

Enc.

INTER-DEPARTMENT MEMO—1

RECEIVED

DATE 9/17/81

SEP 18 1981

Department of Water Resources

Loefer Holmes

Dave Tuttle

W.D. 72-B

faulst etc measurement records of a Summit
green gain measurements made in Garden check.

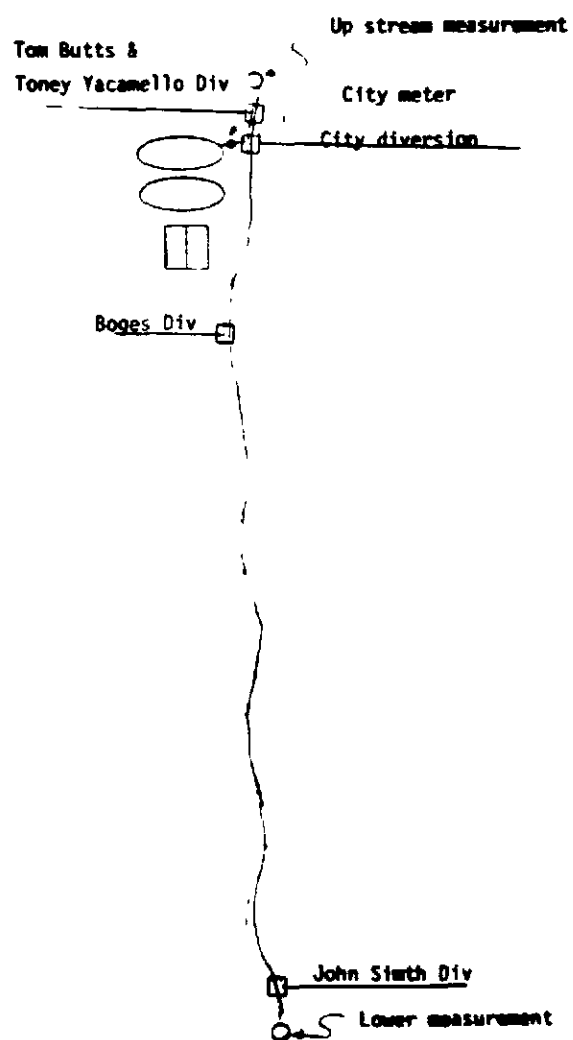
[Signature]

SIGNATURE

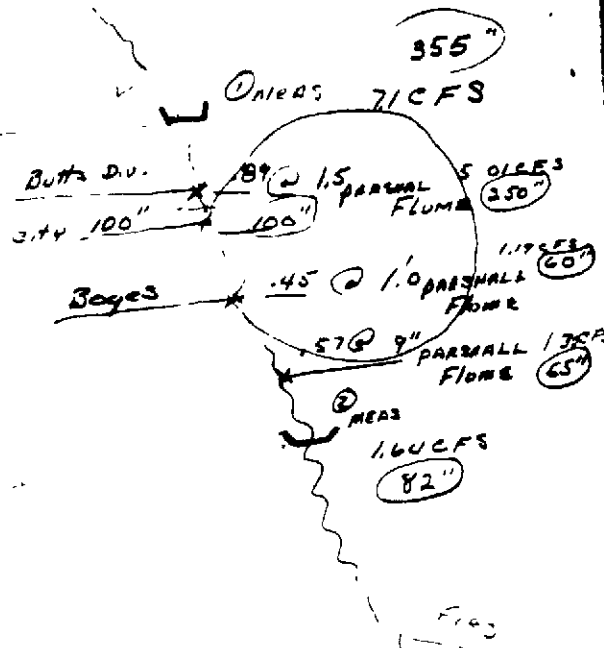
8

DATE	GAIN	UP STREAM	TOM BUTTS	CITYS	Boges	John Swift	MAVER
		MEASUREMENT	DIVERSION	DIVERSION	DIVERSION	DIVERSION	MEASUREMENT
7-4-78	27	764 cfs	5.02 cfs	20 cfs	1.19 cfs	130 cfs	164 cfs
7-31-78	55	12414	1.45	0	0.11	1.44	7.105
11-19-79	3	3	1.5	0	0	0.11	4.856
5-8-80	1.53	0	1.55	0	0	72	238
7-2-80	10	A 12		0.1	0.1	0.1	4.20
7-2-80			0.1	0.1	0.1	0.1	7.58

P.



P:



35" 5

$$\begin{array}{r}
 250' \\
 60' \\
 65' \\
 100' \\
 \hline
 475' \\
 82' \\
 \hline
 557' \\
 355' \\
 \hline
 202''
 \end{array}$$

P.

17.245 18 19 20 21 22 23 24 25 26 27 28 29 30 31
 ABOVE City of Challis
 DIVERSION

J-200
 63

STATE OF IDAHO
 DEPARTMENT OF RECLAMATION

1-6-32 DISCHARGE MEASUREMENT NOTES

300 ft. at 9:45 A.M.

Dist ft. to point	Width ft.	Depth ft.	Area sq. ft.	Time in sec.	Velocity ft. per sec.	Area sq. ft.	Area sq. ft.	Discharge cfs.
EW) 2.0	5	1.5						
2.5	5	1.5	7			213	250	.05
3.0	5	1.7	10	42		274	230	.02
3.5	5	1.9	15	42		263	240	.01
4.0	5	2.0	20			620	245	.02
4.5	5	2.0	20	44		644	250	.03
5.0	5	2.1	25			743	250	.03
5.5	5	2.2	30	47		802	245	.04
6.0	5	2.3	35			891	240	.07
6.5	5	2.4	40			912	230	.06
7.0	5	2.5	45			987	230	.05
7.5	5	2.6	50			1041	230	.04
8.0	5	2.7	55	42		1043	230	.03
8.5	5	2.8	60			1054	245	.03
9.0	5	2.9	65			1091	230	.03
9.5	5	3.0	70	47		1129	250	.06
10.0	5	3.1	75			1102	235	.02
10.5	5	3.2	80			1138	235	.03
11.0	5	3.3	85	42		1141	240	.05
11.5	5	3.4	90	47		1104	237	.02
12.0	5	3.5	95			880	235	.02
EW) 12.5	5	3.6	100			754	230	.01
13.0	5	3.7	105					

Dec. K. N. A. Took Notes

Shed. Comp. by C. N. by

P.

Butts D, corr. .89 1 1/2'
Yours - - Parshall
Flume.

Boys 27
.45 = 1.71 c.f.
1 1/2'

Parshall
Flume

Butts D, corr.

9' ch. 5

1.5 ch. 5

5.7 - 55'

= 130 --

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
DISCHARGE MEASUREMENT NOTES

1.64
CFS
82"

P.

$\frac{2.41 \times 10^5}{100} = 2410$

$113 \times 2.57 = 289.41$

$7.62 \times 10^5 = 762,000$

$1.59 \times 10^5 = 159,000$
 $92.1 \times 10^3 = 92,100$
 or $0.3''$ gain

$\frac{72}{1.59 \times 10^5}$
 $\approx 79.5 \text{ inches gain}$
 P.

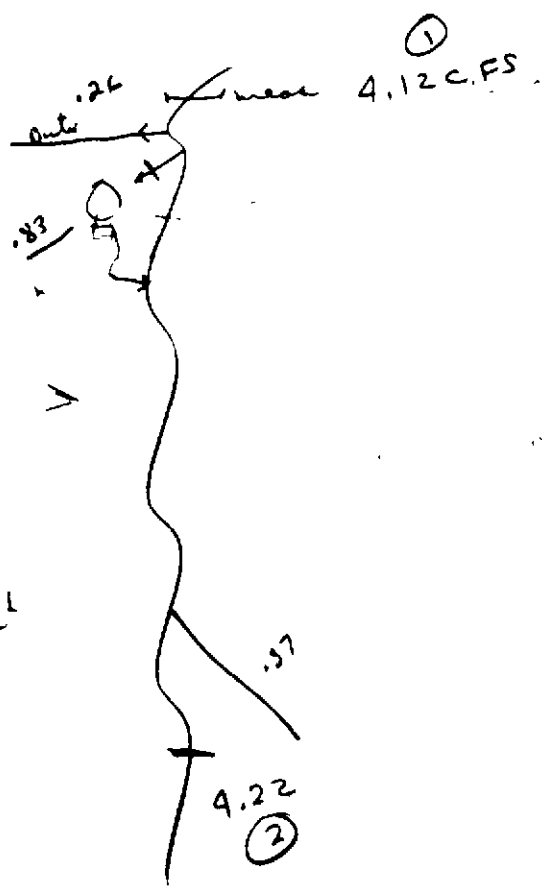
Year	Month	Day	Time	Location	Notes
1950	1	1	10:00	1000	1000
1950	1	2	10:00	1000	1000
1950	1	3	10:00	1000	1000
1950	1	4	10:00	1000	1000
1950	1	5	10:00	1000	1000
1950	1	6	10:00	1000	1000
1950	1	7	10:00	1000	1000
1950	1	8	10:00	1000	1000
1950	1	9	10:00	1000	1000
1950	1	10	10:00	1000	1000
1950	1	11	10:00	1000	1000
1950	1	12	10:00	1000	1000
1950	1	13	10:00	1000	1000
1950	1	14	10:00	1000	1000
1950	1	15	10:00	1000	1000
1950	1	16	10:00	1000	1000
1950	1	17	10:00	1000	1000
1950	1	18	10:00	1000	1000
1950	1	19	10:00	1000	1000
1950	1	20	10:00	1000	1000
1950	1	21	10:00	1000	1000
1950	1	22	10:00	1000	1000
1950	1	23	10:00	1000	1000
1950	1	24	10:00	1000	1000
1950	1	25	10:00	1000	1000
1950	1	26	10:00	1000	1000
1950	1	27	10:00	1000	1000
1950	1	28	10:00	1000	1000
1950	1	29	10:00	1000	1000
1950	1	30	10:00	1000	1000
1950	1	31	10:00	1000	1000

4

5
20
6

$$\begin{array}{r} 4.12 \\ 4.02 \\ \hline .10 = 5 \end{array}$$

$$\begin{array}{r} 4.22 \\ 1.37 \\ 1.26 \\ \hline 4.85 \\ - 1.83 \\ \hline 4.02 \text{ C.F.S.} \end{array}$$



$$\begin{array}{r} 4.12 \\ + .26 \\ \hline 4.38 \end{array}$$

4.12

P.

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 GEOLOGICAL SURVEY
 WATER RESOURCES DIVISION
 10 22 11 11
 DISCHARGE MEASUREMENT NOTES
 River or
 LAKE DEL CR

Stake	Dist. from stake to point	Width	Depth	Channel width at this point	Revolutions	Time in seconds	VELOCITY		Adjusted for barograph or	Area	Discharge
							At point	Mean in vertical			
1.0											
0.5											
2.0											
0.5											
3.0											
0.5											
4.0											
0.5											
5.0											
0.5											
6.0	50	1.7	3	41	116				25	64	
0.5	50	1.68	10	41					23	61	
7.0	50	1.57	15	42	14				28	11	
0.5									15	23	
8.0									26	29	
0.5									21	45	
9.0									24	52	
									15	40	
10.0									2	22	
0.5									42	41	
11.0									42	44	
		1.0	30						50	36	
12.0									45	21	
0.5									43	21	

Date 10 22 11 11
 By T.R.
 9

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

Date 4-1 in 2 DISCHARGE MEASUREMENT NOTES

Strong at

[illegible]

Re. _____ of _____ State. Cause by _____ on 7-6-6

U. S. GOVERNMENT PRINTING OFFICE: 1964-0-348-000-1

9-575
January 1952

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

Date 4/2, 1952 1170 11
Discharge Measurement Notes

River at Gravel

100 37
0.25 partial
0.7 full

Angle of sight	Dist. from initial point	Width	Depth	Observed and corrected	Revo- lutions	Time in seconds	VELOCITY		Adjusted for bar sag at	Area	Discharge
							At point	Mean in feet			
EW	3.0	.25									
	4.5	.50	.2		20	42	501			.20	.10
	5.0	.50	.4		40	5	796			.20	.16
	6.5	.56	.4		50	42	118			.22	.26
	6.7	.50	.4		57	75	32			.20	.46
	7.5	.50	.4		103	44	222			.20	.44
	7.7	.50	.5		50	43	116			.25	.29
	7.8	.50	.5		40	47	860			.25	.22
	8.2	.50	.4		42	41	199			.20	.20
	8.5	.50	.5		82	42	196			.25	.49
	9.2	.50	.5		80	41	191			.25	.48
	9.5	.50	.5		80	40	196			.25	.49
	10	.50	.5		80	44	177			.25	.44
	9.5	.50	.4		30	42	229			.20	.15
	11.0	.50	.4		7	48	185			.20	.04
EW	0.5	.25									

4.22

Total

No. of _____ Station. Comp. by _____

Obs. by _____



7
1

9.

MEASUREMENT LOCATION ^{LINE} ~~LINE~~ NAME: ~~LINE~~
 MEASURED BY GLF

DISTANCE FROM INITIAL POINT FEET	DEPTH FEET	WAVE CYCLES	WAVE PERIOD SEC	WAVE LENGTH FEET	WAVE DIRECTION DEG	WAVE PERIOD SEC	WAVE LENGTH FEET
4.000	.000	1.0	1.0	1.0	1.0	1.0	1.0
4.500	.500	1.0	1.0	1.0	1.0	1.0	1.0
5.000	.500	1.0	1.0	1.0	1.0	1.0	1.0
5.500	.500	1.0	1.0	1.0	1.0	1.0	1.0
6.000	.700	1.0	1.0	1.0	1.0	1.0	1.0
6.500	.050	1.0	1.0	1.0	1.0	1.0	1.0
7.000	.050	1.0	1.0	1.0	1.0	1.0	1.0
8.000	.000	1.0	1.0	1.0	1.0	1.0	1.0
8.500	.050	1.0	1.0	1.0	1.0	1.0	1.0
9.000	.700	1.0	1.0	1.0	1.0	1.0	1.0
9.500	.700	1.0	1.0	1.0	1.0	1.0	1.0
10.000	.050	1.0	1.0	1.0	1.0	1.0	1.0
10.500	.050	1.0	1.0	1.0	1.0	1.0	1.0
11.000	.050	1.0	1.0	1.0	1.0	1.0	1.0
11.500	1.000	1.0	1.0	1.0	1.0	1.0	1.0
12.000	.050	1.0	1.0	1.0	1.0	1.0	1.0
12.500	.050	1.0	1.0	1.0	1.0	1.0	1.0
13.000	.000	1.0	1.0	1.0	1.0	1.0	1.0
TOTALS		6.000					

MEASUREMENT FOR WATER HOUSE OVERFLOW

PAGE 1

MEASUREMENT LOCATION
MEASURED BY GLF

ON 4-2-80

LEGAL DESCRIPTION

= .55CN + .046

SEC

TWP

RND

DISTANCE FROM
INITIAL POINT

DEPTH

AREA

REVOLUTIONS

TIME

VELOCITY

DISCHARGE

FEET

FEET

SQ. FT.

SEC.

FT./SEC.

CFS

.000

.000

.000

0

.000

.000

.000

.500

.150

.117

15

42.000

.336

.040

1.000

.150

.075

60

40.000

2.400

.121

1.500

.250

.125

90

40.000

2.908

.240

2.000

.250

.125

100

41.000

2.378

.237

2.500

.200

.100

40

41.000

.979

.080

3.000

.200

.100

15

45.000

.350

.036

3.500

.200

.100

0

.000

.000

.000

4.200

.000

.000

0

.000

2.000

.000

TOTALS

.829

.632

Gorda Creek Lower Nav.

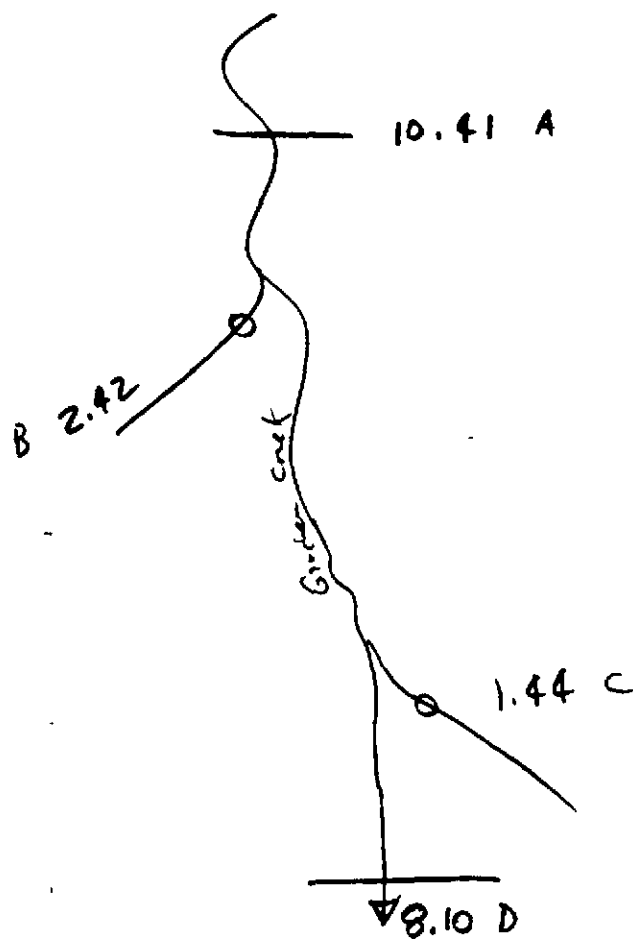
	width	depth	Bar	Time	Vel.	Q
1.5	0.25	—				—
2.0	0.50	.5	50	41	1.22	0.305
2.5	0.50	.6	60	40	1.50	0.450
3.0	0.50	.8	100	46	2.17	0.968
3.5	0.50	.8	150	42	3.57	1.428
4.0	0.50	.7	150	43	3.49	1.222
4.5	0.50	.6	150	48	3.12	0.939
5.0	0.50	.7	50	42	1.19	0.417
5.5	0.50	.6	60	44	1.36	0.408
6.0	0.50	.5	80	40	2.00	0.500
6.5	0.50	.6	80	43	1.86	0.558
7.0	0.50	.5	80	40	2.00	0.500
7.5	0.50	.4	60	43	1.40	0.280
8.0	0.50	.3	40	44	0.909	0.136
8.5	0.50	.2	30	48	0.625	0.063
9.0	0.50	.15	20	48	0.417	0.031
9.5	0.25	—				—
8.0	8.0					8.105

Herd of Gorda Creek

	width	depth	Row	Time	Vel.	Q
E.W 0.0	0.75	-	-	-	-	-
.5	0.50	-	-	-	-	-
1.0	0.50	-	-	-	-	-
1.5	0.50	-	-	-	-	-
2.0	0.50	-	-	-	-	-
2.5	0.50	-	-	-	-	-
3.0	0.50	1.0	50	40	1.250	0.625
3.5	0.50	1.0	60	41	1.463	0.732
4.0	0.50	1.2	50	40	1.250	0.750
4.5	0.50	1.2	30	47	0.638	0.383
5.0	0.50	1.2	50	41	1.220	0.732
5.5	0.50	1.1	60	48	1.250	0.698
6.0	0.50	1.1	60	41	1.463	0.805
6.5	0.50	1.0	60	43	1.395	0.698
7.0	0.50	0.8	80	50	1.600	0.640
7.5	0.50	0.8	80	42	1.905	0.762
8.0	0.50	0.9	80	43	1.860	0.837
8.5	0.50	0.8	60	41	1.463	0.585
9.0	0.50	0.8	60	45	1.333	0.533
9.5	0.50	0.9	40	41	0.976	0.439
10.0	0.50	1.0	30	42	0.714	0.357
10.5	0.50	0.8	30	42	0.714	0.286
11.0	0.50	0.9	30	50	0.600	0.270
11.5	0.50	0.9	15	41	0.366	0.165
12.0	0.50	0.9	15	53	0.283	0.122

0.4 0.5 0.6 0.8

0.4 0.5 0.6 0.8



A-B-C-D = gain

gain of 1.55 cfs

77 1/2 inches of rain

1-10
FORM 100

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

GARDEN Ck
Lower Waco.

3:00 PM

See Kopper

DATE 7/31, 1961 DISCHARGE MEASUREMENT NOTES Took Notes

By Gary Funderburk

No.	Date	Time	Stage	Temp	Wind	VELOCITY		Area	Discharge
						At	From		
						1/2	1/2		
1	7/31	3:00	5.0	41	1.21			175	1.61
2	7/31	3:05	5.5	42	1.48			300	4.44
3	7/31	3:10	6.0	42	2.12			400	8.48
4	7/31	3:15	6.5	42	3.46			400	13.84
5	7/31	3:20	7.0	43	3.38			350	11.83
6	7/31	3:25	7.5	43	3.07			300	9.09
7	7/31	3:30	8.0	43	4.18			350	14.13
8	7/31	3:35	8.5	44	4.35			300	14.05
9	7/31	3:40	9.0	44	4.96			250	11.90
10	7/31	3:45	9.5	43	4.82			300	15.96
11	7/31	3:50	10.0	43	4.96			250	14.90
12	7/31	3:55	10.5	43	4.38			200	12.76
13	7/31	4:00	11.0	44	4.93			150	11.57
14	7/31	4:05	11.5	43	4.99			100	10.64
15	7/31	4:10	12.0	44	4.99			107	10.16
16	7/31	4:15							7.75

By R. H. H. H.
was present

P.

6-270
January 1921

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

HEAD

7/31

Goldsboro Co

DISCHARGE MEASUREMENT NOTES

1:40 PM

No.	Date	Time	Wind	Temp	Channel	Type	VELOCITY		Area	Discharge
							At	Mean		
1	7/31	1:40								
2	7/31	1:40								
3	7/31	1:40								
4	7/31	1:40								
5	7/31	1:40								
6	7/31	1:40								
7	7/31	1:40								
8	7/31	1:40								
9	7/31	1:40								
10	7/31	1:40								
11	7/31	1:40								
12	7/31	1:40								
13	7/31	1:40								
14	7/31	1:40								
15	7/31	1:40								
16	7/31	1:40								
17	7/31	1:40								
18	7/31	1:40								
19	7/31	1:40								
20	7/31	1:40								
21	7/31	1:40								
22	7/31	1:40								
23	7/31	1:40								
24	7/31	1:40								
25	7/31	1:40								
26	7/31	1:40								
27	7/31	1:40								
28	7/31	1:40								
29	7/31	1:40								
30	7/31	1:40								
31	7/31	1:40								
32	7/31	1:40								
33	7/31	1:40								
34	7/31	1:40								
35	7/31	1:40								
36	7/31	1:40								
37	7/31	1:40								
38	7/31	1:40								
39	7/31	1:40								
40	7/31	1:40								
41	7/31	1:40								
42	7/31	1:40								
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46	7/31	1:40								
47	7/31	1:40								
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66	7/31	1:40								
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68	7/31	1:40								
69	7/31	1:40								
70	7/31	1:40								
71	7/31	1:40								
72	7/31	1:40								
73	7/31	1:40								
74	7/31	1:40								
75	7/31	1:40								
76	7/31	1:40								
77	7/31	1:40								
78	7/31	1:40								
79	7/31	1:40								
80	7/31	1:40								
81	7/31	1:40								
82	7/31	1:40								
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88	7/31	1:40								
89	7/31	1:40								
90	7/31	1:40								
91	7/31	1:40								
92	7/31	1:40								
93	7/31	1:40								
94	7/31	1:40								
95	7/31	1:40								
96	7/31	1:40								
97	7/31	1:40								
98	7/31	1:40								
99	7/31	1:40								
100	7/31	1:40								

P.

MEASUREMENT FOR GARDEN CREEK

PAGE 2

MEASUREMENT LOCATION ABOVE CITY WATERWORKS
MEASURED BY AGW ON 9/24/80

LEGAL DESCRIPTION
V = .900N + .040

DISTANCE FROM INITIAL POINT	DEPTH	AREA	REVOLUTIONS	TIME	VELOCITY	DISCHARGE
FEET	FEET	SQ FT		SEC	FT/SEC	CFS
4.750	.000	.000	0	.000	.000	.000
5.000	1.050	.525	50	48.600	1.030	.525
5.500	1.150	.575	50	41.000	1.242	.600
6.000	1.250	.625	40	43.600	.923	.597
6.500	1.350	.625	40	41.700	.963	.600
7.000	1.100	.550	60	45.500	1.307	.725
7.500	1.050	.525	60	44.000	1.250	.700
8.000	1.100	.550	40	47.500	.851	.440
8.500	1.000	.500	40	40.000	1.000	.500
9.000	.750	.375	60	44.500	1.335	.581
9.500	.000	.400	60	42.500	1.296	.500
10.000	.900	.450	70	40.000	1.719	.774
10.500	.700	.350	50	40.000	1.241	.434
11.000	.900	.450	40	48.300	.838	.377
11.500	1.000	.500	40	40.500	.924	.417
12.000	1.000	.500	40	57.500	.711	.356
12.500	.900	.450	25	46.700	.558	.251
13.000	.000	.400	15	54.500	.389	.124
13.500	.750	.375	10	48.500	.247	.081
14.000	.700	.525	10	52.000	.230	.121
14.500	.500	.750	0	40.000	.046	.025
15.000	.000	.000	0	.000	.000	.000
TOTALS		10.000				8.053

1.5' weir flume

H₂ = 2.30

H₀ = 2.26

% sup. = 87

Correction = .15 X 1.4 = 0.21 cfs

Q_{corr} = 4WH₂^{1.522} W^{0.0016} = 0.94

Q_{net} = 0.94 - 0.21 = 0.73

1.5' weir flume

H₂ = 0.64

Q = 2.03 cfs

5' weir flume

MEASUREMENT FOR GARDEN CREEK

PAGE 1

MEASUREMENT LOCATION ABOVE CHALLIS CREEK ROAD
MEASURED BY ABH ON 9/24/00

LEGAL DESCRIPTION

SEC

TWP

RNG

V = .966H + .046

DISTANCE FROM
INITIAL POINT
FEET

DEPTH

AREA

REVOLUTIONS

TIME

VELOCITY

DISCHARGE

FEET

FEET

SQ. FT.

SEC

FT/SEC

CFS

3.000	.000	.000	0	.000	.000	.000
3.500	.500	.375	50	47.000	1.063	.399
4.000	.700	.350	50	50.000	.990	.340
4.500	.700	.350	50	20.000	2.366	.820
5.000	.750	.375	50	20.000	1.763	.687
5.500	.800	.400	50	19.300	2.523	1.009
6.000	.600	.300	50	14.900	3.343	1.082
6.500	.500	.250	50	36.000	1.352	.338
7.000	.600	.300	40	41.000	.961	.300
7.500	.600	.300	50	36.000	1.374	.412
8.000	.500	.250	50	24.200	2.021	.908
8.500	.500	.250	50	18.300	2.658	.663
9.000	.300	.150	50	21.100	2.311	.347
9.500	.250	.125	50	27.600	1.778	.222
10.000	.150	.100	30	42.400	.722	.136
11.000	.000	.000	0	.000	.000	.000

TOTALS

3.963

7.158

X X 8.953 cfs

0.73 cfs

2.03 cfs

0.37 cfs

7.158 cfs

Gain 0

STATION	LEGAL DESCRIPTION	SEC	TWP	RND
10+00	Y - 300N + 04E			
REVOLUTIONS	TIME	VELOCITY	DISCHARGE	
	SEC	FT/SEC	CFS	
0	0.000	0.000	0.000	
30	47.000	1.063	.399	
60	50.200	.990	.349	
90	20.000	2.366	.828	
120	20.000	1.753	.657	
150	19.300	2.523	1.009	
180	14.300	3.243	1.002	
210	36.600	1.352	.338	
240	41.000	.961	.200	
270	36.000	1.374	.412	
300	24.200	2.021	.505	
330	18.300	2.650	.665	
360	21.100	2.311	.347	
390	27.000	1.778	.222	
420	42.100	.722	.136	
450	0.000	0.000	0.000	
480			7.158	



Gain of 1.44 cfs
or
71.75 inches

20 May 1944 - 2000 Jy. Hudson

Red Ruler

1000 Jy. Hudson

2000 Jy. Hudson

But 1000

Approx. 1000 Jy. Hudson
Red Ruler 1000 Jy. Hudson

1000 Jy. Hudson

5.1	1.15	50	48.6
5.5	1.15	50	41
6	1.25	40	43.6
6.5	1.25	40	41.7
7	1.1	60	40.5
7.5	1.1	60	41
8	1.1	60	41.5
8.5	1.	40	40
9	0.75	60	41.5
9.5	0.8	60	41.5
10	0.7	60	40
10.5	0.7	50	40
11	0.7	40	41.3
11.5	1.	40	41.5
12	1.	40	41.5
12.5	0.9	25	40.7
13	0.8	15	41.5
13.5	0.75	10	41.5
14	0.7	10	52

14.5

15 0.5

15.5

16 0.4

5

30

20

1.0

4

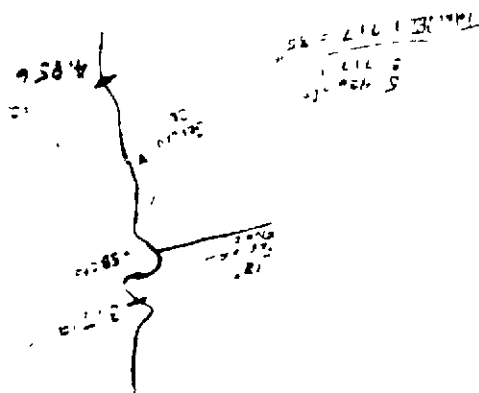
Power Loss
 Distance Dip Loss

9" A
 0.25

~~3.5~~

3.5	1.5	(5)	21
4	0.7	(5)	5.2
4.5	0.7	(5)	5.2
5	0.55	(5)	2.5
5.5	0.5	(5)	19.3
6	0.6	(5)	11.5
6.5	0.5	(5)	36.6
7	0.6	(5)	11.2
7.5	0.5	(5)	3.6
8	0.5	(5)	24.2
8.5	1.5	(5)	18.3
9	0.3	(5)	1.1
9.5	0.25	(5)	51.6
10	0.15	30	42.4
11	EW		

8



T 2 18' Flow - 58 cfs
Nov - 19.1979

8-575
January 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

Date Nov 10, 1962 DISCHARGE MEASUREMENT NOTES
GARDNER CR River at near above City Stream

Top 546.87
546.87

Time of day	Wind speed	Wind direction	Depth in ft	Time in sec	VELOCITY		Area of the cross section	Area	Discharge
					At point	Mean in cross section			
0.0			.8						
.5	.5	.9		20	46	.435	8	.45	.2196
1.0	.5	.9		25	43	.581	6	.45	.261
1.5	.5	1.0		25	40	.625	6	.50	.313
2.0	.5	1.0		40	48	.832	4	.55	.458
2.5	.5	.9		30	41	.732	4	.45	.329
3.0	.5	.8		50	43	1.190	4	.40	.476
3.5	.5	.6		60	40	1.50	30	.450	
4.0	.5	.7		60	53	1.132	35	.396	
4.5	.5	.7		40	44	.909	35	.318	
5.0	.5	.7		20	43	.500	35	.175	
5.5	.5	.8		20	45	.444	40	.178	
6.0	.5	.9		10	48	.208	45	.099	
6.5	.5	.7		8	41	.073	35	.025	
7.0	.5	.7		3	50	.060	35	.021	
7.5	.5	.6		3	58	.051	30	.015	
8.0	.5	.4		3	43	.071	20	.014	
8.5		.3		0	0				
9.0		.3		0	0				2.719

Discharge of _____ Cfs. Comp. by _____ Date by _____

Bogert & Butts & Yack
upper .22
lower .71

J-200
1-63
S. 5/8

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

DISCHARGE MEASUREMENT NOTES

8.45 River at Garden Creek - Upper

Dist. from lateral point	Width	Depth	No. of obs.	Revo- lutions	Time in sec.	VELOCITY		Adju- st- ed for bow angle or other	Area	Discharge
						At point	Mean in channel			
FW 2.0		.2								
2.5	5	.3								
3.0		.35								
3.5	5	.45	5	44						0.026
4.0		.50	5	42						0.030
4.5		.50	10	40						0.063
5.0		.60	10	43						0.070
5.5	2	.78	20	42						0.186
6.0	5	.80	25	40						0.217
6.5	5	.70	40	50						0.280
7.0	5	.70	60	40						0.525
7.5	5	.65	80	48						0.542
8.0	5	.75	80	44						0.682
8.5	5	.60	50	4						0.225
9.0	5	.75	30	45						0.224
9.5	5	.65	40	41						0.317
10.0	5	.70	70	43						0.265
10.5	5	.88	30	40						0.291
11.0	5	.90	20	50						0.270
11.5	5	.80	2	52						0.231
12.0	5		2	5						0.195
12.5	5	.55	20	4						0.179
13.0	5	.5	15	44						0.094
13.5	5/6									5.174

of _____ Station _____ Temp. by _____ Chk. by _____

-P.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

DISCHARGE MEASUREMENT NOTES

 $5'27 = 5$

16 City above 7th street. Cedar Creek

[illegible]

Get it?

9.

John McKinney Salmon.

1st diversion meas. 5.174 C.F.S.

cd. boye.

meas:

Flume 2.58 C.F.S.

1' = .75 =

John Smith Flume.

9" Flume .685 = 1.72 C.F.S.

2nd Meas. 2.387 C.F.S.

1st meas - 5.174 C.F.S.

2nd Meas. 2.387 C.F.S.

1st Flume Meas. 2.58 C.F.S.

2nd Flume Meas 1.72 C.F.S.

Total 6.687

5.174

Difference 1.513 C.F.S.

Gary, Here are some of the measurements
 taken. I am not positive of the dates, but
 they should be close - Roland

garden Cr Measurements

7/7 34 cfs

Buster Lake inlet .94 cfs

Between Yucca & Butte Diversion 904 37 cfs

There is a 74 45

7/20 54 cfs

FS B. 6.07 cfs

B/- 11/25 cfs

Valley Cr. Ed 1.29 cfs

7/24/79 2.76

Chellia Cr. Rd. 1.18

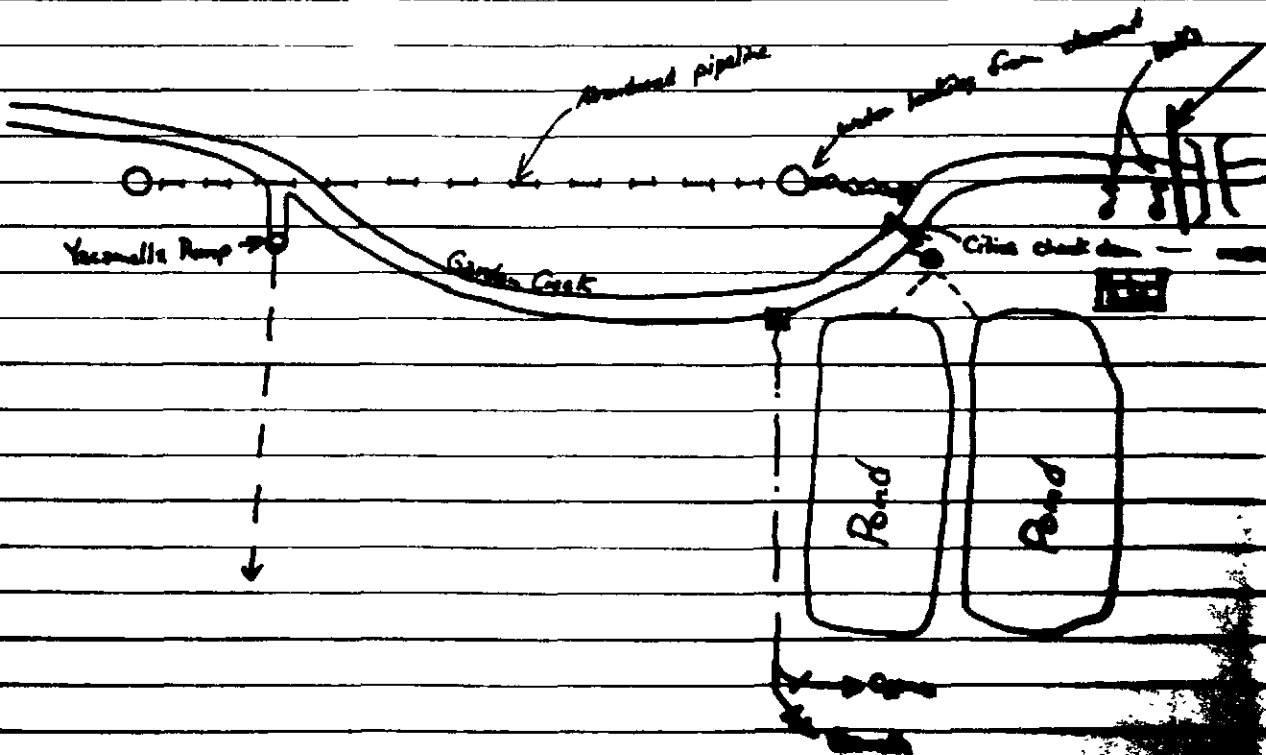
Notes: 4.4 cfs from old fruit cannery

MEASUREMENT FOR AROUND

MEASUREMENT LOCATION ABOVE BRIDGE BELOW CITY DIV.
MEASURED BY ALLEN MERRITT ON 9/23/81

LEGAL DESCRIPTION SEC. 32 T. 10 N. R. 10 E. S. 34
V. 1.0000 - 0.0000
V. 1.0000 - 0.0000

DISTANCE FROM INITIAL POINT FEET	DEPTH FEET	AREA SQ. FT	REVOLUTIONS	TIME SEC	VELOCITY FT. / SEC	
1.500	.000	.000	0	.000	.000	.000
2.000	.200	.150	7	42.000	.167	.000
2.500	.200	.100	20	25.500	.704	.000
3.000	.200	.100	20	27.000	.704	.000
3.500	.250	.125	20	27.500	.727	.000
4.000	.250	.125	20	48.000	.410	.000
4.500	.300	.150	25	33.700	.742	.000
5.000	.350	.175	20	32.700	.612	.000
5.500	.350	.175	20	55.500	.360	.000
6.000	.700	.150	10	48.000	.200	.000
6.500	.300	.150	3	35.000	.066	.000
7.000	.350	.175	5	21.000	.229	.000
7.500	.350	.175	10	32.000	.307	.000
8.000	.750	.175	5	36.000	.139	.000
8.500	.300	.150	10	26.700	.375	.000
9.000	.250	.125	3	23.000	.130	.000
9.500	.200	.100	5	40.000	.075	.000
10.000	.200	.150	5	38.700	.129	.000
10.500	.000	.000	0	.000	.000	.000
TOTALS		2.450				.000

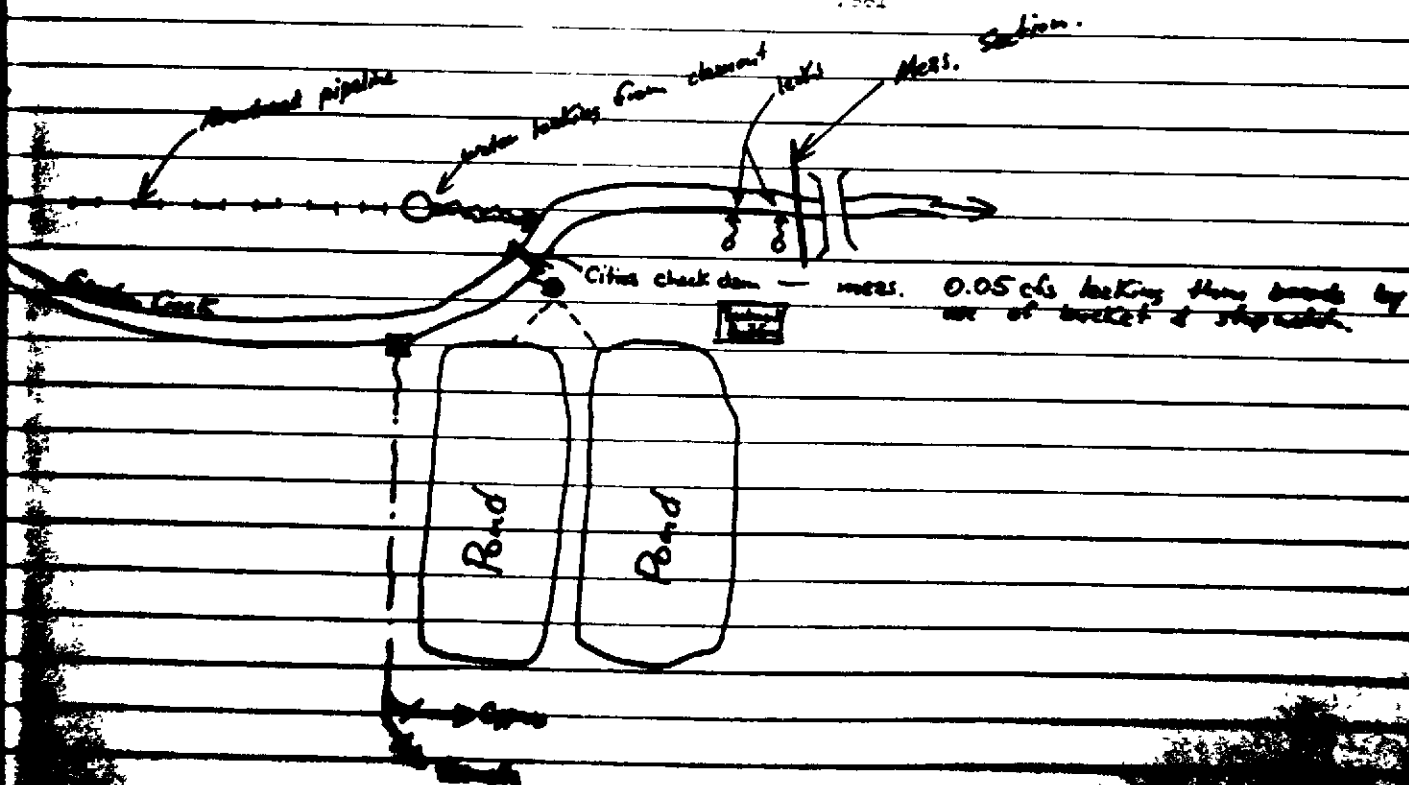


NEW BRUN CITY DIV. LEGAL DESCRIPTION SEC TWP RNG
 ON 9/23/81
 $V = 1.000N + 0.000$ FOR $N \leq 1$
 $V = 1.000N + 0.000$ FOR $N > 1$

WATER	REVOLUTIONS	TIME	VELOCITY	DISCHARGE
30.47		SEC	FT/SEC	FE5
.000	0	.000	.000	.000
.000	7	42.000	.167	.025
.000	20	25.500	.784	.078
.000	20	27.000	.741	.074
.125	20	27.500	.737	.091
.125	20	45.000	.410	.051
.150	25	33.700	.740	.111
.125	20	33.700	.612	.107
.175	20	55.500	.360	.065
.150	10	45.000	.300	.071
.150	3	75.000	.096	.013
.175	5	21.000	.220	.040
.175	10	32.600	.307	.054
.175	5	35.000	.139	.024
.150	10	25.700	.375	.056
.125	3	21.000	.130	.016
.150	5	40.000	.075	.005
.000	0	38.700	.129	.019
.000	0	.000	.000	.000

2.458

.561



wanted to move the PD. to
→ transferred last by
Adams

72-0051 B

0.50 April 22, 1925

No point of diversion

POU T14N, R19E, Sec. 33

SWNE 40

SENE 40

NESE 40

NWSE $\frac{40}{160}$

filed by ME. Rogers

identified as 72-0051 L

App for transfer says
POD in NENW, Sec. 33, T14N.
R19E

372 72-0051 M

0.25

April 5, 1926

No Point of diversion described

POU 14 N

identified as 72-0051 N

776

72-0051 P

0.30

Aug. 18, 1951

POD is Zilkey Ditch

~~NESE Sec. 28, T14N, R19E~~ → ~~printed~~
wrong

New POD is Julie Ditch NWNW,
Sec. 32, T14N, R19E

177

72-0048

3.2
(2.6)

June 27, 1944

POD Upper Bradbury & Julie Ditches
(Top Adams Ditch)

RECORDED

JUN 26 1992

Cyprus Thompson Creek Mining Company

3745 - 72-00051 N, B & L

Add ~~POD~~ Change POV

3747

72-00110, 00111

Change POV

Protestants (Garden Creek Water Users)

Mark & Vicki Armbruster

Michael Shannon - Foster represents Shannon

James A Lynch (Nota)

Ray Keppner

Two matters -

Motion in Limine

~~the~~ Identification of Protestants

Exhibits

Testimony

JUN 26 1992

~~Sc~~
Cyrus Testimony

Scott I. Benowitz —

Rule 9, 11

Montgomery Engineers Mallard Drive -

Ogden Utah - Attended MSU

Started with Alpentech 1 1/2 yr. in SCC

P.E. in Idaho Hydrology & Hydraulics

Figure One - written testimony -

~~One~~ Figure 4A photo 13 area bare of
snow's field drain

Measured streamflows at 3 locations at Garden Creek

Yacomella receives water from Bradbury

Ditch course sprinkled in 1990 with water
from the upper Bradbury ditch

Garden Creek is losing reach

FILED
JUN 26 1992

Dept. files show gaining reach
Poorly drained soils retain water
for days - water is released parallel

14 days for protestants -
14 days Campbell to respond

November 5, 1991

Measuring sites - Accessibility

Impact of proposed transfers on Garden
Creek - No impact -
Can't be absolutely certain

Keppner

Not measured - just upstream of Bradbury -

Armbruster -

Agronomy & Botany
During irrigation season

RECEIVED
JUN 26 1992

Well logs are in the appendix
Frozen soil profile will effect ^{ground} water movement.

Bert Doughty - Cyprus Creek Mining
Supervisor of Environmental Affairs
B.S. Environmental Engineering
Worked for Anaconda in Butte Montana
Air, water, hazardous waste - anything that
affects the environment

Applicant's Exhibit 2 -

Photograph 10/2/79 - Depicts Challis area
subdivisions

Photograph depicts property owned by
Cyprus

Discussed with Keppner why dump
field

Water rights not appurtenant to the
40 acres near the dump

X - Exam by Campbell

Not familiar with system

RECEIVED
FILMED

JUN 26 1992

Lawrence Bradbury - Lives in Lewiston, Id.
Previously owned grass property
160 acres first Ivey in
1965 acquired all the property

How long
since
diverted
into

Hesson ditch 100 inches split 3 ways
Irrigated yellow & blue cross hatched area
Water originally diverted thru the
Ivey ditch was ~~now~~ diverted into
the Bradbury ditch

Commingle 3 water rights commingled
in the Bradbury

2 water rights

Watermaster never complained about
use of water on any of his lands.

History of Hesson

West side of highway - behind

37.5 inches diverted -

1880 water right thru Hesson ditch

lost between July 15 & Aug. 1

With waste water - Irrigated about

80 acres - Sold to Dr. Bogue in 1973

Hesson ditch operating at time he
sold it in 1973

Water diverted thru Ivey in 1973

80 inches of 1901

12.5 inches of 1880 } 92.5 inches thru
the Ivey ditch

Thru the Bradbury (Upper

105 in. 1879

55 in. 1889

80 in. 1901

240 inches thru the Upper Bradbury

Always had water -

Ivy ditch below city diversion in the morning there was excess water -

After sprinkler - 120 acres in east of highway

Entire 160 acres in the Ivy place was irrigated except for the gully

Sub irrigated → from where
→ Raised 110 acres of natural grass on the home place 160-165 acres total

Golf course - Malm & home places

Several place where water comes back from Village of Challis - Tile drains installed bring water back to the creek -

* No water from Malm & home place

no. of
acres

Keppner -

Ambruster -

MICROFILMED

JUN 26 1992

George TARK

Bowse

Formed corporation with a Doctor
Purchased property from Bradbury 1/1/74
Sub S corp. Pres. & general manager
Managed irrigation of the property
Owned until 1978 west side sold to
Tom Butts -

May 1979 sold interest in corp to Dr. Bogue
No changes to irrigation 74-76 were good
water years

Changed in 1977 - drought year -
Buster Lake - heads the Barber Creek
water shed - storage for 40 acres owned
by the Forest Service

X - Exam by Foster

REPRODUCED

JUN 26 1992

William Butts. 33 yrs. old

Works for Cyprus Thompson Creek -
Safety officer - Employed by Cyprus for
eight years - U of I 3 yrs in zoology
Managed Challis lounge & lodge

Irrigated portions of property -
Moved sprinkler pipe on land located
on west side of highway - '72 & '73

Living in area - yes - Land was being
irrigated during Turk's

Stepfather - Father purchased property west
of the highway - purchased the property
from Bogue in 1978 or 1979

Hayed property for 4 years - sold
to Cyprus

Jim McGowan. 2 miles out Challis Creek
Road - 1975-1980 - did not live in
Challis U of I Maintenance planner -
lubrication & mechanical maintenance -

Familiar with property - Moved pipe
for Bradbury - started in 1970 - work
for 4 summers - thru 1973 -

MICROFILMED
JUN 26 1992

Some change in irrigation
No water on the dump road field -
in the past year or two

Change at golf course - sprinkler system

Tim Ingram Ingram leases property from
Cypress - leases yellow with orange
hatched & blue hatched.

1989 water from Bradbury ditch irrigated
Dump field

91 nozzles irrigate property east of highway
30 nozzles

Ivy Ditch supplies field with the
blue cross hatch

Open ditch thru most of the subdivision
1 1/2 mile of open ditch. Ditch loses
water - How much 2 times as much
diverted as is used

9/64" nozzles - 5 gpm

Upper Bradbury - lined about half the
ditch

Hesson Ditch not used any longer -
Comes thru Ivy Ditch

Will Ingram 3 year leased

DE Strand ^{JUN 26 1992} Challis - Helped construct
the golf course - Central Idaho Rod & Gun Club
pipe 87-88 course constructed - laid underground
Irrigate through the upper Bradbury ditch
Green with orange x-hatch is golf course
pumped to the golf course

steal
during
daytime
or
nighttime

9-10 hours to irrigate the entire course
28 heads per zone 7 heads per valve
10-14 gpm per head

Summer - never pit water -
Drainage installed in middle of course -
French drains
Golf course - good for community

50 acres irrigated in the golf course -

83 bought Tensary Oil no ditch that
needed to be filled in.

Rukavina - Helped w/ construction of golf course
When Yakamella's irrigated above -

John Adams decree - part of this record -

RECORDED

JUN 26 1992

Foster

Dec Keppner Rancher & watermaster

72 B. Garden Creek 12 years -

Takes water from Garden Creek -

Delivers by year and date to the
respective users -

Familiar with the water rights -

Bradbury right

105 inches 1878 right

~~1901 rights~~

120 inches 1910

17 inches 1917

Irre Ditch

50 inches 1880 rights ?

100 inches 1880

Last 5 years - one

Requested 50 inches of water within
the past 3 or 4 years

Stark is only person who requested water
Water has not been delivered to dump road -
for 3 years.

Irre Ditch Telegram requested below
the highway JUN 20 1992 inches thru the weir in
June & July 1989 and 1990

Hesson ditch - charged water in 1963

Hesson ditch not in use

Doesn't know when use discontinued

Forest Service still gets water thru the
Hessen ditch.

X-Exam by Campbell-

Ray Keppner owns the ranch
Resides a mile up Garden Creek - Irrigates
Garden Creek & regulates diversions onto
the property

May, 1990 -

Keppner 79 - means 1879 users
next is water measured thru the weir -
the amount recorded is in inches -
#s correspond to water right held

Ray Keppner - Moving water upstream -

Changing points of diversion -

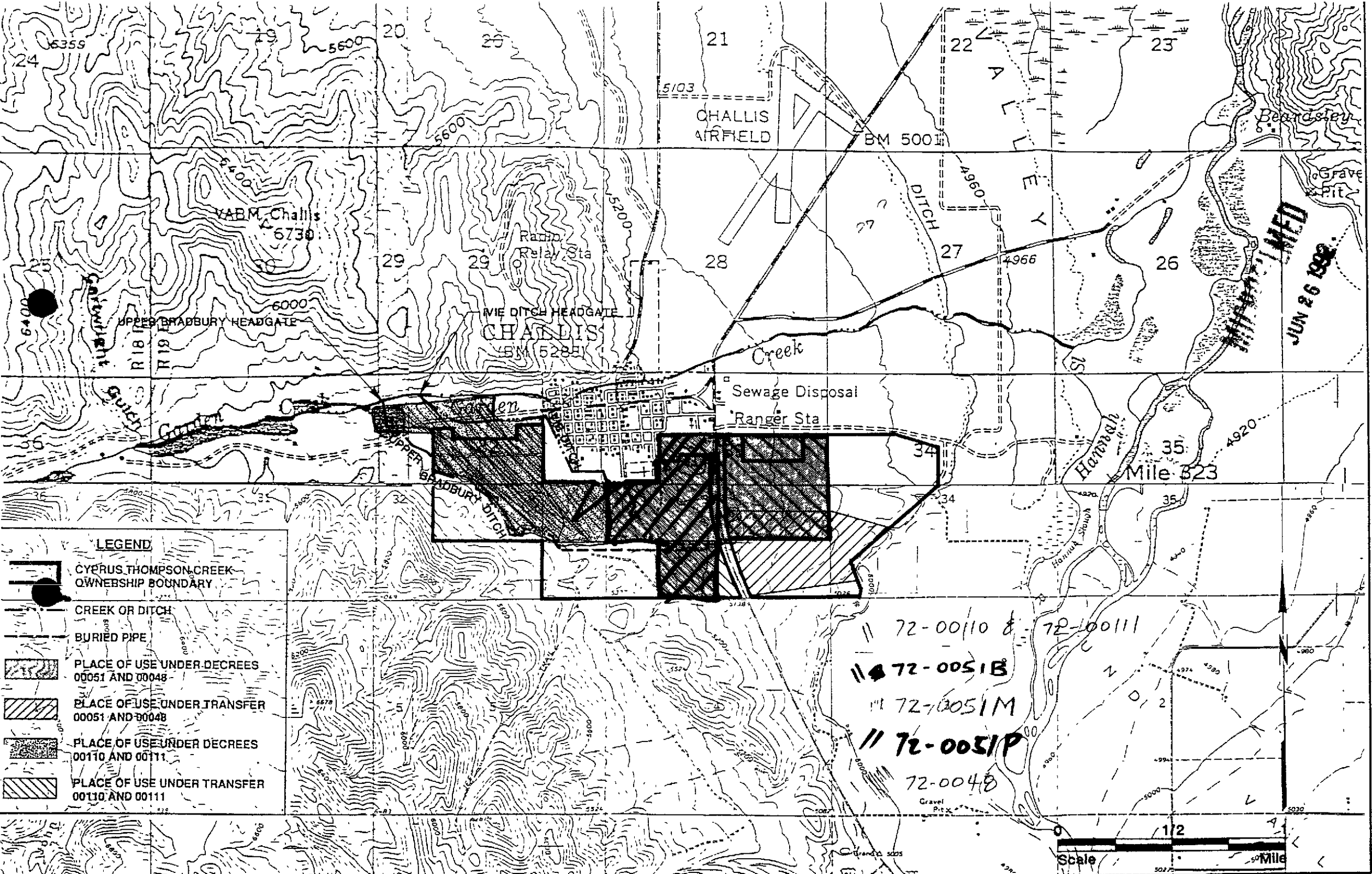
Diversion below highway -
Below the highway -

Diversion not used -

Armbruster 1910 water right -

More water released downstream
to satisfy users -

← Where is it out of the system



CYPRUS Transfers -

Tape Counter

Witness

0000	Preliminary arguments on motion in limine
0308	Campbell - victim statement
0370	Scott Benowitz Direct exam by Campbell
1800	" " Cross exam by Foster
2400	" " Cross Exam by victim counsel
2507	" " " " Atmabaster
4357	Bert Doughty - Campbell Direct exam
4793	" " Foster Cross exam
5015	Lawrence Bradbury Campbell - Direct

New Tape (2)

0000	Lawrence Bradbury
0564	George Tuttle

1079	Ron Butts
354	Jim McGowan
764	Tim Ingleton
1115	Will Ingleton
2766	Dan Strand
3475	Mike Rukavina
3942	Dee Keppner

New Tape (3)

0000	Dee Keppner
0651	Ray Keppner
909	Atmabaster

MICROFILMED

JUN 26 1992

Kennel -

S/N, L, B, - in Fort-Seneca Place.

Change with some water to use. 1885.

Campbell - Bradbury made changes - 1/12 - now
optimum.

Kennel - Con't 1880 water in middle 1880.

Thompson - 1880 1880 1880

Direction is water. 1880 1880.
1880 1880 1880 place.

Kennel: 1880 1880

10" 1880 supposed to be in lower Bradbury 1880.

Not
present

Amurhaster - 1880 1880

& Litch

Directions 1880 U.S. from 1880

* Thompson will reduce gain to 1880
& 50 damage 1880 1880.

HTS - 1880 1880

Consolidating

JUN 26 1932

RECEIVED

SEP 17 1993

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF COMPLETED TRANSFER

The Idaho Department of Water Resources will consider this form as a statement regarding completion of the authorized water right(s) transfer.

1. Water Right No(s). 72-00051B, 72-00051L, 72-0051N and 72-00048

Transfer No. 3745

2. Name of Water Right Holder(s): Cyprus Thompson Creek Mining Co,

Address: P.O. Box 62 Clayton, Idaho 83227

3. Water right transfer authorized by Department is:
(check appropriate space or provide description)

Complete _____ Not Complete x

Partially Complete (describe work completed) NONE

4. If the transfer has not yet been completed or is only partially complete, please provide a statement why the authorized change(s) have not been accomplished and the date which you expect the changes to be complete: NOTE: APPLICATION FOR TRANSFER

WAS REQUESTED TO SHOW PROPER PLACE OF USE. ALL HEADGATES, DITCHES, MAINLINE

AND WHEEL LINE WERE ALREADY IN PLACE. NEED TO INSTALL SECOND STAFFGAGE IN

PARSHALL TO CHECK FOR SUBMERGENCE CONDITIONS.

5. I hereby assert that the responses provided above are true to the best of my knowledge. I understand that any willful misrepresentations may result in Department action rescinding the approved water right(s) transfer.

A. S. Hurlless Manager
Signature

9/15/93
Date

(& title if on behalf of a company or organization)

OCT 25 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 12, 1993

CYPRUS THOMPSON CREEK MINING CO
PO BOX 62
CLAYTON ID 83227

RE: Transfer of Water Right Nos. 72-00051B, 72-00051L, 72-00051N
and 72-00048

Dear Water Right Holder(s):

We are in receipt of your response to our inquiry regarding the completion status of Transfer No. 3745. We have reviewed your explanation as to why the transfer has not been completed.

By this letter we are granting an extension of time and advancing the completion date to June 1, 1994.

At the end of the extension period the department will again contact you regarding completion of the transfer.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Johnson', with a long horizontal line extending to the right.

JIM JOHNSON
Water Rights Supervisor

JJ;dc

Enclosure

RECEIVED

OCT 25 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8200

RECEIVED

JUL 07 1993

Department of Water Resources

72-00048
72-00051B
72 51L
51N
72-0111
72-00110

July 6, 1993

Mr. Tim Luke
Senior Water Resource Agent
Water Allocations Division
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Measuring Device and Headgate Requirement conditions for
Transfer No. 3747 in the Name of Cyprus Thompson Creek
Mining Company

Dear Tim:

Thank you for your correspondence of June 28, 1993. I appreciate your clarification of our telephone discussion and your correction of my correspondence of June 22, 1993.

Since receiving your correspondence, I have been in telephone contact with Mr. Gary Funderburg regarding this matter. Mr. Funderburg indicates that he has transferred responsibility for Garden Creek to Mr. Jim Stanton of the Southern Region Office. Mr. Stanton was not in the office when I attempted to contact him by telephone.

I will await telephone contact from Mr. Stanton before proceeding with clarification of the acceptability of the control and measuring devices for Garden Creek for the Cyprus Thompson Creek Mining Company diversions.

Again, I appreciate your clarification of our conversation. I apologize that I neglected to accurately document the content of our discussion. The oversight was completely unintentional.

I will continue to inform you of my discussions with Mr. Stanton regarding these matters.

80901316100003.LTR
Boise

FAX: (208) 338-8249

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • HONOLULU, HAWAII • LOS ANGELES, CALIFORNIA
PORTLAND, OREGON • RICHLAND, WASHINGTON • SAN FRANCISCO, CALIFORNIA • SEATTLE, WASHINGTON • WASHINGTON, D.C.

Mr. Tim Luke
July 6, 1993
Page 2

Please contact me if you have any questions.

Very truly yours,

DAVIS WRIGHT TREMAINE


Scott L. Campbell

SLC:ma

cc: Mr. James Stanton
Mr. Gary Funderburg
Mr. Gary Spackman
Mr. Bert Doughty
Bruce Kirchhoff, Esq.
Mr. D. Keppner, Watermaster

OCT 11 1993



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

7/2 0000
SIB
SIL
SIN
0110
0111

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 28, 1993

Scott L. Campbell
702 W. Idaho St.
Suite 700
Boise, ID 83702

Re: Measuring Device and Headgate Requirement Conditions for
Transfer No. 3747 in name of Cyprus Thompson Creek Mining Co.

Dear Scott:

I have received your letter dated June 22, 1993 summarizing our phone conversation regarding the existing headgates and measuring devices for the diversions involved in the above referenced transfer.

You stated in your letter that based upon our discussion that you would advise your client that the condition of the order approving the transfer relating to measuring devices and control works has been satisfied. I believe that this statement may be a little misleading.

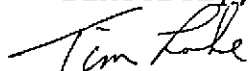
I wish to clarify that I feel the extent of our conversation only involved whether the existing measuring devices are devices which are considered as standard devices accepted by the Department for water measurement. Based on your description of the devices, I identified them as Parshall flumes. A Parshall flume is a measuring device accepted by the Department for purposes of water measurement and is a measuring device commonly found throughout Idaho. I hope you recall however that I also mentioned that since I have not had any opportunity to inspect these devices or even look at photographs, that I could not comment as to whether your client's flumes and headgates are properly installed and/or yield accurate measurements. You may further recall that I mentioned that accurate measurements of Parshall flumes are dependent on proper installation, mainly that they must be installed level and require a solid, watertight foundation. While the type of measuring devices and headgates in question may be acceptable to us, I can not say at this time that the conditions of the transfer order have necessarily been satisfied.

I have reviewed your letter with Gary Spackman. Gary mentioned that he thought Gary Funderburg of our Southern Regional office in Twin Falls had at one time visited the diversions and inspected the measuring devices and headgates in question. I have attempted to call Gary Funderburg but he has been out of the office for several days. I would suggest that you contact Gary and ask what he knows about these diversions. If Gary is not knowledgeable of the

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diversions, then your client will have to work directly with the watermaster. If the watermaster is satisfied with the existing devices, then I think the conditions of the transfer are satisfied. If there are further questions, problems or concerns regarding this matter, please contact me at this office. You may also contact me if you want any material or information about Parshall flumes.

Sincerely,



Tim Luke
Hydrologist
Water Allocations

cc: Gary Funderburg
Gary Spackman
Dee Keppner, Watermaster

OCT 27 1981

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

RECEIVED

JUN 23 1993

Department of Water Resources

SCOTT L. CAMPBELL
(208) 338-8200

June 22, 1993

Mr. Tim Luke
Senior Water Resource Agent
Water Allocations Division
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Application for Transfer No. 3747; Permit Nos. 72-00048,
72-00051B, 72-00051L, 72-00051N, 72-00110, 72-00111 in
the Name Cyprus Thompson Creek Mining Company

Dear Tim:

This correspondence will confirm the content of our conversation by telephone on June 18, 1993, concerning the above-referenced matter.

I contacted you to discuss the existing conditions of the diversion control mechanisms and measuring devices on the diversion works for the water rights involved in the transfer. I indicated to you that there were two diversion points and two delivery ditches involved in the transfer and that both diversions had existing lockable headgates of metal construction. I also described the metal measuring devices in the ditches which you identified as parshal flumes. Based upon the description which I provided to you during our telephone conversation, you indicated that these devices would be satisfactory to the Department of Water Resources. Based upon this comment, I am advising my client's representative that the condition of the order approving the transfer relating to measuring devices and control devices has been satisfied. If this does not conform with your understanding of our conversation, please advise me immediately in writing.

Thank you for your cooperation.

Very truly yours,

DAVIS WRIGHT TREMAINE


Scott L. Campbell

OCT 25 1993

Mr. Tim Luke
June 22, 1993
Page 2

SLC:ma
cc: Mr. Bert Doughty
Bruce Kirchoff, Esq.
Mr. Gary Spackman

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8200

May 28, 1993

RECEIVED

JUN 01 1993

Department of Water Resources

72-00048

51B

51L

51N

0110

0111

Mr. Gary Spackman
Manager, Water Right Permit Section
Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Application for Transfer No. 3747; Permit Nos. 72-00048,
72-00051B, 72-00051L, 72-00051N, 72-00110, 72-00111 in
the Name Cyprus Thompson Creek Mining Company

Dear Gary:

This will confirm our telephone conversation of May 27, 1993, concerning the memorandum decision and order of the Director approving the above-referenced transfer application.

At my request, you provided me with the name of Tim Luke and George Austiguy (telephone number 327-7900), both of the Central Office of the Department, as appropriate individuals to contact concerning the types of measuring devices which would be acceptable to the Department for use by Cyprus Thompson Creek Mining Company in performance of the condition of the memorandum decision and order approving the transfer application. I indicated to you that I would communicate with Mr. Bert Doughty, Environmental Supervisor for Cyprus Thompson Creek Mining Company and indicate to him that the lessee of the Cyprus property upon which these water rights are utilized, should contact Mr. Luke or Mr. Austiguy to coordinate installation of acceptable measuring devices in accordance with the terms of the memorandum decision and order.

I indicated to you that a short extension of the time frame specified in the June 1, 1992 order would be necessary. You indicated that this should not be a problem for the Department. Accordingly, we request a 30 day extension of the June 1, 1993 deadline for installation of these measuring devices be granted. If this 30 day extension is not acceptable, please contact me in

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Boise

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OCT 25 1993

FAX (208) 338-8299

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • HONOLULU, HAWAII • LOS ANGELES, CALIFORNIA
PORTLAND, OREGON • RICHLAND, WASHINGTON • SAN FRANCISCO, CALIFORNIA • SEATTLE, WASHINGTON • WASHINGTON, D.C.

Mr. Gary Spackman
May 28, 1993
Page 2

writing.

Thank you for your cooperation in this matter.

Very truly yours,

DAVIS WRIGHT TREMAINE


Scott L. Campbell

SLC:ma
cc: Mr. Bert Doughty
Bruce Kirchoff, Esq.

1 Scott L. Campbell
Susan E. Buxton
2 DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
3 Boise, Idaho 83702
(208) 338-8200
4
5 Attorneys for Cyprus Thompson
Creek Mining Company
6
7

8 BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
9 OF THE STATE OF IDAHO

10 IN THE MATTER OF CYPRUS THOMPSON)
11 CREEK MINING COMPANY TRANSFER)
12 APPLICATIONS FOR WATER RIGHTS) POST-HEARING BRIEF IN
13 NUMBERS 72-00051B, 72-00051N,) SUPPORT OF APPLICATIONS
72-00051L, 72-00048, 72-00110) FOR TRANSFER OF WATER
AND 72-00111.) RIGHTS
14

15 Applicant Cyprus Thompson Creek Mining Company (Applicant)
16 respectfully submits the following Post-Hearing Brief in Support
17 of its Applications for Transfer of Water Rights pursuant to I.C.
18 § 42-222. Applicant holds decreed Water Right Numbers 72-00110¹,
19

20
21 ¹ Location of existing point of diversion is the NW 1/4 of the
NW 1/4, Section 32, Township 14 N, Range 19 E, Boise Meridian,
Custer County, Idaho. The priority date is May 15, 1899.
22 Description of the existing diversion works includes; water is
diverted with rock jetty into metal measuring flume, flow is
23 controlled by wheel valve at diversion point. Water then flows
into earthen ditch system and eventually flows into eight-inch
24 steel buried pipeline with end point being sprinkler wheel lines.
Length of ditch system is approximately 5,400 feet and buried pipe
25 segment is approximately 3,800 feet, for total length of
approximately 9,200 feet. Amount is .86 cfs. Total consumptive
26 use claimed is 562.5 acre feet per annum.

OCT 25 1993

1 72-00111², 72-00051B, 72-00051N, 72-00051L³, and 72-00048⁴;

2
3 ² The priority date is May 15, 1878. Location of the existing
4 point of diversion is the NW 1/4 of the NW 1/4, Section 32,
5 Township 14 N, Range 19 E, Boise Meridian, Custer County, Idaho.
6 The description of existing diversion works is the same as that of
7 72-00110. The water is claimed in the amount of 2.1 cfs. The
8 total consumptive use claimed is 475 acre feet per annum.

9 ³ 72-00051N, priority date 5/15/1880, .30 cfs, diverted for
10 irrigation purposes, April 1st to November 1st, the points of
11 diversion are in the NW 1/4 of the NW 1/4, Section 32, Township 14
12 N, Range 19 E, Boise Meridian, Custer County, Idaho; 72-00051B,
13 priority date 5/15/1880, .50 cfs, diverted for irrigation purposes,
14 April 1st to November 1st, the points of diversion are in the NW
15 1/4 of the NW 1/4, Section 32, Township 14 N, Range 19 E, Boise
16 Meridian, Custer County, Idaho; 72-00051L, priority date 5/15/1880,
17 .25 cfs, diverted for irrigation purposes, April 1st to November
18 1st; all three rights are diverted from both the Upper Bradbury and
19 Ivie Ditches, the points of diversion are located in the NW 1/4 of
20 the NW 1/4, Section 32, Township 14 N, Range 19 E, Boise Meridian,
21 Custer County, Idaho. The local name for the diversions are the
22 Upper Bradbury Ditch and Ivie Ditch. The lands irrigated amount to
23 190 acres. There will be no change or effect upon existing
24 irrigated acres due to the fact that this place of use and change
25 of diversion has been in effect for a number of years.

26 ⁴ A 1944 Order, number 177, was filed in the matter of the
application of Lawrence Bradbury of Challis, Idaho for a change of
authorization and for a change of point of diversion. Mark R.
Kulp, for the State of Idaho, Department of Reclamation, State
Engineer, authorized the change in the point of diversion of 3.2
cfs of the waters of Garden Creek. A 1960 certificate, number 193,
authorizing transfer of the water right concerns water right number
72-0048 granted permission to John Q. Adams of Challis, Idaho, to
transfer their use of 3.2 cfs of waters from Garden Creek. On
April 25, 1991, the application for transfer of the water right,
including the water right number 72-0048, on behalf of Cyprus
Thompson Creek Mining Company, the Applicant, for the purpose of
transfer is to add diversion points and change place of use. The
Applicant wishes to formalize and document changes which have
occurred over a number of years since the water right was original-
ly decreed. Water right number 72-00048, priority date 5/15/1901
for 3.2 cfs for the purpose of irrigation from April 1st to
November 1st, the points of diversion are in the NW 1/4 of the NW
1/4, Section 32, Township 14 N, Range 19 E, Boise Meridian, Custer
County, Idaho. The total amount of water being transferred is 3.2
cfs. The source of the water is Garden Creek which is tributary to
the Salmon River. The local name for the diversions are the Upper
Bradbury and the Ivie Ditches. The total number of acres irrigated

1 collectively referred to as "water rights"⁵.

2 The water rights have been used on the same or similar
3 parcels of land since they were decreed. The decree, dated May
4 19, 1914, did not enumerate the points of diversion, it merely
5 set forth the legal description of the lands the water rights
6 were to be used upon.⁶ There will be no effect on the land now
7 irrigated if the place of use is changed pursuant to these
8 transfers because the changes have been in effect for a number of
9 years. The changes reflect actually irrigated acres and
10 represent a reduction from the amount of acres listed as the
11 place of use on the decree creating these rights, and a reduction
12 from the number of acres listed on the respective adjudication
13 claims. Applicant intends to amend the adjudication claims
14 through this transfer process.

15 Over time, the water rights came into the ownership of
16 Lawrence Bradbury. Mr. Bradbury testified at the March 11, 1992
17 hearing as to the changes in the place of use and the points of
18 diversion and that no protests to such changes were ever lodged.
19 Mr. Bradbury also testified that all other appropriators of

20
21 is 125.

22 ⁵ Transfer applications for water right numbers 72-00048, 72-
23 00051N, 72-00051B and 72-00051L, have been combined. The
24 application for transfer of water rights number 72-00110 and 72-
00111 are contained on one application form.

25 ⁶ See Exhibit A, pp. 2, 11. The 1914 decree established the
26 basic water rights on Garden Creek. This decree was official
noticed by the hearing officer during the March 11, 1992 hearing as
being part of the record.

1 Garden Creek in the area knew of these changes, including current
2 protester Ray Keppner, who diverted water from Garden Creek at
3 the same time. Mr. Bert Doughty of Cyprus, testified that the
4 reason the applications for transfer were filed was because the
5 water master, Dee Keppner, refused to deliver water to one of the
6 parcels.

7 This post-hearing brief will discuss:

8 (1) Whether the protesters are estopped from asserting that
9 the proposed change in points of diversion are injurious;

10 (2) Whether the proposed changes are in fact injurious to
11 other appropriators;

12 (3) Whether the changes constitute an enlargement of use;

13 (4) Whether the proposed changes are in the public interest
14 and coincide with the conservation of Idaho waters requirement of
15 I.C. §42-222; and

16 (5) Whether the changes fall within the parameters of I.C.
17 §42-1416. The Applicant contends that the applications for
18 transfer of water rights should be approved because the changes
19 requested have been in place for many years without protest.
20 Further, protesters have not met their burden of rebutting the
21 evidence offered by the Applicant in the record.

22 STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

23 The following factual discussion represents the evidence
24 present in the record. The record includes the oral and written
25 testimony presented during the March 11, 1992 hearing and the
26

1 decrees and orders that established the water rights in question.
2 These decrees and orders were official noticed as being part of
3 the record by the hearing officer during the March 11, 1992
4 hearing.

5 1. THE PROPERTY UTILIZING THE WATER RIGHTS TO BE
6 TRANSFERRED.

7 Lawrence Bradbury, and members of his family, at one time
8 owned much of what is now the property held by Cyprus Thompson
9 Creek Mining Company. In 1941, Lawrence Bradbury purchased the
10 hayfield parcel and irrigated it through the Upper Bradbury
11 Ditch. The irrigation system servicing the hayfield was upgraded
12 over the years. Most recently, the hayfield has been irrigated
13 with a mainline and fed by gravity flow to sprinkler wheel lines.
14 The parcel purchased in 1941 was formerly known as the Ivie
15 Place, which consisted of approximately 160 acres, and held a
16 water right from Garden Creek, designated as Water Right No. 72-
17 00048, with a 1901 priority date for 3.2 cfs, or 160 miners
18 inches. During the March 11, 1992 hearing, Mr. Bradbury
19 described that the points of diversion required changing because
20 all of the upper 40 acres and part of the southern-most 40 acres
21 of the Ivie Place was above the Ivie Ditch. (The Ivie Ditch is
22 also called the Middle Bradbury Ditch.)

23 Mr. Bradbury received permission from the State Water
24 Engineer, Roy Thompson, to transfer 80 miners inches (1.6 cfs.)
25 to the Upper Bradbury Ditch to service a portion of the Ivie
26 property not irrigable by the Ivie Ditch. In spite of the change

1 in point of diversion, there were still 17 acres across the big
2 draw that were not irrigable by flood irrigation. Therefore,
3 between 1948-1950, Mr. Bradbury testified that he extended the
4 Upper Bradbury Ditch across the big draw to a knoll north of the
5 present City Dump and installed a gravity sprinkling system. The
6 gravity sprinkling system irrigated the hayfield located along
7 the dump road. The old ditch and concrete headbox are still
8 visible on the knoll. The system had a pipeline that ran down
9 the hill to the hayfield and also utilized a portable mainline.

10 In 1955 or 1956, Mr. Bradbury installed a headbox on the
11 Upper Bradbury Ditch, approximately 200 yards south of the old
12 cemetery on what is now Cyprus property, and buried a pipeline
13 used to irrigate all of the original Ivie property, plus part of
14 an additional 40 acres. This system was in use when the Bradbury
15 property was sold in 1973.

16 At the time of the sale in 1973, the Bradbury property had
17 three water rights that were conveyed through the upper ditch
18 (Upper Bradbury Ditch). Water Right 72-00110 (2.1 cfs., priority
19 date 1878), Water Right 72-00111 (.8 cfs., priority date 1899),
20 and one-half of Water Right 72-00048 (1.6 cfs., priority date
21 1901), which were used on what is now the golf course and the
22 hayfield which are at issue in this case.

23 The Ivie Ditch (Middle Bradbury Ditch) diverted one-half of
24 Water Right 72-00048 (1.6 cfs., priority date 1901), and an
25 additional 15 miners inches of the Zilkey Water Right (Water
26 Right 72-0051N), and an additional 15 miners inches was available

1 from an unnamed spring near the Lenzingers property. This
2 unnamed spring had a water right filed upon it by Harry Waters
3 with a priority date of approximately 1900, plus 80 inches of
4 waste water filed upon it by Sam Hessen in 1936.

5 Mr. Bradbury was raised in a home located approximately 100
6 yards east of the unnamed spring. Mr. Bradbury's father
7 irrigated a small pasture, lawn and garden with the water from
8 that spring. The home site was sold by Mr. Bradbury's father in
9 1925, however, the spring remained inside the boundary of the
10 property owned by the Bradbury family. In the late 1920's or
11 early 1930's, Harry Waters filed on the waters of this spring for
12 use upon his property located across Highway 93 east of the
13 present Village Motel. In order to get the water across the Ivie
14 Ditch, Harry Waters constructed a flume across the ditch. Mr.
15 Waters used this water for a number of years.

16 Approximately 1938 or 1939, Harry Waters sold his property
17 to Sam Hessen. In an attempt to gain more water for irrigation,
18 Sam Hessen asked for permission from Mr. Floyd Bradbury, Lawrence
19 Bradbury's father, to enter the Bradbury property with a drag
20 line to dig through the clay dike that forced the groundwater to
21 the surface, hoping to release a greater flow of water from
22 behind the dike. These efforts were unsuccessful in generating
23 any additional flow of underground water. Sam Hessen did file on
24 a waste water right, of 80 miner's inches from the Bradbury
25 property. This waste water formerly had flowed into the Ivie
26 Ditch. In order to carry the waste water over the Ivie Ditch,

1 Sam Hessen replaced the original Harry Waters' flume with a
2 larger flume.

3 The system used by Mr. Bradbury incorporated a pump system
4 that irrigated the present Cyprus subdivision and the hayfield
5 property below Highway 93. The lower ditch, the Hessen Ditch,
6 used by the Forest Service, and the Cranes, and the Bradbury
7 property, had 100 inches of Zilkey water, with a priority date of
8 1880. The Forest Service received 25 inches, Crane received 37
9 1/2 inches, and Mr. Bradbury received 37 1/2 inches from the
10 Zilkey water right. Mr. Bradbury acquired the Hessen property in
11 1945 and used the 37 1/2 inches to irrigate the land below the
12 highway not covered by sprinklers.

13 Mr. Bradbury stated that he believed all of the above
14 transfers of water to different diversion points were of record
15 with the State Department of Water Resources.

16 In 1960, Mr. Bradbury was in search of more irrigation water
17 and drilled an 18-inch diameter well on the property now owned by
18 Clyde Rigby. This well was unsuccessful as an irrigation well
19 but the static water level rose to within two feet of the ground
20 surface. From the Ivie Ditch, a 600 foot, 8-inch cement pipe
21 tapped the well casing approximately 9 feet below the surface.
22 This allowed the well to continuously flow approximately 15
23 miner's inches year around. Mr. Bradbury used this water supply
24 for stockwater.

25 Sometime during the 1950's, it was determined that the Ivie
26 Ditch was not large enough to carry all of the decreed water,

1 waste water, and storm run-off. Occasionally, it caused some
2 flooding of streets and residences in the City of Challis. The
3 City of Challis threatened legal action in this matter. Mr.
4 Bradbury then entered into an agreement with the City of Challis
5 to share the cost of digging a 6 to 8 foot ditch on the side of
6 the Ivie Ditch to alleviate the threat of flooding.

7 After Mr. Bradbury sold his property in 1973, it was held by
8 JanMar Corp. Mr. George Turk testified as to the operation of
9 the property during the JanMar ownership and testified that he
10 did not make any changes in the irrigation system as were
11 existing when Mr. Bradbury sold him the property in 1973. The
12 only change made was in 1977 when Mr. Turk installed two Parshall
13 flumes; one on the Upper Bradbury ditch, and another on the Ivie
14 Ditch. This was the only change made upon the Bradbury water
15 delivery system and JanMar Corporation continued to irrigate the
16 same lands as Mr. Bradbury.

17 **2. PROCEDURAL BACKGROUND.**

18 Cyprus Thompson Creek Mining Company (Applicant) filed
19 applications with the Idaho Department of Water Resources (IDWR)
20 to add diversion points and change the place of use of those
21 decreed water rights. These applications were filed on May 21,
22 1991.

23 On September 3, 1991, IDWR received a protest to the
24 applications for transfer of water rights from the Garden Creek
25 Waterusers, District 72-B. The signatories to the protest were
26

1 Mark and Vicki Armbruster, Michael Shannon, James A. Lynch, and
2 Ray Keppner.

3 A. Pre-Hearing Conference Attendance

4 On September 16, 1991, the IDWR sent a Notice of Pre-Hearing
5 Conference to the Applicant and the above-listed Protesters. The
6 Notice scheduled the pre-hearing conference for Monday, September
7 30, 1991 at the Custer County Courthouse in Challis, Idaho. This
8 conference was held and neither the Armbrusters nor Mr. Lynch
9 were present. The Notice contained a provision specifying that
10 failure of a protester to appear at a hearing gives IDWR the
11 discretion to dismiss the protest. At the March 11, 1992
12 transfer of water right hearing, Applicant challenged the
13 participation of Protesters Mark Armbruster and Nola Lynch.
14 Applicant noted that failure of protesters to participate in pre-
15 hearing conference prejudices the Applicant because there was no
16 notice as to their specific protests to the proposed transfers.
17 The IDWR hearing officer, Gary Spackman, refused to dismiss the
18 Armbrusters' and Lynchs' protests but agreed to limit their
19 participation to those issues already identified by Protesters
20 Shannon and Keppner.

21 B. Motion in Limine

22 Applicant filed a Motion in Limine before the March 11, 1992
23 hearing requesting that the IDWR exclude all written and oral
24 testimony submitted by Dee Keppner, the water master. The motion
25 was based upon conflict of interest principles because Dee
26 Keppner is the son of Protester Ray Keppner, resides on Ray

1 Keppner's property, and helps operate Ray Keppner's ranching
2 operation which uses irrigation water diverted from Garden Creek.

3 The IDWR hearing officer denied Applicant's motion.
4 Nevertheless, he agreed that questions of credibility and weight
5 could arise because of the relationship, and the Applicant could
6 raise those issues during cross-examination.

7 C. Written Testimony - Protesters' Post-Hearing Comments

8 The hearing officer allowed the written testimony of Scott
9 I. Benowitz, P.E. to be admitted into evidence. Based upon the
10 unfamiliarity with the use of prepared written testimony, the
11 hearing officer gave each Protester fourteen days to submit their
12 comments relative to the written testimony.

13 All post-hearing briefs are due from the Applicant and all
14 Protesters by Friday, May 1, 1992.

15 After the hearing, Applicant filed a Motion to Strike
16 comments submitted by Tom Jacob. This motion was prompted by the
17 filing, on behalf of Protester Shannon, of Mr. Jacob's comments
18 on the Written Testimony submitted at the March 11, 1992, hearing
19 by Scott Benowitz.

20 Protester Shannon and his counsel were in possession of Mr.
21 Benowitz' Written Testimony well in advance of the hearing. Mr.
22 Jacob, a friend of Protester Shannon, was present at all phases
23 of the hearing. He sat at counsel's table and provided input to
24 Shannon and his attorney, Kent Foster, during the hearing.
25 Applicant also must assume that Mr. Jacob had access to the
26 Written Testimony in advance of the hearing.

1 Pursuant to IDWR Rule 9,5, all testimony to be considered by
2 the Director must be sworn. Mr. Jacob was not sworn, nor did he
3 testify at the hearing. To the contrary, Mr. Jacob had the
4 benefit of hearing all the testimony proffered by Applicant then
5 he submitted unsworn comments after the fact, thereby denying
6 Applicant any opportunity to cross-examine him concerning his
7 "comments."

8 Applicant's Motion to Strike Mr. Jacob's comments has yet to
9 be ruled upon.

10 In the event the Director decides to consider Mr. Jacob's
11 comments, Applicant should be granted the opportunity to cross-
12 examine Mr. Jacob, or, at the very least, be given the
13 opportunity to respond to those comments as to their scientific
14 accuracy. Procedural due process requires that Applicant be
15 afforded these measures.

16 Applicant also filed a Motion to Strike the comments
17 submitted by Mark and Vicki Armbruster as being untimely. The
18 Armbrusters' comments were not filed within the time period as
19 set forth by the hearing officer. The Armbrusters comments,
20 therefore, should be stricken.

21 **3. GEOLOGICAL FACTS.**

22 **A. The Make-Up of the Soils in the Area of Garden Creek**

23 Garden Creek flows along the northern boundary of the lands
24 covered under the decreed water rights numbered 72-00110 and 72-
25 00111. Existing soil information for the area was provided by
26 Karen Langersmith of The Soil Conservation Service of the United

1 States Department of Agriculture. According to the Soil
2 Conservation Service (SCS), lands to the north of Garden Creek,
3 adjacent to the Yacomella property, are well drained with good
4 permeability. The soils on the Yacomella property, and part of
5 the now-existing golf course, are poorly drained soils with
6 moderate permeability. The soils on the lands on the southern
7 portion of the golf course, and to the south of the golf course
8 are well drained with moderate permeability. The soils on the
9 land east of the golf course are excessively drained, with
10 moderate permeability.

11 Well driller's reports from the Idaho Department of Water
12 Resources establish that the deeper soils in the vicinity,
13 including the Yacomella and golf course properties, indicate the
14 presence of clay soils. These clay soils are usually underlain
15 with gravels and sands. In some locations, however, the clay is
16 overlain with boulders and gravels.

17 B. Stream Flow Measurements of Garden Creek

18 Scott Benowitz conducted a survey of the flows in Garden
19 Creek on November 5, 1991. During his visit, Mr. Benowitz
20 inspected Garden Creek at several locations, including three
21 measuring sites adjacent to the Yacomella property east of the
22 City of Challis water treatment facility, and one location on the
23 west end of the City of Challis within its city limits. Mr.
24 Benowitz also inspected three water diversion sites along the
25 reach of Garden Creek including the upper Bradbury ditch, the
26 City's diversion, and the Ivie Ditch. Mr. Benowitz also

1 inspected the upper Bradbury ditch on the west and south side of
2 the City of Challis's water treatment facility, and followed the
3 Bradbury ditch to where it crosses the Garden Creek Road,
4 including Yacomella's diversion headgate and supply ditch, which
5 routes water from the upper Bradbury ditch onto Yacomella's
6 property.

7 The Yacomella property is managed predominately as pasture.
8 The vegetation existing thereon consists of grass, hay, with
9 large areas of deciduous shrub vegetation, including willow,
10 alder, dogwood, and rosehip. The northern parcel of the
11 Yacomella property appeared to have been cultivated, as the
12 surface was relatively smooth. The southern half, however,
13 appeared hummocky, as though the ground had not been cultivated
14 recently.

15 Mr. Benowitz also inspected the Challis Golf Course
16 beginning near the western boundary and proceeded in an easterly
17 direction. The drain system consisted of an approximately three
18 foot deep trench, in which perforated pipe and gravel were
19 placed. In some areas the trench was filled, and others
20 approximately one foot of the trench was not filled. Some drain
21 pipes run from east to west, and dump into two small ponds, one
22 up gradient from the other. The lower pond has what appears to
23 be a drain pipe exiting to the east. The drain pipe is buried in
24 a trench which continues to the east property line where it
25 apparently ends.
26

1 Mr. Benowitz took stream flow measurements of Garden Creek
2 during his site visit in November of 1991. Those stream flow
3 measurements were recorded at the three above-described locations
4 along Garden Creek. Velocity measurements were obtained with a
5 Teledyne Gurly Pigmy Meter and flows calculated using a width
6 increment method which has approximately a 10% accuracy rating.
7 The flows were at site one -- 11.0 c.f.s.; site two -- 8.8 c.f.s.
8 and site three -- 6.6 c.f.s.

9 At the time of the measurements, the only diversion from
10 Garden Creek was the flow to the City of Challis' water system in
11 between sites one and two. Regardless, this flow was routed back
12 into Garden Creek upstream from measuring site two. The stream
13 flow measurements indicate that on this particular section of
14 Garden Creek is a losing reach, at least when irrigation is not
15 occurring on fields immediately adjacent to the creek.

16 A review of flow measurements taken on Garden Creek in
17 August, 1935; May, July, September and November, 1979; and April,
18 May, July and September, 1980 by the Idaho Department of Water
19 Resources, indicates that Garden Creek is a gaining stream
20 between the following locations: (1) upstream from the City's
21 diversion; and (2) where Garden Creek flows under the Challis
22 Creek Road.

23 It should be noted that the reach calculated by the Idaho
24 Department of Water Resources is different from the reach where
25 Mr. Benowitz took flow measurements during his site visit. The
26 reach measured by Mr. Benowitz began upstream from where the

1 IDWR's reach began, and ended upstream from IDWR's reach ended.
2 Therefore, IDWR's data indicating that a portion of Garden Creek
3 is a gaining reach cannot be directly compared to the data
4 collected by Mr. Benowitz indicating that a portion of Garden
5 Creek is now a losing reach because two different sections of
6 Garden Creek were evaluated.

7 C. Recharge of Garden Creek

8 Mr. Benowitz testified that irrigation waste water and run-
9 off occurring on the north side of the Garden Creek Road would
10 generally drain to the east until encountering a physical
11 obstruction like the Ivie Ditch or other irrigation or drain
12 ditches. Upon this occurrence, the surface water is routed
13 wherever that ditch or obstruction takes it. It is common for
14 the surface water to flow to the southeast once it reaches the
15 Ivie Ditch. Nevertheless, when irrigation water run off occurs
16 immediately adjacent to Garden Creek, the local topography may
17 route it directly into Garden Creek. Some of the water collected
18 in the Ivie Ditch or other irrigation or drain ditches may also
19 seep into the underlying soils.

20 The groundwater in the vicinity of the property owned by
21 Cyprus appears to be influenced by two sources at two different
22 piezometric elevations. According to the well logs reviewed by
23 Mr. Benowitz, the static water levels in most wells is greater
24 than fifteen feet below the ground surface. These conditions are
25 apparently influenced by a deeper aquifer. Nevertheless, ground
26 water was observed by Mr. Benowitz seeping from field drain pipes

1 into the small ponds on the golf course, and seeping into the
2 Ivie Ditch from adjacent ditch banks. Based upon information
3 supplied by Bill Yacomella and Joe Pyle regarding water
4 availability in the Ivie Ditch, historical flow measurements in
5 Garden Creek and the soils data, water is apparently held by the
6 poorly drained soils with a piezometric surface elevation near
7 the ground surface. This groundwater source is probably,
8 therefore, surface irrigation water.

9 There appears to be two distinct types of soils present in
10 the area: (1) that which is well-drained and highly permeable,
11 and (2) that which is poorly drained and moderately permeable.
12 The zone where the soils meet appears to be along Garden Creek
13 adjacent to the Yacomella parcel, the western limit of the City
14 of Challis, and the base of the hills on the south side of the
15 golf course. Poorly drained soils which are located on the
16 Yacomella property, and a portion of the Challis Golf Course
17 parcel, have a high water-holding capacity and retain irrigation
18 and surface run-off water for long periods of time. Any
19 irrigation water or surface run-off applied to these soils prior
20 to them becoming saturated is probably retained within the soils
21 then released down gradient, primarily to the east, parallel to
22 Garden Creek slowly over time. These soils probably do not dry
23 out at depths greater than approximately one foot due to the
24 annual application of surface irrigation water. The vegetation
25 growing on Yacomella's parcel indicates that the soils at a depth
26 of 1 to 2 feet retain water throughout the growing season.

1 The surficial soils, as described in the SCS survey, have
2 the capability to retain irrigation water. Such retention occurs
3 over a long period of time which reduces the recharge capacity of
4 the underlying soils.

5 The surface water applied to the Yacomella property most
6 likely will remain on-site for an extended period of time until
7 the soil becomes saturated. Upon saturation, additional surface
8 water will sheet flow down gradient to the east. Some of this
9 water will be picked up by the Ivie Ditch and routed to the
10 southeast away from Garden Creek. It is possible that a small
11 amount of surface water could be diverted by topographical features
12 back into Garden Creek, however, no such features were observed
13 by Mr. Benowitz.

14 Idaho Department of Water Resources' historical measurements
15 taken along Garden Creek indicate that the reach between a
16 location just upstream from the city's diversion and the point
17 where Garden Creek crosses under the Challis Creek Road is a
18 gaining reach. Nevertheless, the measurements taken by Mr.
19 Benowitz at different locations indicate that Garden Creek loses
20 water in the stream reach which he measured. Mr. Benowitz'
21 measurements indicate that Garden Creek is a losing reach. An
22 explanation for this losing reach is that the soils are well
23 drained, with high permeability under the creek, and some of this
24 flow is returning to the creek downstream from measuring site
25 three but upstream from the Challis Creek Road. Since the IDWR's
26 historical measurements were taken only at upstream and

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1 downstream locations, with no intermediate locations observed,
2 there is no indication where along the creek the inflow is
3 occurring. There is no physical evidence indicating whether the
4 recharge source is from irrigation or alluvial ground water. All
5 that is known is that there is a gain between the two reaches
6 measured by the IDWR.

7 Once the poorly drained soils on the Yacomella and golf
8 course parcels become saturated, the water they contain will tend
9 to move down gradient to the east parallel to Garden Creek.
10 Because of the soils' low capacity to hydraulically transmit
11 water, this process will probably occur quite slowly. This water
12 may surface where there are either low topographical features
13 such as the Ivie Ditch, or Garden Creek, or where drain pipe
14 systems carry the water to a discharge location, like the golf
15 course drainage system. It is more likely, therefore, that the
16 water from the Yacomella property west of the Ivie Ditch, and the
17 water from the golf course property will be intercepted by the
18 Ivie Ditch than by Garden Creek.

19 D. Summary of the Area Geology and its Effect Upon
20 Recharge of Garden Creek

21 Surface irrigation water applied to the subject property
22 parcels will probably not influence flows in Garden Creek. Soils
23 in this area are well drained with good to moderate permeability.
24 These parcels are not located topographically up gradient of
25 Garden Creek. Irrigation water applied to these parcels would
26 probably drain to the east parallel to Garden Creek towards the

1 Salmon River. Application of irrigation water to these parcels
2 as proposed by the transfers would not change flows in Garden
3 Creek, particularly since the changes have been in effect for
4 several decades.

5 LAW & ANALYSIS

6 STATUTORY AUTHORITY FOR TRANSFER OF WATER RIGHTS

7 1. STATUTORY AUTHORITY.

8 Idaho Code § 42-222(1) provides that a person with water
9 rights, i.e., license issued, or judicial decree, who wants to
10 change the point of diversion, place of use, period or nature of
11 use shall apply with the Idaho Department of Water Resources
12 (IDWR). The application shall include the right or license which
13 is to be changed, and the changes which are proposed.

14 If protested, the Director of the IDWR (the Director) shall
15 investigate and conduct a hearing. The Director must advise the
16 water master of the district in which the water is used of the
17 proposed change. The water master shall provide the Director a
18 recommendation on the application. The Director cannot make a
19 final decision prior to receipt of the water master's recommen-
20 dation.

21 Upon examination of the application, the Director shall
22 examine all evidence and information available, and shall approve
23 the change in whole, in part, or upon conditions. The Director's
24 decision must be based upon the determination that the change
25 will not injure other water rights, that the change does not
26 constitute an enlargement in use of the original right, that the

1 change is consistent with the conservation of water resources
2 within the state of Idaho, and is in the local public interest.
3 A change in the nature of use shall not be allowed if it is
4 changed from agricultural use where such change would
5 significantly affect the agricultural base of a local area.

6 **2. APPLICATION OF AUTHORITY TO TRANSFER OF WATER RIGHTS.**

7 Absent injury, one has a constitutional right to make a
8 change in use of their water right. *Hillcrest Irr. Dist. v.*
9 *Nampa*, 57 Idaho 403, 409, 66 P.2d 115, 117 (1937); *First Sec.*
10 *Bank v. State*, 49 Idaho 740, 744, 291 P. 1064, 1065 (1930).
11 Idaho Code § 44-222(1) provides for approval of a transfer of a
12 water right by the director of the Department of Water Resources
13 if:

- 14 (1) no other water rights are injured,
15 (2) the change does not constitute an enlargement of the
16 use of the original right,
17 (3) the change is consistent with conservation of water
18 resources within the State,
19 (4) the change is in the local public interest, and
20 (5) the change does not affect the agricultural base of the
21 local area.

22 The first two elements are legal in nature where the next three
23 require a more subjective analysis of public interest concerns.

24 The burden of proof is on the appropriator applying for the
25 change to show no injury. No injury must be established by a
26 preponderance of the evidence. *Bongiovi v. Jamison*, 110 Idaho
734, 739, 718 P.2d 1172, 1177 (1986).

1 A. Protesters are Estopped from Opposing the Transfer
2 Applications

3 A junior appropriator protesting the transfer application
4 must first have standing. To have standing, the junior
5 appropriator's priority must predate the date of the change in
6 the applicant's water right. In other words, a junior
7 appropriator has no right to complain of a change that occurred
8 prior to the junior's appropriation. *Hall v. Blackman*, 22 Idaho
9 539, 542, 126 P. 1045, 1047 (1912).

10 While it is not alleged that all of the protesters water
11 rights are junior, the Applicant contends that the changes in the
12 points of diversion and the places of use occurred many years
13 ago. Therefore, protesters are estopped by laches to contest the
14 formality of this proceeding to merely document those existing
15 changes.

16 "It is axiomatic that no appropriator can compel any other
17 appropriator to continue the waste of water whereby the former
18 may benefit." *In re Boyer*, 73 Idaho 152, 162, 248 P.2d 540, 550
19 (1952). In *Boyer*, a dam held seasonal storage water. The
20 protesting appropriators claimed a right to the waste water and
21 demanded its diversion onto other appurtenant land be prohibited
22 as it would endanger their water rights downstream. The Idaho
23 Supreme Court, however, held that, "[t]he rule that a junior
24 appropriator has the right to a continuation of stream conditions
25 as they were at the time he made his appropriation, could not
26

1 compel [the senior appropriator] to waste his water for use on
2 [the senior appropriator's property]." *Id.* at 163.

3 Boyer applies directly to the Applicant's contention that
4 the use of the water on the golf course parcel, as well as the
5 hayfield and the parcel across the highway, have all been
6 previously irrigated under the same water rights before.
7 Further, it is the right of a water right holder to put the water
8 to beneficial use and change the point of diversion so long as
9 there is no injury, nor any enlargement. See *Jenkins v. State*
10 *Dept. of Water Resources*, 103 Idaho 384, 388, 647 P.2d 1256, 1260
11 (1982).

12 The holder of a water right is on equal footing with a real
13 property owner in that a water right may be transferred in regard
14 to its point of diversion and its place of use. *Hillcrest Irr.*
15 *Dist. v. Nampa & Meridian Irr. Dist.*, 57 Idaho 403, 409, 66 P.2d
16 115, 121 (1937). See also *In re Rice*, 50 Idaho 660, 299 p. 664
17 (1931). Additionally, "long and continuous knowing acquiescence
18 in another's use and enjoyment of a property or privilege may
19 preclude one from subsequently asserting his claim." *Id.* at 411,
20 66 P.2d at 123.

21 Mr. Bradbury testified that he had served as the water
22 district secretary for thirty (30) years and that the other
23 appropriators were aware of his change in points of diversion
24 attributable to the water rights. Mr. Bradbury went on to
25 testify with specificity regarding those diversion point changes
26 occurring with regard to the Hessen Ditch, the Upper Bradbury

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1 Ditch, the Ivie Ditch, and the addition of the transfer box on
2 top of the knoll placed so water could be delivered to all
3 parcels owned by him.

4 Accordingly, the protesters are estopped from opposing the
5 transfer applications because the changes have been in place
6 since at least 1973 when Mr. Bradbury sold the parcel to JanMar
7 Corporation, and protesters have failed to demonstrate or even
8 assert any injury to their water rights until this transfer
9 process began.

10 B. The transfer applications mirror the presumed validity
11 of the changes afforded by Idaho Code §42-1416

12 The Idaho legislature mandated the adjudication of all water
13 rights located within the Snake River Basin in 1985 when it
14 enacted Idaho Code §§42-1406A through 42-1423. As part of that
15 legislation, Idaho Code §42-1416 established a rebuttable
16 presumption in a basin-wide adjudication that,

17 [t]he holders of previously adjudicated water rights
18 shall be presumed to have validly applied all water to
19 beneficial use on the lands being irrigated at the time
20 of the basin-wide adjudication with no change in the
21 priority dates of the original rights.

22 In the instant proceeding, the changes in place of use had
23 been instituted long before the commencement of the Snake River
24 Basin Adjudication (SRBA), which began in 1987. Consequently, in
25 the context of the adjudication process these changes would be
26 presumed to be valid.

Admittedly, the transfer process under Idaho Code §42-222 is
not the same as a basin-wide adjudication. However, it is

1 important to note that the SRBA claims filed by the Applicant
2 listed these changes, in large part, and the transfer
3 applications were filed because continued delivery of the water
4 in conformance with the established changes was being denied by
5 Dee Keppner, the watermaster. Interim delivery of the water,
6 pending resolution of the claimed changes under the presumption
7 statute, would not be allowed. Therefore, the Applicant
8 proceeded with these filings.

9 Given this factual context, significant weight should be
10 given to the language of Idaho Code §42-1416. It gives a clear
11 expression of the legislature's intent as to the proper method of
12 handling the factual circumstances of the present case in the
13 adjudication process. This same approach of granting "amnesty"
14 to long-standing, historic variances of water rights from the
15 original decree should be extended to the instant case. This is
16 particularly so where, as here, the SRBA claims asserted the
17 changes and Dee Keppner's refusal to continue water deliveries
18 was the only reason the transfer applications were filed instead
19 of allowing the changes to be processed in the adjudication.

20 C. Water Right Changes Prior to 1969: Administrative
21 Approval Not Required

22 All, or virtually all, of the water right changes which are
23 requested in this transfer proceeding were instituted while
24 Lawrence Bradbury owned the subject properties. His testimony
25 established those facts and the testimony of several other
26 witnesses for the Applicant supported his statements. This

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1 record clearly establishes that virtually all of these changes
2 occurred prior to 1969.

3 This date is significant in the context of this proceeding
4 because until July 1, 1969, Idaho Code §§42-222 and 42-108 did
5 not require administrative approval of water right changes. Such
6 approval became mandatory only after the amendments of those
7 sections by the legislature that year. 1969 Idaho Sess. Laws
8 905. Consequently, any water right changes instituted prior to
9 that date, such as those in the present case, could be validly
10 accomplished without compliance with the transfer process of
11 Idaho Code §§42-222 and 42-108.

12 Unfortunately, administrative enforcement, either through
13 the watermaster or the Department of Water Resources, failed to
14 acknowledge the validity of these pre-1969 changes. Beginning in
15 1989, the watermaster, apparently with the approval of the
16 Department, refused to allow the continued delivery of water
17 under these pre-1969 changes. Based upon this refusal (see
18 testimony of Bert Doughty), the Applicant submitted applications
19 for transfer to validate the changes through the administrative
20 process.

21 It is Applicant's position that such administrative
22 validation should not be necessary in order to receive continued
23 delivery of water under the pre-1969 changes. However, since the
24 administrative approval has been required, Applicant believes
25 that the legal status of the pre-1969 changes virtually mandates
26 administrative validation of these changes.

1 D. No Injury Rule

2 A junior appropriator has a vested right to maintenance of
3 stream conditions existing at and after the time of the junior's
4 appropriation. *Crockett v. Jones*, 47 Idaho 497, 504, 277 P.2d
5 550, 552 (1929). An injury consists of making a junior
6 appropriator subject to a priority not previously subject to, or
7 the change increases the burden on the stream, or the change
8 reduces the volume of water flowing in the stream. *Jenkins v.*
9 *State Dept. of Water Resources*, 103 Idaho 384, 388, 647 P.2d
10 1256, 1260 (1982). The injury must be real and substantial.
11 *Beecher v. Cassia Creek Irr. Co.*, 66 Idaho 1, 8, 154 P.2d 507,
12 509 (1954). In the present case, the changes have been in place
13 for many years and no claim of injury, substantial or otherwise,
14 had been made previously.

15 Mr. Bradbury testified that the parcels he irrigated were
16 the same as those contained in the transfer applications. Mr.
17 Rukavino and Mr. Strand testified that the golf course parcel
18 actually used less water than if it were to be flood irrigated
19 because of the computerized sprinkler system. Mr. McGowan and
20 Mr. Butts testified that they had grown up in the area and had
21 helped move sprinkler lines on the hayfield site where the
22 watermaster has recently refused to deliver water, prompting this
23 proceeding. These uses demonstrate that no injury to other
24 appropriators has occurred as all of the parcels have been
25 irrigated by the water in question.
26

1 Mr. Benowitz further demonstrated that the make-up of the
2 soils in the area are of the type that recharge to Garden Creek
3 is unlikely. Further, it was more likely, due to the geological
4 strata that the waste water flows predominantly south and east
5 and is intercepted by the Ivie Ditch without opportunity to
6 recharge Garden Creek.

7 The protesters have not provided any evidence to rebut these
8 facts. The standard is that of a preponderance. The Applicant
9 has clearly demonstrated, by more than a mere preponderance, that
10 the transfers would not and have not injured other appropriators.
11 Moreover, the facts contained in the record, if construed to
12 injure other appropriators, do not arise to the level of
13 "substantial injury" as required by *Beecher*. *Id.* Therefore, the
14 Director must find there is no injury, and grant the applications
15 to transfer the water rights.

16 E. No Enlargement of Use

17 An expansion in irrigated acreage is an enlargement that is
18 prohibited by I.C. §42-222. Nevertheless, § 42-222 allows expan-
19 sions in irrigated acreage of storage water, therefore,
20 expansions in irrigated acreage of direct flow rights are not
21 authorized and are considered an enlargement. *Hall v. Blackman*,
22 22 Idaho 556, 126 P. 1047 (1912). In the present case, the
23 number of acres under irrigation is actually reduced from the
24 amount described in the decree establishing the rights.

25
26
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1 As demonstrated by the transfer applications, the total
2 amount of land to be irrigated is approximately 329 acres. This
3 does not constitute an enlargement of the area irrigated.

4 Under the transfer applications, water rights 72-00110 and
5 72-00111 propose to irrigate approximately 199 acres with 2.96
6 cfs. Under the original decree, these two water rights were
7 designated to irrigate approximately 240 acres.

8 Under water rights 72-00048 and 72-00051B, N & L, the
9 transfer proposes to irrigate approximately 160 acres with 2.6
10 cfs. Originally, these water rights irrigated approximately 320
11 acres with 4.25 cfs.

12 Further, since the golf course parcel uses a computerized
13 sprinkler system, the use is smaller than if irrigation was
14 continued thereon.

15 Accordingly, the Director should find there to be no
16 enlargement of use and grant the transfer applications.

17 F. Public Interest Elements: conservation, public
18 interest, agricultural base of local area

19 The burden is on the applicant to show that the change is
20 either in the local public interest or that there are factors
21 that outweigh the local public interest in favor of the change.
22 *Shokal v. Dunn*, 109 Idaho 330, 339, 707 P.2d 441, 450 (1985).
23 The determination of what elements of the public interest are
24 impacted and what the public interest requires is within the
25 sound discretion of the IDWR. *Id.* The IDWR shall weigh: the
26 economic effects of the change; the effect on water quality;

1 effect of alternative changes in place of that applied for;
2 impact of change on recreational and scenic uses; and the effect
3 on vegetation, wildlife, and fish. *Id.* See also, *In re Collins*
4 *Bros. Corp.*, 114 Idaho 600, 606, 759 P.2d 891, 897 (1988).

5 The proposed uses do not change the nature of use. The
6 uses, in fact, are in the public interest. By developing a golf
7 course, the public interest is served, as evidenced by the
8 testimony of long time Challis resident and businessman Danny
9 Strand. Mr. Strand testified that with the increase of tourism
10 in the area, like white water rafters, cyclists and sightseers,
11 the golf course is an attractive amenity of Challis. It also
12 provides the citizens of Challis a relaxing activity that can be
13 enjoyed by many people. It also represents a community-supported
14 project that required a large degree of cooperation.

15 The transfer applications also provide for sustained
16 agricultural use of the parcels. In fact, absent transfer
17 approval, the hayfield would not be cultivated because the
18 watermaster refuses to divert water to it.

19 As stated by Mr. Bradbury, Mr. Butts and Mr. McGowan at the
20 hearing, the hayfield is a good hay producing parcel and should
21 not be held fallow. Further, the Ingrams testified that they had
22 rented the hayfield with the expectation of growing hay for their
23 herd on it. It has been uncultivated for three years even though
24 a valid water right exists that has historically irrigated that
25 field.
26

1 The protesters have not supplied any evidence that
2 cultivation of the hayfield is contrary to the public interest in
3 the area. Therefore, the Director should approve the transfer
4 applications.

5 CONCLUSION

6 The Applicant has shown, by more than a preponderance of the
7 evidence, that the transfer applications meet and exceed the
8 elements set forth by I.C. §42-222 governing transfers of water
9 rights. Specifically, the proposed transfers merely formalize
10 and document changes which have occurred over a number of years
11 since the water rights were originally decreed. Neither the
12 protesters, nor their predecessors, have ever contested the
13 points of diversion or places of use of any of the water rights
14 in the past. No proof of injury has been made to defeat the
15 Applicant's evidence of no injury. The changes constitute no
16 enlargement of use, and the changes are within the public
17 interest, comply with conservation concerns, and do not adversely
18 affect the agricultural base of the local area.

19 DATED this 1st day of May, 1992.

20 DAVIS WRIGHT TREMAINE

21
22 By: Scott L. Campbell
23 SCOTT L. CAMPBELL
24 Attorneys for Cyprus Thompson
25 Creek Mining Company
26

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May, 1992, a true and correct copy of the within and foregoing document was hand delivered to the following:

Mr. Gary Spackman
State of Idaho
Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83706

and mailed, postage prepaid, to the following:

Mark and Vicki Armbruster Protestants
P. O. Box 1127
Challis, Idaho 83226

Kent W. Foster Attorney for Protestant
HOLDEN KIDWELL HAHN & CRAPO Michael Shannon
330 Shoup Avenue
P. O. Box 50130
Idaho Falls, Idaho 83405

Ray Keppner Protestant
P. O. Box 243
Challis, Idaho 83226

Mr. & Mrs. James A. Lynch Protestants
P. O. Box 847
Challis, Idaho 83226

Scott L. Campbell

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CUSHER.

John A. Adams, J. A. Harrington, Charles F. Wilkey,
Thomas Chivers, W. D. Bradbury, Belle W. Thompson,
George Thompson, Ethel Philps, Lizzie Chivers,
George E. Peyser, Peter McKinney, George E. Keyes,
W. W. Keyes, W. E. Oster, W. P. Wilson, Ida B.
Wilson, Ralph Baxter, Julia Metzgar, Lynn Wilkin-
son, Clyde Wilkinson, Alice B. Chamberlain,
Rodger Brassner, John Boyd, Lockhart Boyd, H. M.
A. L. Small and M. Millick, Plaintiffs.

vs.

R. B. Vandervoort, H. M. Sweet, Lavantia McGowan,
Nanett Hosford, Kate Cameron, Della McGowan,
C. W. Wilkinson, Elizabeth Wells, Mary Horton,
G. E. Fuchs, J. E. Horton, Perry Shull, Hannah
Hahn, Guy Bradbury, Thomas Jose, Jr., James A.
Mcadden, Esther Van Camp, Ed. O'Neal, Custer
County, Lillie S. McVendrick, Challis Independent
School District No. 1, J. C. Fox, Gertrude D.
Brown, Paul Gardiol, M. A. Brown, F. Nickerson,
Chas. D. Wilkinson, A. M. Wilson, F. M. Deane,
W. M. Peck, Thomas Jose, Ethel Kerr, First
Congregational Church of Challis, George Coryell,
Leo Watson, Ros. Rodgers, E. J. Michael and
H. M. Sweet as Executors of the Estate of J. C.
Winnell, L. Blume, J. H. VanCamp, G. T. Potter,
Eulore Puffman, J. L. Riley, L. L. Moats,
J. L. Moats, Henry Horton, Earl J. Michael,
David B. Drake, Mabel Rowles, Consuella Howell,
Idalene Michael, E. J. Michael as Executor of the
Estate of L. H. Johnston, Hollie Elder, Joseph
T. Abbotts, L. E. Glennon, Nick Z. Kiser,
Julius Blume, Sr., A. E. Blume, William Klug,
John P. Bradbury, William Buster, Barbara E.
Watson, Barbara M. Watson as Guardian of the
Estate of William Treloar, Rodger Brassner,
L. Rock, Maggie Jose, W. E. Adamson, Mattie
Adams, William Chivers, William Nickson,
Village of Challis, Alex. Klug, Margaretha
Klug, Mabel Adamson, Louise S. Treloar,
L. Violet Bradford, Jennie Dodge, T. J. Kerr,
Leo Ferr, Mackay and Central Idaho Stage
Company, a corporation,

This cause having heretofore come on for hearing before
Andrew J. Higgins, a referee who had been regularly appointed by the
Court for that purpose, and said hearing having been had without a
jury;

The evidence and the proofs of the respective parties having
been submitted to the said referee for his consideration, and he having
filed herein his findings of fact and conclusions of law, and this
Court having adopted said findings of fact and conclusions of law.

HEREFORE by reason of the law and the findings and con-
clusions aforesaid:

EXHIBIT A

Now, it is therefore ordered, adjudged and decreed that the waters of Garden Creek, and its tributaries, situated in the County of Custer, State of Idaho, be, and the same are hereby distributed, awarded and decreed to the several parties to this suit, for beneficial purposes and uses, in amounts and of the dates, and for the lands, with priority of rights in accordance with said dates, as follows, to-wit:

72 0047 1. To the plaintiff, John Q. Adams, One Hundred and Two (102) inches, or Two and Four (2.04) cubic feet per second of time, for the irrigation of

East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$), East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$), Section Twenty-two (22), Township Fourteen (14) North, Range Nineteen (19) East of the Boise Meridian, containing One Hundred and Sixty (160) acres

his right to date from October 24, 1877.

72 0048 2. To the plaintiff, John Q. Adams, 160 inches, or 2.2 cubic feet per second of time for the irrigation of

SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 22; NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 27, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from May 15, 1901.

72 0049 3. To the plaintiff, J. A. Harrington, ~~60 inches, or 1.6 cubic feet from Garden Creek and the waters of a slough known as the Tawalt~~ slough consisting of about 20 inches, or .4 cubic feet, for the irrigation of

NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, Lot 3, Sec. 23, T. 14 N., R. 19 E., B. M. containing 171.9 acres

his right to date from March 22, 1878.

72 0050 4. To the plaintiff, J. A. Harrington, 60 inches, or 1.2 cubic feet for the irrigation of

N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 27; N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 28, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from June 21, 1908.

72 0051 5. To the plaintiff, Charles F. Zilkey, 160 inches, or 2.2 cubic feet for the irrigation of

SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 27, T. 14, N., R. 19 E., B. M., containing 160 acres

his right to date from May 15, 1880.

72 0052 6. To the plaintiff, Thomas Chivers, 10 inches, or 1/5 cubic foot for the irrigation of a tract of land described as follows:

Commencing at the corners of Secs. 28, 29, 32 and 33, T. 14 N., R. 19 E., B. M., running thence North 18 rods and 8 links, thence East 20 rods, thence North 4 rods, thence East 52 rods, thence South 22 rods and 8 links, thence West 80 rods to place of beginning, containing 10.3 acres

his right to date from May 15, 1895.

72 0056. To the plaintiff, W. D. Bradbury, 55 inches, or 1.1 cubic foot for the irrigation of

that portion of the NW¹/₄, NE¹/₄, Sec. 31, T. 14 N., R. 19 E., B. M., which lies North of the Challis-Bonanza wagon road which wagon road is a continuation of the main street of Challis Village in Custer County, Idaho, containing 100 acres more or less

his right to date from May 15, 1878.

72 0057. To the plaintiffs, Belle W. Thompson, George Thompson, Ethel Philips and Lizzie Chivers, 74 inches, or 1.48 cubic foot for the irrigation of

SE¹/₄, SW¹/₄, SE¹/₄ NW¹/₄, Sec. 31, T. 14 N., R. 19 E., B. M., containing 160 acres

their right to date from March 5, 1879.

72 0058. To the plaintiff, George Thompson, 47 inches, or .94 cubic foot for the irrigation of

NE¹/₄, NW¹/₄, Sec. 31, T. 14 N., R. 19 E., B. M., containing 100 acres,

his right to date from March 5, 1879.

72 0059. To the plaintiff, George E. Keyser, 94 inches, or 1.88 cubic feet, for the irrigation of

NE¹/₄, SW¹/₄, NW¹/₄, Sec. 28, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from February 2, 1910.

72 0060. To the plaintiff, Peter McKinney, 55 inches, or 1.1 cubic foot for the irrigation of

W¹/₂ SE¹/₄, SW¹/₄, Sec. 15; E¹/₂ SE¹/₄, Sec. 16; E¹/₂ NE¹/₄, Sec. 21; NW¹/₄, NE¹/₄, Sec. 22, T. 14 N., R. 19 E., B. M., containing 520 acres

his right to date from May 15, 1887.

72 0061. To the plaintiffs, George E. Keyes and E. W. Keyes, 4 inches, or .1 cubic foot for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at a point 57.7 feet South of the Northeast corner of Block 2, thence East 150 feet, thence North 57.7 feet to the North line of Block 2, thence North 75 feet, thence East 75 feet, thence South 75 feet, thence West to a point 40 feet East of the West line of Sec. 32, T. 14 N., R. 19 E., B. M., thence North and parallel with said West line of Sec. 32 to the North line of said Sec. 32, thence East to a point directly North of the Northeast corner of Block 3, thence South to the Northeast corner of said Block 3, thence West to the Northwest corner of said Block 3, thence South 57.7 feet, thence East to the point of commencement, containing about 4 acres

their right to date from May 15, 1885.

- 72 0059 13. To the plaintiff, W. T. Oster, 3 inches, or .06 cubic feet for the irrigation of a tract of land situate within the townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at a point 25 feet South of the Northwest corner of Block 2, thence East 75 feet, thence North 100 feet, thence West 75 feet, thence South 100 feet to the point of beginning, containing an area of about 2 town lots of the said Village of Challis

his right to date from May 15, 1895.

- 72 0060 14. To the plaintiffs, E. P. Wilson and Ida B. Wilson, 8 inches or .16 cubic feet for the irrigation of

Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 8, also that piece of land described as commencing at the Northwest corner of Block 8, running thence North 87.5 feet to the North line of Sec. 28, T. 14 N., R. 19. E., B. M., thence East 200 feet more or less to a point opposite the Northeast corner of said Block 8, thence South to the Northeast corner of Block 8 thence West 200 feet more or less to the point of commencement

their right to date from May 15, 1888.

- 72 0061 15. To the plaintiffs, E. P. Wilson and Ida B. Wilson, 4 inches or .04 cubic feet, more or less, being all the water of a certain stream rising in a cellar on Lot 6, Block 24 of the said Townsite of Challis, and which water is conveyed by box and drain to a point at the East end of the alley in Block 26 of said Townsite, from the North line of

Lots 1 and 3 in Block 27 of the Townsite of Challis, Custer County, Idaho

their right to date from November 1, 1909.

- 72 0062 16. To the plaintiff, Ralph Baxter, 2 inches, or .04 cubic feet for the irrigation of

Lot 8 in Block 17 of the Townsite of Challis, Custer County, Idaho

his right to date from May 15, 1884.

- 72 0063 17. To the plaintiff, Julia Metzgar, 3 inches, or .06 cubic feet for the irrigation of

Lots 6 and 8 in Block 18 of the Townsite of Challis, Custer County, Idaho.

her right to date from May 15, 1890.

- 72 0064 18. To the plaintiff, Lynn Wilkinson, 5 inches, or .1 cubic feet for the irrigation of a tract of land situate within the townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

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Commencing at the Northwest corner of Block 7, thence North to the North line of Sec. 33, T. 14 N., R. 19 E., B. M., thence East 200 feet more or less, thence South to the Northeast corner of said Block 7, thence West to the place of commencement; also Lots 2, 4, 6 and 8 of said Block 7

his right to date from April 15, 1888.

72 0065 19. To the plaintiff, Clyde Wilkinson, 5 inches, or .1 cubic foot for the irrigation of

Lots 2, 4, 6 and 8 of Block 9 and a strip of ground commencing at the Northeast corner of said Block 9 and running thence North 80 feet more or less to the North line of Sec. 32, T. 14 N., R. 19 E., B. M., thence West along said section line 200 feet, thence South to the Northwest corner of said Block 9, thence East 200 feet to the place of commencement

his right to date from May 15, 1888.

72 0066 20. To the plaintiff, Alice B. Chamberlain, 10 inches, or .2 cubic foot for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at the Northwest corner of Block 1 and running thence South to the Southwest corner of Lot 2, Block 12, thence East to the Southwest corner of Lot 6, Block 12, thence North 10 feet, thence East 102.2 feet, thence North to the Northeast corner of Block 1, thence West to the point of commencement

her right to date from May 15, 1880.

72 0067 21. To the plaintiff, Rodger Brassuer, 2 inches, or .04 cubic feet for the irrigation of

Lot 6 in Block 36 of the Townsite of Challis, Custer County, Idaho

his right to date from June 15, 1894.

72 0068 22. To the plaintiffs, John Boyd and Lockhart Boyd, 5 inches, or .1 cubic foot for the irrigation of

Lots 5, 6, 7 and 8 in Block 50 of the Townsite of Challis, Custer County, Idaho

their right to date from May 15, ~~1884~~ 1884.

72 0069 23. To the plaintiffs, C. J. Kerr and Lee Kerr, 1 inch, or .02 cubic feet for domestic purposes, to-wit, watering stock on

Lot 4 in Block 15 of the Townsite of Challis, Custer County, Idaho,

their right to date from May 15, 1885.

72 0070 24. To the defendant, M. M. Sweet, 3 inches, or .06 cubic feet for the irrigation of

The East 41.6 feet of Lot 3; the West 41.6 feet of Lot 5; all of Lot 4 except 10 feet on the West side and 7 feet on the East side, all in Block 2 of the Townsite of Challis, Custer County, Idaho.

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his right to date from May 15, 1882.

72 0071 25. To the defendant, Lavantia McGowan, 4 inches, or .08 cubic feet for the irrigation of

Lots 2, 4 and 6 in Block 39 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 0072 26. To the defendant, Emmett Hosford, 3 inches, or .06 cubic feet for the irrigation of

Lots 1 and 3 in Block 3 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1910.

72 0073 27. To the defendant, Kate Cameron, 3 inches, or .06 cubic feet, for the irrigation of Lots

Lots 1 and 3 in Block 17 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 0074 28. To the defendant, Della McGowan, 5 inches, or .1 cubic foot for the irrigation of

Lots 1, 3, 5 and 7 in Block 18 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 0075 29. To the defendant, C. E. Wilkinson, 6 inches, or .12 cubic feet for the irrigation of

Lots 1, 2, 3, 4 and 6 in Block 25 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1882.

72 0076 30. To the defendant, Elizabeth Wells, 3 inches, or .06 cubic feet for the irrigation of

Lots 5 and 7 in Block 7 of the Townsite of Challis, Custer County, Idaho.

her right to date from May 15, 1883.

72 0077 31. To the defendant, Mary Horten, 6 inches, or .12 cubic feet, for the irrigation of

Lots 1, 2, 3, 4 and 5 and 50 feet adjoining Lot 1 in Block 6 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1880.

72 0078 32. To the defendant, G. E. Fuchs, 6 inches, or .1 cubic feet for the irrigation of

Lots 1 and 3 in Block 5, Lots 2 and 4 in Block 16 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1881. 5 1883

33. 33. To the defendant, Hannah Malm, 3 inches, or .06 cubic feet for the irrigation of

72 6079

Lots 1 and 3 in Block 24 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 6080 To the defendant, Guy Bradbury, 40 inches, or .8 cubic feet for the irrigation of

SW¹/₄ NW¹/₄, Sec. 32, T. 14 N., R. 19 E., B. M., containing 40 acres,

his right to date from June 20, 1910.

72 6081 To the defendant, Thomas Jose, Jr., 4 inches, or .08 cubic feet for the irrigation of

Lots 5, 7 and 8 and 5.6 feet of Lot 6 in Block 6 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1882.

72 6082 36. To the defendant, James A. McFadden, 8 inches, or .16 cubic feet for the irrigation of

Lots 1, 2, 3, 4, 5, 6, 7 and 8 in Block 21; and 20 feet of the West side of Lots 1 and 2 in Block 22 of the Townsite of Challis, Custer County, Idaho.

his right to date from May 15, 1885.

72 6083 To the defendant, Esther VanCamp, 5 inches, or .1 cubic feet for the irrigation of

Lots 5 and 7 in Block 40; Lots 6 and 8 in Block 52 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1889.

72 6084 38. To the defendant, Ed. O'Neal, 3 inches, or .06 cubic feet for the irrigation of

Lots 2 and 4 in Block 27 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1886.

72 6085 39. To the defendant, Custer County, 8 inches, or .16 cubic feet for the irrigation of

Block 29 of the Townsite of Challis, Custer County, Idaho,

its right to date from May 15, 1901.

72 6086 40. To the defendant, Lillie S. McKendrick, 3 inches, or .06 cubic feet for the irrigation of

Lots 1 and 3 in Block 38 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

41. To the Defendant, Challis Independent School District, No. 1,
8 inches, or .16 cubic feet for the irrigation of
72 0087 Block 30 of the Townsite of Challis, Custer County,
Idaho,

its right to date from May 15, 1896.

42. To the defendant, J. C. Fox, 3 inches, or .06 cubic feet,
72 0088 for the irrigation of

Lots 6 and 8 in Block 15 of the Townsite of Challis,
Custer County, Idaho,

his right to date from May 15, 1888.

72 0089 To the defendant, J. C. Fox, 5 inches, or .1 cubic feet
for the irrigation of a tract of land situate within the Townsite of
Challis, Custer County, Idaho, and more particularly described as
follows, to-wit:-

Commencing at the corner of Sixth Street and the alley
between North and Main Avenues, Block 16, Lot 8, thence West
100.4 feet, thence North 300 feet, thence East 100.4 feet, thence
South 300 feet to the place of beginning

his right to date from May 15, 1888-1887

44. To the defendant, Gertrude D. Brown, 15 inches, or .1 cubic
72 0090 feet, for the irrigation of

Lots 1, 3, 5 and 7 in Block 37 of the Townsite of
Challis, Custer County, Idaho,

her right to date from May 15, 1888-1887

72 0091 To the defendant, Paul Gardiol, 8 inches, or .16 cubic
feet for the irrigation of

Lots 1, 3, 5 and 7 in Block 47; Lots 6 and 8 in
Block 48; Lots 2 and 4 and the West Half of Lot 3 in Block
47 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1912.

72 0092 45. To the defendant, J. L. Riley, 3 inches, or .06 cubic feet
for the irrigation of

Lots 6 and 8 in Block 54 of the Townsite of Challis,
Custer County, Idaho,

his right to date from May 15, 1910.

72 0093 To the defendants, A. L. Moats and J. B. Moats, 15 inches
or .1 cubic feet for the irrigation of

Lots 1, 3, 5 and 7 in Block 54 of the Townsite of
Challis, Custer County, Idaho,

their right to date from May 15, 1910.

48. To the defendant, Henry Horton, 5 inches, or .1 cubic feet
72 0094

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for the irrigation of

Lots 1, 2, 3 and 4 in Block 31 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 30, 1912.

72 1095 To the defendant, Earl J. Michael, 3 inches, or .06 cubic feet for the irrigation of

Lots 1 and 3 in Block 9 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1885.

72 1096 To the defendant, Earl J. Michael, 2 inches, or .04 cubic feet for the irrigation of

Lot 4 in Block 19 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1885.

72 1097 51. To the defendant, David B. Drake, 9 inches, or .16 cubic feet for the irrigation of

Lots 6 and 7 in Block 9; Lots 1, 3, 5 and 7 in Block 10; Lots 1, 2, 3, 4, 5, and 6 and 8 feet on the west side of Lots 7 and 8 in Block 20 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1885.

72 1098 52. To the defendant, Mabel Rowles, 3 inches, or .06 cubic feet for the irrigation of

Lots 1 and 3 in Block 7 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1883.

72 1099 To the defendant, Consuella Howell, 3 inches, or .06 cubic feet for the irrigation of

Lots 6 and 8 in Block 38 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1907.

72 1100 To the defendant, Idalene Michael, 3 inches, or .06 cubic feet for the irrigation of

Lots 6 and 8 in Block 19 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 1101 To the defendant, Earl J. Michael, Executor of the Will of L. H. Johnston, deceased, 4 inches, or .08 cubic feet for the irrigation of

Lots 6 and 8 in Block 7; Lots 2, 4, 6 and 8 in Block 72 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1898.

56. To the defendant, Nellie Elder, 5 inches, or .1 cubic feet
for the irrigation of

72 0102 Lots 1, 3, 5 and 7 in Block 23 of the Townsite of
Nellie's, Custer County, Idaho.

her right to date from May 15, 1882.

57. To the defendant, Joseph L. Ebberts, 2 inches, or .04 cubic
72 0103 feet, for the irrigation of

Lot 1 in Block 4 of the Townsite of Challis, Custer
County, Idaho.

his right to date from May 15, 1911.

58. To the defendant, Joseph L. Ebberts, 3 inches, or .06 cubic
72 0104 feet for the irrigation of.

Lots 5 and 7 in Block 16 of the Townsite of Challis,
Custer County, Idaho.

his right to date from May 15, 1883.

59. To the defendant, E. W. Glennon, 3 inches, or .06 cubic
72 0105 feet for the irrigation of

Lots 2 and 4 in Block 54 of the Townsite of Challis,
Custer County, Idaho.

his right to date from May 15, 1910.

72 0106 To the defendant, Alex W. Kiser, 70 inches, or 1.14 cubic
feet for the irrigation of

SE 1/4, NW 1/4, Sec. 2, T. 15 N., R. 18 E., B. M.,
N. 1/4, R. 18 E., B. M.,

his right to date from May 15, 1890.

72 0107 To the defendant, Julius Blume, Sr., 3 inches, or .06 cubic
feet, for the irrigation of

Lots 1 and 3 in Block 39 of the Townsite of Challis,
Custer County, Idaho.

his right to date from May 15, 1899.

72 0108 To the defendant, A. F. Blume, 3 inches, or .06 cubic feet
for the irrigation of

Lots 5 and 7 in Block 28, of the Townsite of Challis,
Custer County, Idaho.

his right to date from May 15, 1904.

72 0109 To the defendant, William Klug, 60 inches, or 1.2 cubic feet
for the irrigation of

NE 1/4, NW 1/4, Sec. 2, T. 15 N., R. 18 E., B. M.,
SE 1/4, NW 1/4, Sec. 35, T. 15 N., R. 18 E., B. M.,

his right to date from May 15, 1889.

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64. To the defendant, John P. Bradbury, 255 inches or 2.96

72-0110 cubic feet for the irrigation of

NE 1/4, NW 1/4, SE 1/4, S 1/2, SW 1/4, NE 1/4, Sec. 32, T. 14 N., R. 19 E., B. M.; also

All that land embraced in the following description, to-wit:- Commencing at a point on the West line of the Challis Townsite known as the old Challis and Bonanza road, said point of commencement being the Northeast corner of said tract of land, and running from said point of commencement along the South line of said Challis and Bonanza road, 3/4 mile in a Westerly direction to the West line of Sec. 32, T. 14 N., R. 19 E., B. M.; thence South to the South line of the NW 1/4 of said Section, Township and Range, thence East 1/2 mile, thence South 1/2 mile, thence East 1/2 mile to the East line of the Challis Townsite, thence North along the East line of said Challis Townsite to the place of beginning, all in Sec. 32, T. 14 N., R. 19 E., B. M. and containing about 240 acres.

5.5 feet
0.04 cu. ft.
2.1 cu. ft.

his right to the use of 105 inches, or 2.1 cubic feet, of the said water

to date from May 15, 1870; and to the use of 43 inches, or .56 cubic

72-0111

feet of the said water to date from May 15, 1899.

72-0112 To the defendant, William Buster, 5 inches, or .1 cubic feet

for the irrigation of

Lot 1 and the West 10 feet of Lot 2 throughout its entire length, the South 75 feet of Lot 2, the West 10 feet of Lot 1 to the depth of 75 feet from the alley North, approximating 4 lots, all in Block 2 of the Townsite of Challis, Custer County, Idaho.

his right to the use of 5 inches, or .06 cubic feet of the said water

to date from May 15, 1881; and to the use of 2 inches, or .04 cubic

72-0113

feet of the said water to date from May 15, 1884.

72-0114 66. To the defendants, Barbara E. Watson and Barbara E. Watson

as Guardian of the Estate of William Treloar, 5 inches, or .1 cubic

feet for the irrigation of

Lots 6 and 8 in Block 37; Lots 6 and 7 in Block 39 of the Townsite of Challis, Custer County, Idaho.

their right to date from May 15, 1884.

72-0115 To the defendant, Rodger Brassner, 2 inches, or .04 cubic

feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows.

To-wit:-

Commencing at a point 50 feet North of the Southeast corner of Lot 7 in Block 2 and running thence West 65 feet, thence in a southerly direction 50 feet to a point on the South line of Lot 3 in Block 7, 11 feet from the Southeast corner of said Lot 3, thence continuing in a southerly direction 25 feet, thence East 65 feet, thence North 75 feet to place of beginning, approximating 1 lot.

his right to date from May 15, 1881.

68. To the defendant, L. Beck, 10 inches, or .2 cubic feet for

72-0116

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the irrigation of

All that lot, piece or parcel of land situate in the NW 1/4, Sec. 32, T. 14 N., R. 19 E., S. 11, in Custer County, Idaho and described more particularly as follows, to-wit:
Beginning at a point 390 feet West of the Southwest corner of Block 12 of the Townsite of Challis, said point being on the North line of Main Street of said Challis, extended, being at line fence between the J. D. Bradbury property and defendant's land, thence thence Northwesterly 604 feet, more or less, to the North line of Sec. 32, T. 14 N., R. 19 E., S. 11, thence East along said North line of said Sec. 32 to the Northeast corner of the NW 1/4, Sec. 32, thence South along the East line of said NW 1/4, to the line of said Main Street of Challis, extended, thence West along the line of said Main Street, extended, to place of commencement, containing about 5 acres more or less.

his right to date from May 15, 1878.

72 01199. To the defendant, L. Peck, 9 inches, or .18 cubic feet, for the irrigation of

Lots 2, 4, 6 and 8 in Block 75; Lots 2, 4, 6 and 8 in Block 74; Lots 2, 4, 6 and 8 in Block 75 of the Townsite of Challis, Custer County, Idaho

his right to date from May 15, 1884.

72 01198. To the defendant, Maggie Jose, 5 inches, or .1 cubic feet, for the irrigation of

The North Half of Block 13 of the Townsite of Challis, Custer County, Idaho, containing 4 lots,

her right to date from May 15, 1882.

72 01197. To the defendant, J. L. Adanson, 3 inches, or .06 cubic feet for the irrigation of a tract of land situate within the townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:

Commencing at the Southeast corner of Lot 8 in Block 2, thence following along the South line of Lots 8, 6 and 4, a distance of 112 feet, thence at right angles South a distance of 65 feet, thence at right angles East a distance of 112 feet to the East line of Lot 7, thence at right angles North along the East line of said Lot 7, a distance of 65 feet to place of beginning.

his right to date from May 15, 1881.

72 01196. To the defendant, Mattie Waters, 3 inches, or .06 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:

Commencing at the Southeast corner of Lot 8 in Block 2, thence running thence North 56.8 feet, thence East 112 feet, thence South 56.8 feet, thence West 112 feet to place of beginning, the same being a portion of Lots 4, 6 and 8 in Block 2,

her right to date from May 15, 1885.

73. To the defendant, William Chivers, 81 inches, or .06 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:

All that parcel of land lying between Lots 2 and 4 in Block 14 and Lots 1 and 3 in Block 3, the same being 80 feet wide and 102 feet long,

his right to date from May 15, 1907.

72 0122 74. To the defendant, William Hickson, 3 inches, or .06 cubic feet for the irrigation of

lots 5 and 7 in Block 33 of the Townsite of Challis, Custer County, Idaho,

his right to date from April 15, 1880.

72 0123 75. To the defendant, Village of Challis, 7 inches, or .12 cubic feet for the irrigation of a tract of land situate within the corporate limits of the Village of Challis, County of Custer, State of Idaho, and more particularly described as follows, to-wit:-

Commencing at the intersection of the center lines of 7th Street with Border Avenue as shown by a stone monument at said street intersection: Bears S. 17° 55' E. 157.33 feet (Mag. Var. 19° 45'); thence N. 87° 55' E. 646 feet to the Northeast corner; thence S. 2° 5' E. 306 feet to the Southeast corner; thence N. 87° 55' W. 646 feet to the Southwest corner; thence E. 2° 5' W. 306 feet to the Northwest corner; the place of beginning; including all of what is now shown as the Challis Cemetery besides 2.33 acres in addition thereto, all of which is shown more fully by the official plat thereof on file with the County Recorder of Custer County.

its right to date from May 15, 1904.

72 0124 76. To the defendant, Alex. Klug, 51 inches, or .10 cubic feet for the irrigation of

SE 1/4, NW 1/4, NE 1/4, Sec. 35, T. 14, N., R. 18 E., B. M.,

his right to date from May 15, 1879.

72 0125 77. To the defendant, Alex. Klug, 53 inches, or .10 cubic feet for the irrigation of

Lots 2 and 3, Sec. 31, T. 14 N., R. 18 E., B. M., containing 82 acres, more or less,

his right to date from August 15, 1910.

72 0126 78. To the defendant, Margaretha Klug, 80 inches, or .16 cubic feet for the irrigation of

NE 1/4, NW 1/4, Sec. 31, T. 14 N., R. 18 E., B. M., containing 80 acres,

her right to date from August 15, 1910.

79. To the defendant, Mabel Adamson, 5 inches, or .1 cubic foot for the irrigation of the North Half of Block 8 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1909.

72-0128 To the defendant, Louise S. Treloar, 6 inches, or .12 cubic feet for the irrigation of a tract of land described as follows:

Commencing at a corner stone 2.8 chains to the Southeast of the center of the SW1/4, Sec. 28, T. 14 N., R. 19 E., S. 11, running North 48 rods to the North line of the said SW1/4, thence East 48 rods to section line between Secs. 28 and 29, thence South along said section line 48 rods, thence East 48 rods to place of beginning, containing about 14.75 acres,

her right to date from May 15, 1901.

72-0129 To the defendant, L. Violet Bradford, 4 inches, or .08 cubic feet for the irrigation of

lots 2, 4 and 6 in Block 17 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1882.

72-0130 82. To the defendant, Jennie Dodge, 3 inches, or .06 cubic feet for the irrigation of

lots 1 and 3 of Block 40 of the Townsite of Challis, Custer County, Idaho,

72-0188

84. To the defendant Joseph H. Horton three inches or six one

hundredths of a cubic foot for the irrigation of lots one and

three in Block 30 of the townsite of the town of Challis, Custer county, Idaho, his right to date from May 15th, 1884.

whereof the well creek, in the order of priority herein set forth, or in the manner or to the extent above set forth.

It is further ordered and decreed that each of the parties hereto shall bear his own costs and expenses in this action.

Done this 19th day of May, 1914.

Filed May 23rd 1914

Att. General's Office

14-

J. W. Steiner
District Judge.

State of Idaho)
 : ss.
County of Custer)

I, E. J. Michael, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Custer, hereby certify that I have compared the foregoing copy with the record, which appears in the Judgment Book of said county and state, at pages 788 to 798, inclusive, and that the same is a full, true and complete copy of such record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 25th day of May, 1914.

E. J. Michael
Clerk of the District Court.

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MAY 25 1914

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	FINAL ORDER ADOPTING
TRANSFER 3745 AND 3747)	
(PERMIT NO.'S 72-00048, 72-00051B)	PROPOSED MEMORANDUM
72-00051L, 72-00051N, 72-00110,)	DECISION AND ORDER
72-00111) IN THE NAME)	
OF CYPRUS THOMPSON CREEK MINING CO.)	

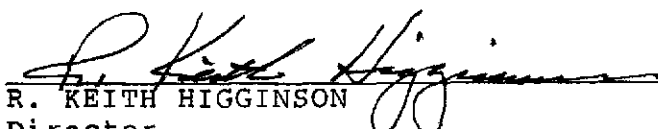
WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on June 2, 1992, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order, and Application for Transfer No.'s 3745 and 3747 (Permit No.'s 72-00048, 72-00051B, 72-00051L, 72-00051N, 72-00110 and 72-00111) are APPROVED.

Dated this 18TH day of JUNE, 1992.


R. KEITH HIGGINSON
Director

RECORDED

JUN 26 1992

I HEREBY CERTIFY THAT on this 18th day of June, 1992, a true and correct copy of the Final Order Adopting the Proposed Memorandum Decision and Order was mailed, postage prepaid to the following:

Susan Buxton
Davis Wright Tremain
702 West Idaho, Ste 700
Boise, ID 83702

Scott Campbell
Davis Wright Tremain
702 West Idaho, Ste. 700
Boise, ID 83702

Michael Shannon
P.O. Box 1039
Challis, ID 83226

Kent W. Foster
P.O. Box 50130
Idaho Falls, ID 83405

Tom Jacob
Box 31
Challis, ID 83226

Lawrence F. Bradbury
4082 Fairway Drive
Lewiston, ID 83501

John S. Smith
Box 27
Challis, ID 83226

Will Ingram
HC 61 Box 3020
Challis, ID 83226

Scott Benowitz
Montgomery Engineers
161 Mallard Drive
Boise, ID 83706

Paris Almond
Box 1039
Challis, ID 83226

Gene King
Box 501
Challis, ID 83226

Nola Lynch
Box 847
Challis, ID 83226

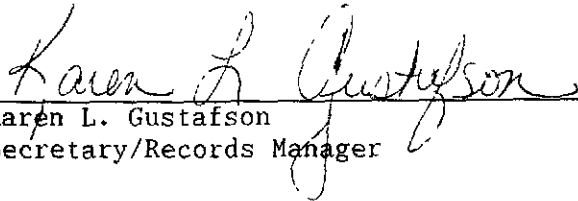
Bert Doughty
P.O. Box 62
Clayton, ID 83227

Jim McGowan
HC 63 Box 1530
Challis, ID 83226

Dave Bergey
P.O. Box 62
Clayton, ID 83227

Dee Keppner
Box 281
Challis, ID 83226

Ray Keppner
Box 243
Challis, ID 83226


Karen L. Gustafson
Secretary/Records Manager

JUN 26 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Should questions arise during
the processing of this
Transfer No. 3745Boise, ID 83701-1036
343-5434Name of applicant Cyprus Thompson Creek Mining Company Phone (208) 838-2200
Post Office address c/o David Bergey, P.O.Box 62, Clayton, Idaho 83227

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Applicant wishes to formalize and document changes which have occurred over a number of years since the water right was originally decreed. These changes represent a reduction of the amount of irrigated acres as described in the decree establishing these 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>72-00051N</u>	<u>5/15/1888</u>	<u>.30</u>	<u>irrigation</u>	<u>4/1</u> to <u>11/1</u>
<u>72-00051B</u>	<u>5/15/1888</u>	<u>.50</u>	<u>irrigation</u>	<u>4/1</u> to <u>11/1</u>
<u>72-00051L</u>	<u>5/15/1888</u>	<u>.25</u>	<u>irrigation</u>	<u>4/1</u> to <u>11/1</u>
<u>72-00048</u>	<u>5/15/1901</u>	<u>2.6 *</u>	<u>irrigation</u>	<u>4/1</u> to <u>11/1</u>

2. Total amount of water being transferred 2.6 cubic feet per second and/or _____ acre-feet per annum.3. Source of water Garden Creek tributary to Salmon River4. Point(s) of Diversion: * Reduction in quantity of water and acres at place of use from recorded and claimed right.

Lot	1/4	1/4	1/4	Sec.	Twp	Rge	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch
		NW	NW	32	14N	19E	Custer	Upper Bradbury Ditch

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	
14N	19E	33													20	30	30	30	100
14N	19E	34									20	10							30

Total acres 130

PART 1

6 General Information.

a. Description of diversion system Water diverted with rock jetty into metal measuring flume. Flow is controlled by wheel valve at diversion point. Earthen ditch system to 8" steel pipeline connected to sprinkler wheel lines.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XXX 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.
None - change has been in effect for a number of years.

d. Remarks.
The change reflects actually irrigated acres and represents a reduction from the number of acres listed as the place of use on the decree creating these rights and a reduction from the number of acres listed on the adjudication claims. Applicant intends to amend the adjudication claims through this transfer process.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 72-00051/00048

And said application is hereby APPROVED, subject to the following limitations and conditions
PURSUANT TO ORDER DATED 6/1/92.

Witness my hand this 1ST day of JUNE, 1992

A. Glen Saylor
CHIEF, WATER ALLOC. BUREAU JUN 26 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by.

- a. Decree No 72-00051B Decreed to Charles F. Zilkey
in case of Adams, et al. vs Vandervoort
dated May 19, 1914 in 6th District county of Custer
- b. License No _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No. 72-00051B T353 which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority 5/15/1880

5. Water is used for the following purpose:

amount .50 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right .50 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp.	Rge	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. 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	
14N	19E	33			40	40									40	40			160

Total acres 160

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

72-00051L, 72-00051N

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2*(Attach one copy for each right)***A. DESCRIPTION OF RIGHT AS RECORDED****1. Right evidenced by**

- a. Decree No. _____ Decreed to _____
 in case of _____ vs _____
 dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. A72-00051B on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below☐ Tax Notice☒ Warranty Deed☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority May 15, 1880

5. Water is used for the following purpose:

amount .50 for irrigation purposes from 4/1 to 11/1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right .50 cubic feet per second and/or _____ acre-feet per annum

7 Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp.	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33													30	20	30	30	110
14N	19E	34							20			40	20						80

Total Acres 190

9. Describe any other water rights used for the same purpose as described above A72-00051L, A72-00051N,
A72-00048

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1 Right evidenced by:

- a. Decree No. 72-00051L Decreed to Charles F. Zilkey
in case of Adams, et al. vs Vandervoort
dated May 19, 1914 in 6th District county of Custer
- b. License No _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No. 72-00051L 72-00051B which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority 5/15/1880

5. Water is used for the following purpose

amount .25 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6 Total amount of water under right .25 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use:

Twp.	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33			40	40									40	40			160

Total acres 160

9. Describe any other water rights used for the same purpose as described above 72-00051B, 72-00051N,

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. A72-00051L on file with the Idaho Department of Water Resources
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority May 15, 1880

5. Water is used for the following purpose

amount .25 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right .25 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use:

Twp.	Rge	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33													30	20	30	30	110
14N	19E	34							20			40	20						80

Total acres 190

9. Describe any other water rights used for the same purpose as described above A72-00051N, A72-00051B,
A72-00048

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No 72-00051N Decreed to Charles F. Zilkey
in case of Adams, et al. vs Vandervoort
dated May 19, 1914 in 6th District county of Custer
- b. License No _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No 72-00051N 77 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority 5/15/1880

5. Water is used for the following purpose

amount .30 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right .30 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use

Twp.	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33								40	40	40		40					160

Total acres 160

9. Describe any other water rights used for the same purpose as described above 72-00051L, 72-00051B

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No _____ Decreed to _____
in case of _____ vs _____
dated _____ in _____ county of _____
- b. License No _____ issued by the Idaho Department of Water Resources
- c. Claim No. A72-00051N on file with the Idaho Department of Water Resources
- d. Transfer No _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority May 15, 1880

5. Water is used for the following purpose:

amount .30 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6 Total amount of water under right .30 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp.	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33													30	20	30	30	110
14N	19E	34							20			40	20						80

Total acres 190

9. Describe any other water rights used for the same purpose as described above A72-00051L, A72-00051B
A72-00048

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

- a. Decree No 72-00048 Decreed to John Q. Adams
in case of Adams, et al. vs Vandervoort, et al.
dated May 19, 1914 in 6th District county of Custer
- b. License No _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No 193 + 177 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

- ☐ Tax Notice ☒ Warranty Deed ☐ Other Salmon River

3. Source of water Garden Creek tributary to _____

4. Date or priority 5/15/1901

5. Water is used for the following purpose.

- amount 3.20 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.20 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. 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	
14N	19E	33								30	40	30		40					140

Total acres 140

9. Describe any other water rights used for the same purpose as described above _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

- a. Decree No _____ Decreed to _____
in case of _____ vs _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. A72-00048 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority May 15, 1901

5. Water is used for the following purpose

amount 3.20 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.20 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33										10	20	40					70
14N	19E	32			30		5	5	15	35					20			20	130

Total acres 200

9. Describe any other water rights used for the same purpose as described above 72-00051N, 72-00051L,
72-00051B

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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

JUN 26 1992

PART 3**B. CHANGES IN NATURE OF USE**

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

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

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

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

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

Patricia N. A. [Signature]
(Signature of Applicant)

Subscribed and sworn to before me this 35th day of April, 19 91

[Signature]
(Notary Public)

My commission expires 12/22/91**FOR DEPARTMENT USE ONLY**Transfer contains 12 pages and 3 attachmentsReceived by MB Date 5-21-91

Protest filed by _____

Prelim. check by _____ Fee 5.00Received by J. Davidson Date 7-25-90Published in The Chatter Messenger

Copies of protest forwarded by _____

Pub. dates 8/15 + 8/22/91

Hearing held by _____ Date _____

Watermaster recommendation requested on 8-5-91Recommended for ☒ approval ☐ denial_____ rec'd. 8-20-91

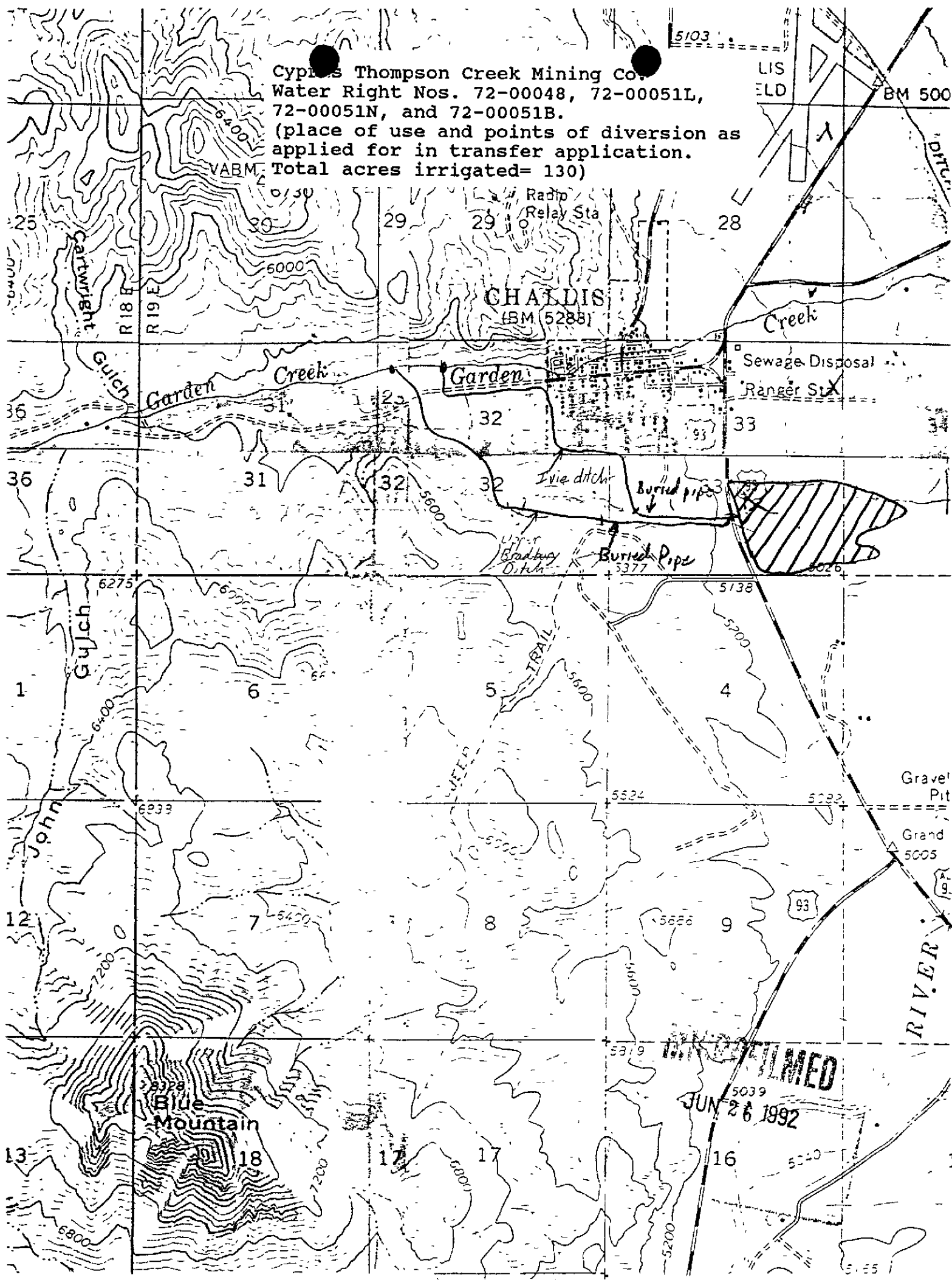
by _____

Copy of transfer sent to lien holder _____

JUN 26 1992

Cypress Thompson Creek Mining Co.
Water Right Nos. 72-00048, 72-00051L,
72-00051N, and 72-00051B.
(place of use and points of diversion as
applied for in transfer application.
Total acres irrigated= 130)

LIS
ELD
BM 500



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

IN THE MATTER OF Application for Transfer 3745 ORDER ISSUING
(Water Rights No.'s 72-00048, 72-00051B, 72-00051L, PROPOSED MEMORANDUM
72-00051N and Application for Transfer No. 3747 DECISION
(Water Rights No.'s 72-00110 and 72-00111) in the name
of Cyprus Thompson Creek Mining Company

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Gary Spackman, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

MICROFILMED
JUN 26 1992

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

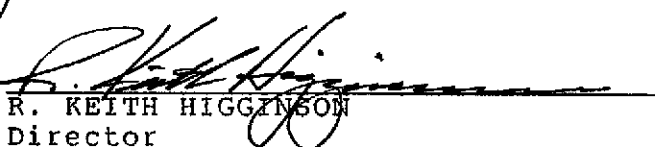
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 2nd day of June, 19 92.


R. KEITH HIGGINSON
Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER 3745 (WATER RIGHTS NO.'S	)	PROPOSED MEMORANDUM
72-00048, 72-00051B, 72-00051L,	)	DECISION AND ORDER
72-00051N) AND APPLICATION FOR	)	
TRANSFER NO. 3747 (WATER RIGHTS	)	
NO.'S 72-00110, 72-00111) IN THE NAME	)	
OF CYPRUS THOMPSON CREEK MINING CO.	)	
	)	

A hearing having been held, and evidence having been presented, the hearing officer, appointed by the Director of the Department, proposes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The water rights proposed for transfer by application number 3747, 72-00110 and 72-00111, authorize the diversion of 2.1 cfs and 0.86 cfs, respectively, for irrigation of 240 acres.

2. The points of diversion for rights 72-00110 and 72-00111 were not identified by the Adams v. Vandervoort decree (the decree). Snake River Basin Adjudication claims describe the point of diversion for rights 72-00110 and 72-00111 as the Upper Bradbury Ditch, located in the NWNW, Sec. 32, T14N, R19E. The Upper Bradbury Ditch is depicted on Figure 1 of the written testimony of Scott Benowitz, an engineer who testified for the applicant, Cyprus Thompson Creek Mining Company (Cyprus). The historical place of use is also depicted on Figure 1 of the Benowitz written testimony.

3. The water rights proposed for transfer by application no. 3745 are all defined by prior transfers, and are described below. Points of diversion were not described by the decree or the prior transfer approval documents, but were depicted on maps filed with the prior transfer applications. Locations described were taken from the applications.

4. Some of the water right numbers identified by application for transfer no. 3745 are not correct. The correct numbers are

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listed below with the wrong numbers listed in parenthesis.

<u>Right No.</u>	<u>Last Transfer</u>	<u>Flow (cfs)</u>	<u>Point of Diversion</u>
72-00048	177	1.6	NWNW, Sec 32, T14N, R19E (Upper Bradbury Ditch)
		1.6	NWNW, Sec. 32, T14N, R19E (J. Q. Adams Ditch)
72-00051B	353	0.50	SESW, Sec. 28, T14N, R19E
72-00051M (72-00051L)	372	0.25	NENW, Sec. 33, T14N, R19E (Adamson-Waters Canal)
72-00051P (72-00051N)	776	0.30	NWNW, Sec. 32, T14N, R19E (Ivie Ditch)

The old places of use are depicted on figure 1 of the Benowitz report.

5. The application for transfer proposed the following changes in point of diversion:

Transfer No. 3747

<u>Water Right</u>	<u>Flow Rate (cfs)</u>	<u>Point of Diversion</u>
72-00110	2.1 cfs	NWNW, Sec. 32, T14N, R19E (Upper Bradbury Ditch)
72-00111	.86 cfs	same

Transfer No. 3745

72-00048	2.6 cfs	NWNW, Sec. 32, T14N, R19E (Ivie Ditch)
		NWNW, Sec. 32, T14N, R19E (Upper Bradbury Ditch)
72-00051B	0.50 cfs	same
72-00051M	0.25 cfs	same
72-00051P	0.30 cfs	same

The proposed place of use is also depicted on figure 1 of the Benowitz report.

6. Transfer no. 177, approved in 1944, authorized the

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diversion of 1.6 cfs of water right 72-00048 from the Upper Bradbury Ditch, and also approved the diversion of 1.6 cfs from the Adams Ditch. The Adams Ditch, as described by the transfer approval document, diverted water at the approximate location of the ditch referred to in the hearing as the Ivie Ditch.

7. Protests were filed against the applications for transfer by four individuals: Ray Keppner, Michael Shannon, James A. Lynch, and Mark and Vicki Armbruster.

8. Two issues were raised regarding possible injury to other water users. First, the protestants alleged that the transfers would result in the diversion of water at a location upstream from the original points of diversion. The protestants argued that Garden Creek is a gaining stream, and, by moving the points of diversion upstream, there will be less water in the creek to satisfy the water rights, resulting in injury to later-in-time right holders whose points of diversion are located higher up Garden Creek Canyon.

9. The second issue raised is that the place of use will be farther from Garden Creek, and return flows will no longer reach Garden Creek.

10. Figure 1 in the written testimony depicts the place of use to which the rights were originally appurtenant, and also depicts the lands to which the transfer applications propose a transfer. The proposed place of use for the rights listed on application for transfer no. 3747 does not change substantially from the place of use previously irrigated. The place of use proposed for transfer no. 3745 is generally located south of the old place of use, although it overlaps some of the old place of use. The topographic slope, or flow direction, of the proposed place of use is essentially the same as the flow direction of the old place of use.

11. The change in the place of use is not significant enough to cause any changes to the flow of Garden Creek.

12. Benowitz measured Garden Creek at three locations depicted on Figure 3 of his written testimony. In November of

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1991, he measured the flows of Garden Creek at the identified sites, and found that Garden Creek was losing water between each of his measuring sites. He acknowledged, however, that a prior court case, Keppner v. Department of Water Resources, Case No. 2690 (1987, 7th District Court), rules that an almost identical reach of Garden Creek as the reach measured by Benowitz gained water during the irrigation season. The appendix of the Benowitz written testimony also contains measurement notes and computations by the Department of Water Resources which confirm that Garden Creek gains water during the irrigation season through approximately the same reach measured by Benowitz.

13. Prior studies in 1935 by Fred A. Tolman, a department employee, concluded that Garden Creek gains approximately 23 inches between the diversion of the Village of Challis and the lower diversions on the creek, which presumably included the Hesson Ditch.

14. At the time of Tolman's analysis, he measured 89 miners inches of available flow at the lowest measuring point. This represented a 25 per cent gain in Challis Creek.

15. Other measurements by Gary Funderburg in 1979 show higher stream flows, and also larger gains. Funderburg measured gains between approximately 20 and 30 percent. Some of Funderburg's field notes are reproduced in Appendix G of Benowitz's written testimony.

16. Benowitz distinguishes between the court's and the Department's conclusions, and his conclusions by stating that he did not measure as far downstream as the department. Measuring site three, which is the most down stream point where flows were measured by Benowitz, is located less than 1/2 mile upstream from where the Challis Creek Road crosses Garden Creek. The Challis Creek Road crossing of Garden Creek was the downstream location for the measurement of Garden Creek which showed a gain in the creek. Benowitz speculates that Garden Creek may gain between measuring site three and the Challis Creek Road crossing. Benowitz discounted all other possible hypothesis, including the suggestion

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that his measurement in November would not measure irrigation return flows that might be occurring during the irrigation season. These return flows might be increasing the flows of Garden Creek during the irrigation season. Most of the prior measurements which showed a gain in Garden Creek were taken during the irrigation season.

17. The hearing officer is not convinced by a one time November measurement that Benowitz or Cyprus can conclude, contrary to past department conclusions, that Garden Creek is a losing stream during the irrigation season.

18. Lawrence Bradbury, a former owner of the property, stated that 100 inches of 1880 water (presumably water authorized for diversion by water right no. 72-00051) was diverted through the Hesson Ditch, and split three ways. Bradbury stated that he was entitled to 37.5 inches of water of the 100 inches. The 37.5 inches of water equals 0.75 cfs. Two portions of water right no. 72-00051 (identified as 72-00051B and 72-00051M) authorized diversion of 0.50 cfs and 0.25 cfs, respectively. If both these water rights were diverted together, the cumulative total would be 0.75 cfs.

19. Bradbury testified that the Hesson Ditch point of diversion was located just west of the highway near the Forest Service building. He stated that the water was diverted in the Hesson Ditch at the time he sold the property in 1973. Other witnesses testified that the Hesson Ditch no longer exists.

20. A transfer of water right no. 72-00051B (transfer no. 353) and transfer of water no. 72-00051M (transfer no. 372) authorized a change in the place of use for the water rights, but did not mention the point of diversion. The prior applications for transfer identified a change in point of diversion, however. Application for transfer no. 372 identified the point of diversion for 72-00051M as the NENW, Section 33, Township 14N, Range 19E. Application for transfer no. 353 identified the point of diversion for 72-00051B as the SESW, Section 28, Township 14N, Range 19E. The points of diversion identified by the applications for transfer

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approximately correspond to the described point of diversion for the Hesson Ditch.

21. All other water rights sought to be transferred confirm a point of diversion at either the Upper Bradbury Ditch or the Ivie Ditch, either by approved transfer or by traditional diversion.

22. Between 1973 and the present, diversion of water pursuant to rights 72-00051B and 72-00051M through the Hesson Ditch ceased, and all of the water was diverted through the Upper Bradbury and Ivie Ditches.

23. Dee Keppner, the watermaster of Water District 72B, Garden Creek, is the son of Ray Keppner, a protestant. Dee Keppner has delivered the water owned by Cyprus through the Ivie Ditch and the Upper Bradbury Ditch. He has not delivered water through the Hesson Ditch during his tenure as a watermaster.

24. Cyprus will irrigate the proposed place of use with sprinklers.

25. After the hearing, an analysis of Benewitz written testimony was submitted by Michael Shannon. The analysis was prepared by Tom Jacob, who claims to be a geologist.

26. Cyprus moved to strike Jacob's analysis on the basis that Jacob's unsworn testimony should not be considered without opportunity for cross examination.

27. Cyprus also moved to strike written comments submitted by Mark and Vicki Armbruster as being untimely.

CONCLUSIONS OF THE LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all of the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho, and is in the local public interest as defined

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in Section 42-203A, Idaho Code; . . .

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights and is consistent with conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The applicant bears the ultimate burden of proof regarding all issues.

5. The change in the place of use will not injure other water rights. The proposed place of use is not substantially different than the original place of use, and will not cause any significant change in the drainage or percolation of waste water from the lands.

6. The points of diversion for water rights 72-00048 and 72-00051 requested by this application are already authorized for diversion through the Ivie Ditch or the Upper Bradbury Ditch by prior Department action. Water rights 72-00110 and 72-00111 have been diverted historically from the Upper Bradbury Ditch.

7. The change in point of diversion for water rights no. 72-00051B and 72-00051M from the Hesson Ditch to the Upper Bradbury and Ivie Ditch will result in a reduction of water available to satisfy junior rights diverted upstream.

8. Data gathered by the Department shows a 20 to 30 percent gain in Garden Creek during the irrigation season. Application for transfer no. 3745 can be approved, but the diversion flows authorized by water rights 72-00051B and 72-00051M must be reduced by 25 percent. The director retains jurisdiction to further refine the reduction in diversion rate if credible data supports a change in the authorized diversion rate.

9. Cyprus argues that the protestants are estopped from

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claiming injury because of acquiescence to changes that have already occurred. There is no evidence that any of the protestants had any knowledge of the changes except Dee Keppner, the watermaster. The date when the Hesson Ditch was abandoned is not clear.

10. Approval of these transfers will not result in an enlargement of use.

11. Approval of these transfers is in the local public interest.

12. The document prepared by Tom Jacobs appears to be in the form of comment rather than scientific analysis. Because Jacobs could have been called as a witness and attended the hearing, and to avoid multiple hearings, his document will be stricken from the record. His comments are not necessary, however, because the hearing officer is not convinced that Garden Creek is a losing stream during the irrigation season.

13. Comments by Mark and Vicki Armbruster will be accepted. The deadlines imposed by the hearing officer were targets for submittal. Failure to technically comply is not fatal.

ORDER

IT IS HEREBY ORDERED that applications for transfer no. 3745 is APPROVED on condition that diversion flows authorized by water rights 72-00051B and 72-00051L must be reduced by 25 percent and other conditions set forth below. The flow rate authorized by the rights shall be:

<u>Right no.</u>	<u>Flow rate (cfs)</u>
72-00051B	0.38
72-00051M	<u>0.19</u>
TOTAL	0.57 cfs

IT IS FURTHER ORDERED that the Director retains jurisdiction over rights 72-00051B and 72-00051M to modify the 25 percent stream flow compensation required if competent data is submitted which better defines the losses and gains to Garden Creek during the irrigation season.

IT IS FURTHER ORDERED that application for transfer no. 3747

PROPOSED MEMORANDUM DECISION AND ORDER - Page 8

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is APPROVED, and all rights transferred by applications no.'s 3745 and 3747 shall be conditioned as follows:

A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

Use of water shall be controlled by the watermaster of Water District 72B, Garden Creek.

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

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

Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

IT IS FURTHER ORDERED that applicant's motion to strike comments by Tom Jacobs is GRANTED.

IT IS FURTHER ORDERED that applicant's motion to strike comments by Mark and Vicki Armbruster is DENIED.

Dated this 1st day of June, 1992.

Gary Spackman
Gary Spackman
Hearing Officer

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I HEREBY CERTIFY THAT on this 2nd day of June, 1992, a true and correct copy of the Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order was mailed, postage prepaid to the following:

Susan Buxton
Davis Wright Tremain
702 West Idaho, Ste 700
Boise, ID 83702

Scott Campbell
Davis Wright Tremain
702 West Idaho, Ste. 700
Boise, ID 83702

Michael Shannon
P.O. Box 1039
Challis, ID 83226

Kent W. Foster
P.O. Box 50130
Idaho Falls, ID 83405

Tom Jacob
Box 31
Challis, ID 83226

Lawrence F. Bradbury
4082 Fairway Drive
Lewiston, ID 83501

John S. Smith
Box 27
Challis, ID 83226

Will Ingram
HC 61 Box 3020
Challis, ID 83226

Scott Benowitz
Montgomery Engineers
161 Mallard Drive
Boise, ID 83706

Paris Almond
Box 1039
Challis, ID 83226

Gene King
Box 501
Challis, ID 83226

Nola Lynch
Box 847
Challis, ID 83226

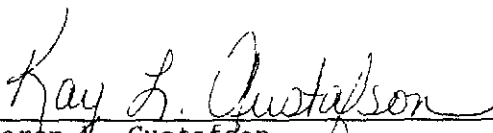
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Jim McGowan
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Challis, ID 83226

Dave Bergey
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Clayton, ID 83227

Dee Keppner
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Challis, ID 83226

Ray Keppner
Box 243
Challis, ID 83226


Karen L. Gustafson
Secretary/Records Manager

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Public Notices

The People's Right To Know

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NOS. 72-00051B, 72-00051N, 72-00051L, 72-00048

Notice is hereby given that CYPRUS THOMPSON CREEK MINING COMPANY of Clayton, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to Section 42-222 of the IDAHO CODE.

WATER RIGHT AS RECORDED

Water right No. 72-00051B, Transfer #353

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort, dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .50 cfs Water use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 160 acres within S1/2NE1/4, N1/2SE1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

Water Right No. A72-00051B

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051B.

Priority Date: May 15, 1880

Source: Garden Creek, tributary to Salmon River

Amount of Water: .50 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right No. 72-00051L, Transfer #372 & #2258

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .25 cfs Water use: irrigation

Point(s) of diversion: NE1/4NW1/4, S32, T14N, R19E (Ivie Ditch), Custer County

Place of use: 160 acres within S1/2NE1/4, N1/2SE1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND

RECORDED AS FOLLOWS:

Water Right No. A72-00051L

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051L

Priority Date: May 15, 1880
Source: Garden Creek tributary to Salmon River

Amount of Water: .25 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right No. 72-00051N, Transfer #776

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .30 cfs Water use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 160 acres within SE1/4NW1/4, NE1/4SW1/4, NW1/4SW1/4, SE1/4SW1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND

RECORDED AS FOLLOWS:

Water Right No. A72-00051N
Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051N.

Priority Date: May 15, 1880

Source: Garden Creek tributary to Salmon River

Amount of Water: .30 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right no. 72-00048, Transfer #193 & #177

Basis of right: Decreed to John Q. Adams in case of Adams et al vs Vandervoort et al dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1901

Amount of water: 3.20 cfs Use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of use: 140 acres within SE1/4NW1/4, NE1/4SW1/4, NW1/4SW1/4, SE1/4SW1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

Water Right No. A72-00048

Name: Cyprus Thompson Creek Mining Co

Basis of right: Decreed Right 72-00048

Priority Date: May 15, 1901

Source: Garden Creek tributary to Salmon River

Amount of Water: 3.20 cfs Use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.

Place of Use: 200 acres within NW1/4SW1/4, SW1/4SW1/4, SE1/4SW1/4, S33, T14N, R19E; SW1/4NE1/4, NW1/4, E1/2SE1/4, S32, T14N, R19E.

WATER RIGHT NO. 72-00051N & ADJUDICATION CLAIM NO. A72-00051N TO BE CHANGED AS FOLLOWS:

Amount: .30 cfs Water use: irrigation

WATER RIGHT NO. 72-00051B & ADJUDICATION CLAIM NO. A72-00051B TO BE CHANGED AS FOLLOWS:

Amount: .50 cfs Water use: irrigation

WATER RIGHT NO. 72-00051L & ADJUDICATION CLAIM NO. A72-00051L TO BE CHANGED AS FOLLOWS:

Amount: .25 cfs Water use: irrigation

WATER RIGHT NO. 72-00048 & ADJUDICATION CLAIM NO. A72-00048 TO BE CHANGED AS FOLLOWS:

Amount: 2.6 cfs Water use: irrigation

Total amount of water being transferred: 2.6 cfs

Source: Garden Creek tributary to Salmon River

Points of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); NW1/4NW1/4, S32, T14N, R19E (Upper Bradbury Ditch); Custer County.

Place of use: 130 acres within SE1/4, S33, T14N, R19E; W1/2SW1/4, S34, T14N, R19E.

Any protest against approval of the application for transfer must be filed with the Department of Water Resources, 222 Shoshone Street East, Twin Falls, ID 83301 on or before September 2, 1991.

R. Keith Higginson, Director
Pub: Aug. 15 & 22, 1991.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Margaret Parks, Publisher of the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated Aug 15 1991 and ending with the issue dated Aug 22 1991

Margaret Parks

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STATE OF IDAHO

AUG 27 1991

COUNTY OF CUSTER Department of Water Resources
Southern Region Office

On this 26 day of Aug in the year of 1991, before me, a Notary Public,

personally appeared Margaret Parks, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Ethel M. Vick JUN 21

Notary Public for Idaho

Residing at Challis

My commission expires: 3-21-92

OK
MB
9-4-91

STATEMENT

**Custer Publishing, Inc.**

Phone 879-4445

P.O. Box 405

Challis, Idaho 83226

Dept. of Water Resources
 222 Shoshone St. East
 Twin Falls, Id 83301

Job No.	Date	DESCRIPTION	Amount
	8-22-91	Notice of Proposed Change of Water Right Nos. 72-00051B, 72-00051N, 72-00051K, 72-00048 Aug 15+22, '91 218 lines 72-00110, 72-00111, 72-00110, 72-00112	\$225.63
		TR Cypress	
		RECEIVED AUG 27 1991 Department of Water Resources Southern Region Office	OK MB 9-4-91

A finance charge of 1½ percent (annual percentage rate of 18%) with a minimum charge of 50¢ will be charged to all accounts not paid within 30 days of billing

JUN 26 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3746**RECEIVED****APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

JUL 24 1990

Name of applicant Cyprus Thompson Creek Mining Company Phone 838-2200
 Department of Water Resources c/o Bert Doughty, P.O. Box 62, Clayton, ID 83227
 Post Office address

A. PURPOSE OF TRANSFER

- 1 ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Applicant wishes to formalize and document changes which have occurred over a number of years since the water right was originally decreed.

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
72-00051N	5/15/1880	.30	irrigation	4/1 to 11/1
72-00051B	5/15/1880	.50	irrigation	4/1 to 11/1
72-00051L	5/15/1880	.25	irrigation	4/1 to 11/1

2. Total amount of water being transferred 1.05 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Garden Creek tributary to Salmon River
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

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	
14N	19E	33													20	20	30	30	100
14N	19E	34									20	10							30
13N	19E	4	5	5															10

Total acres 140

PART 1

6 General Information:

- a. Description of diversion system Water is diverted with a rock jetty into a metal measuring flume. Flow is controlled by a wheel valve at diversion point. Water then flows into earthen ditch system and eventually flows into 8" diameter steel buried pipeline with endpoint being sprinkler wheel lines.
- 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 effect on the land now irrigated if the place of use is changed pursuant to this transfer:
None - change has been in effect for a number of years.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

Witness my hand this _____ day of _____, 19 _____

RECEIVED

JUN 26 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

- a. Decree No. 72-00051B Decreed to Charles F. Zilkey
in case of Adams, et al. vs Vandervoort
dated May 19, 1914 in 6th District county of Custer
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No. 72-00051B which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority 5/15/1880

5. Water is used for the following purpose.

amount .50 for irrigation purposes from April 1 to November 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right .50 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion.

Lot	1/4	1/4	1/4	Sec.	Twp	Rge.	County	Local name for diversion
		NE 1/4	NW 1/4	32	14N	19E	Custer	Ivie Ditch

8. 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	
14N	19E	33			40	40									40	40			160

Total acres 160

9. Describe any other water rights used for the same purpose as described above 72-00051L, 72-00051N

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion

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

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion

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

3. 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	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by.

- a. Decree No. 72-00051L Decreed to Charles F. Zilkey
in case of Adams, et al. vs Vandervoort
dated May 19, 1914 in 6th District county of Custer
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No. 72-00051L which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority 5/15/1880

5. Water is used for the following purpose

amount .25 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion
		NE	NW	32	14N	19E	Custer	Ivie Ditch

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
14N	19E	33			40	40									40	40			160

Total acres 160

9. Describe any other water rights used for the same purpose as described above 72-00051B, 72-00051N

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. 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	

Total acres _____

 RECORDED
 JUN 26 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1 Right evidenced by

- a. Decree No 72-00051N Decreed to Charles F. Zilkey
in case of Adams, et al. vs Vandervoort, et al.
dated May 19, 1914 in 6th District county of Custer
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No. 72-00051N which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water Garden Creek tributary to Salmon River
4. Date or priority 5/15/1880

5. Water is used for the following purpose:

amount .30 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right .30 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. 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	
14N	19E	33								40	40	40		40					160

Total acres 160

9. Describe any other water rights used for the same purpose as described above 72-00051L, 72-00051B

- 10 To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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

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

PART 3**B. CHANGES IN NATURE OF USE**

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

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

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

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

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

Robert D. Galt
(Signature of Applicant)

Subscribed and sworn to before me this 18th day of July, 19 90.

Bonnie M. Whitman
(Notary Public)

My commission expires 12/22/92**FOR DEPARTMENT USE ONLY**Transfer contains 10 pages and 5 attachmentsReceived by M. Baldwin Date 8/3/90

Protest filed by _____

Prelim. check by _____ Fee 850.00 ⁶⁰¹⁷⁷⁹¹Receipted by J. Dawson Date 7/25/90

Published in _____

Copies of protest forwarded by _____

Pub. dates _____

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☐ approval ☐ denial

_____ rec'd _____

by _____

Copy of transfer sent to lien holder _____

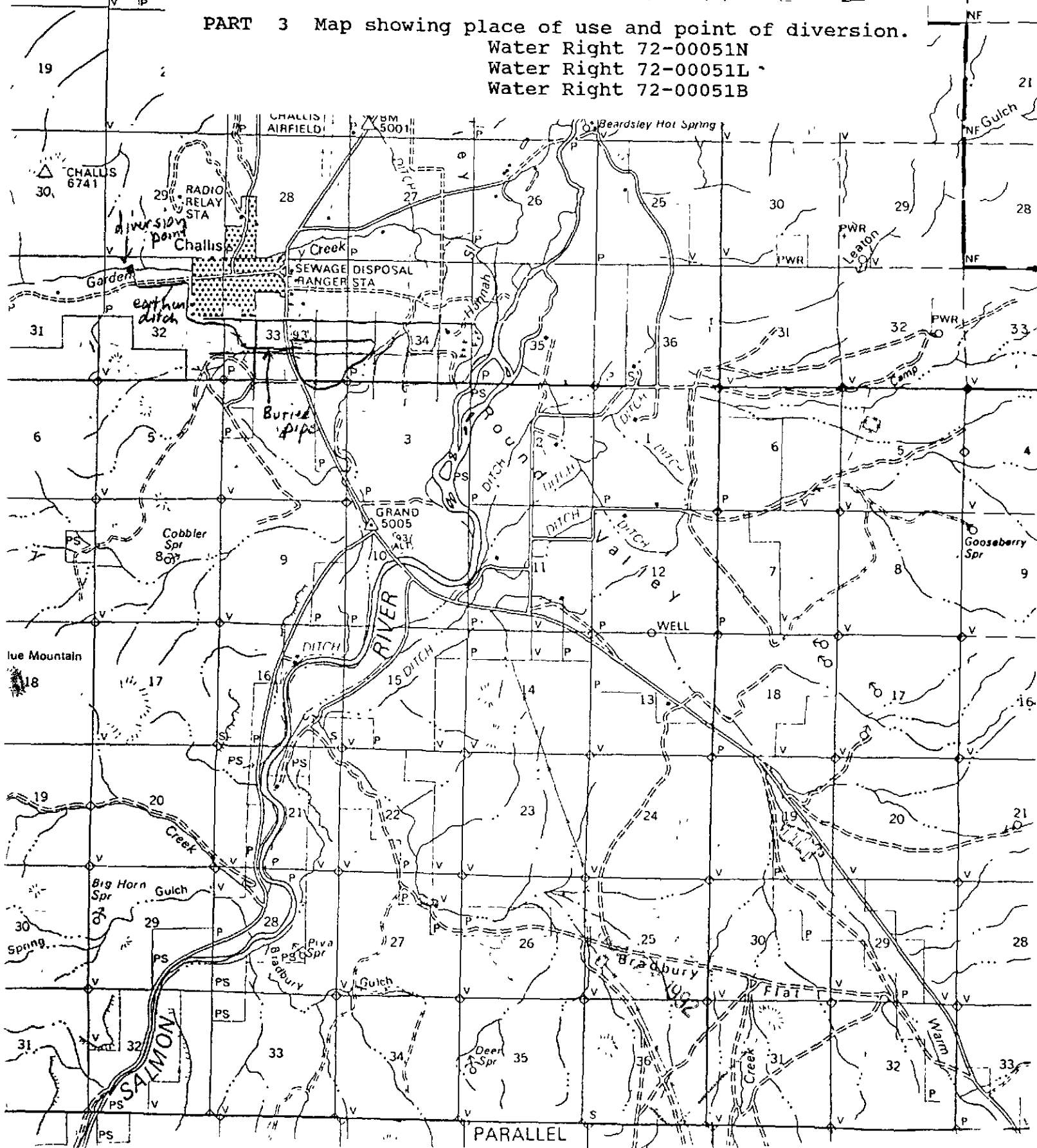
PRODUCED
JUN 26 1992

PART 3 Map showing place of use and point of diversion.

Water Right 72-00051N

Water Right 72-00051L

Water Right 72-00051B



Should questions arise during
the processing of this
application please contact:

SCOTT L. CAMPBELL
Elam, Burke and Boyd
P. O. Box 1539
Boise, ID 83701-1539
343-5454

JUN 26 1992

RECEIVED

AUG 03 1990

Department of Water Resources
Southern Region Office

RECEIVED

Page 1 of 6STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No 3745

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Cyprus Thompson Creek Mining Company Phone 838-2200
 Post Office address c/o Bert Doughty, P.O. Box 62, Clayton, Idaho 83227

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Applicant wishes to formalize and document changes which have occurred over a number of years since the water right was originally decreed.

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

1. Right Number 72-00048 Priority 5/15/1901 Amount 3.20 (cfs/ac-ft) Nature of Use irrigation Period of Use 4/1 to 11/1
2. Total amount of water being transferred 3.20 cubic feet per second and/or _____ acre-feet per annum
3. Source of water Garden Creek tributary to Salmon River
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

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	
14N	19E	33													20	20	30	30	100
14N	19E	34									20	10							30
13N	19E	4	5	5															10

Total acres 140

PART 1**6. General Information.**

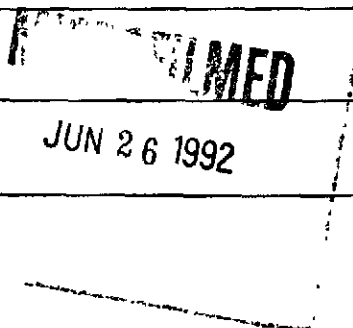
- a Description of diversion system Water is diverted with a rock jetty into a metal measuring flume. Flow is controlled by a wheel valve at the diversion. Water then flows into an earthen ditch system and eventually flows into an 8" diameter buried steel pipeline connected to sprinkler wheel lines.
- 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
None - change has been in effect for a number of years. The place of use under the right as presently recorded with the Department will not be irrigated under this right after transfer is completed.
- d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

- a. Decree No. 72-00048 Decreed to John Q. Adams
in case of Adams, et al. vs Vandervoort, et al.
dated May 19, 1914 in 6th District county of Custer
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
- d. Transfer No. 193 + 177 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A Check appropriate box below:

☐ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water Garden Creek tributary to Salmon River

4. Date or priority 5/15/1901

5. Water is used for the following purpose:

amount 3.20 for irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.20 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NW	32	14N	19E	Custer	Ivie Ditch

8. 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	
14N	19E	33								30	40	30		40					140

Total acres 140

9. Describe any other water rights used for the same purpose as described above _____

10 To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion.

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

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2 Point(s) of Diversion:

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

3. 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	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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

A large grid for drawing a map, consisting of 10 columns and 10 rows of squares. The grid is used for depicting land by section, township, and range number.

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

1992

PART 3

B. CHANGES IN NATURE OF USE

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

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

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

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

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

Robert H. Jones
(Signature of Applicant)

Subscribed and sworn to before me this 18th day of July, 19 90

Bonnie M. Whitman
(Notary Public)

My commission expires 12/22/92

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 3 attachments

Received by J. Baldwin Date 7/25/90 ✓ Protest filed by _____

Prelim. check by _____ Fee \$50.00 CD17791 ✓

Receipted by J. Baldwin Date 7/25/90 ✓

Published in _____ Copies of protest forwarded by _____

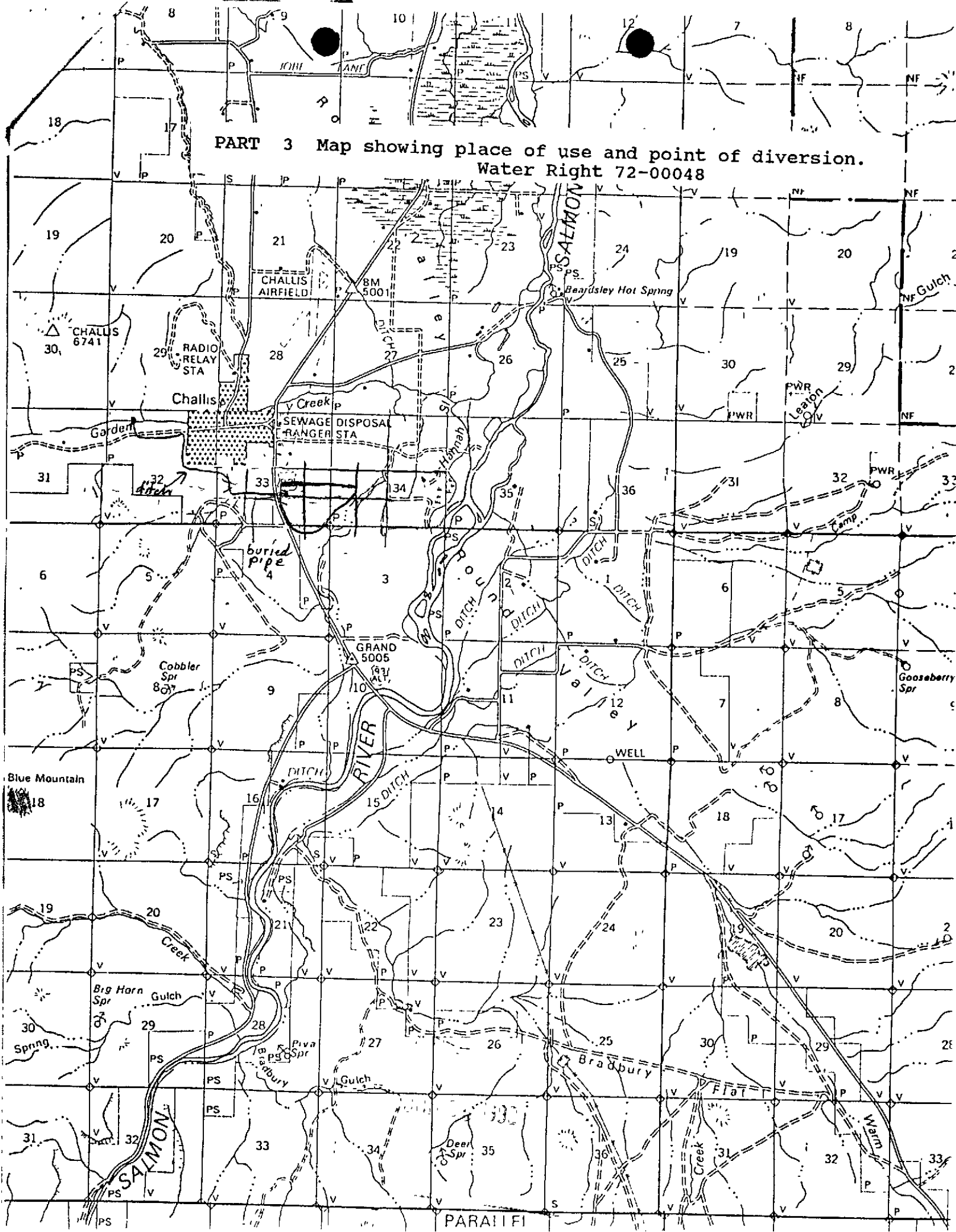
Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd JUN 26 1992 by _____

Copy of transfer sent to lien holder _____

PART 3 Map showing place of use and point of diversion.
Water Right 72-00048



THIS INDENTURE, Made this

13th day of

February

in the year of our Lord one thousand nine hundred and eighty-one

between CHARLES R. BOGE and JANEICE BOGE, husband and wife,

of Idaho Falls

County of

Bonneville

State of

Idaho

the parties of the first part, and

CYPRUS MINES CORPORATION, a Delaware corporation,

of

County of

State of

the part y of the second part,

WITNESSETH, That the said part of the first part, for and in consideration of the sum of

TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION----- DOLLARS,

of the United States of America, to them in hand paid by the

said part y of the second part, the receipt whereof is hereby acknowledged, have granted, bargained

and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said part

of the second part, and to its heirs and assigns forever, all the following described real estate,

situated in

Custer

County

State of Idaho, to wit:

TOWNSHIP 14 NORTH, RANGE 19 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.

Section 33:A parcel of land located entirely within the E $\frac{1}{4}$ of Section 33, more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 33 to bear North 0°47'18" East and all bearings herein relative thereto:

Commencing at the SE corner of Section 33, Township 14 North, Range 19 East, Boise Meridian, being a 2 $\frac{1}{2}$ " Brass Cap and which is the TRUE POINT OF BEGINNING and the SE corner of the herein described parcel; thence along the East line of said Section 33 North 0°47'18" East, 2628.18 feet to the E $\frac{1}{4}$ corner of Section 33, being a Brass Cap; thence continuing along the East line of said Section 33, North 0°24'12" East, 1319.33 feet to the North 1/16 corner of Section 33, being an aluminum cap; thence North 89°51'03" West, 786.93 feet to a plastic cap marked PE.LS. 2237; thence South 0°09'50" West, 435.47 feet to a plastic cap; thence North 89°51'36" West, 1000.01 feet to a plastic cap; thence North 89°52'22" West, 499.84 feet to a 1" drill steel 30" long; thence North 0°08'37" East, 435.60 feet to a point on the North line of the S $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 33, being a 1" drill steel 30" long; thence along the North line of the S $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 33, North 89°51'23" West, 340.00 feet to its intersection with the Easterly Right of Way line of U. S. Highway 93, being a 1" drill steel 30" long; thence along the Easterly Right of way of U.S. Highway 93 South 0°18'55" West, 1322.12 feet to a Right of Way Brass Cap; thence South 89°55'03" East, 10.00 feet to a Right of Way Brass Cap; thence continuing along said Right of Way South 0°11'06" West, 388.27 feet to a Right of Way Brass Cap; thence continuing along said Right of Way along a curve to the Southeast whose radius is 3770.00 feet and whose delta is 24°02'30" and whose chord bears South 11°50'09" East, 1570.30 feet to a Right of Way Brass Cap; thence continuing along said Right of Way, South 23°51'25" East, 780.20 feet to

its intersection with the South line of said Section 33 being a Right of Way Brass Cap; thence along the South line of said Section 33, North 89°47'34" East, 1942.38 feet to the TRUE POINT OF BEGINNING.

Section 34: A parcel of land located entirely within Section 34, more particularly described as follows:

Considering the West line of the SW $\frac{1}{4}$ of said Section 34 to bear South 0°47'18" West and all bearings herein relative thereto:

Commencing at the Southwest Corner of Section 34, Township 14 North, Range 19 East, Boise Meridian, which is a 2 $\frac{1}{2}$ " Brass Cap and which is the TRUE POINT OF BEGINNING and the SW Corner of Parcel; thence along the South line of said Section 34, North 89°47'18" East, 540.61 feet to a 1" drill steel 30" long; thence North 28°28'56" East, 312.01 feet to a 1" drill steel 30" long; thence North 13°15'04" West, 481.01 feet to a 1" drill steel 30" long; thence North 55°16'56" East, 418.01 feet to a 1" drill steel 30" long; thence North 45°17'56" East, 585.00 feet to a 1" drill steel set in the East line of the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of said Section 34; thence along the East line of W $\frac{1}{2}$ of the SW $\frac{1}{4}$ said Section 34, South 0°39'15" West, 19.08 feet to a 1" drill steel; thence North 45°17'43" East, 95.59 feet to a 1" drill steel 30" long; thence North 49°12'43" East, 760.02 feet to a 1" drill steel 30" long; thence North 40°51'43" East 531.01 feet to a 1" drill steel 30" long; thence North 62°20'43" East, 191.01 feet to a 1" drill steel 30" long; thence North 19°42'17" West, 152.00 feet to a 1" drill steel 30" long; thence North 23°50'43" East, 79.00 feet to a 1" drill steel 30" long on the North line of the SW $\frac{1}{4}$ of said Section 34; thence along the Center Line of said Section 34, North 89°37'00" East, 190.34 feet to the Center of Section 34 which is a 2 $\frac{1}{2}$ " Brass Cap on a 2" Galvanized iron pipe 30" long; thence along the Center line of said Section 34, North 0°31'25" East, 1116.83 feet to a 1" drill steel; thence North 74°54'30" West, 760.75 feet to a 1" drill steel 30" long set in the North line of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 34; thence along the North line of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 34, South 89°36'09" West, 1899.61 feet to an aluminum cap which is the North 1/16 corner between Sections 34 and 33; thence along the West line of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 34, South 0°24'12" West, 1319.33 feet to the Quarter Corner between Sections 34 and 33 which is a 2 $\frac{1}{2}$ " Brass Cap; thence continuing along the West line of said Section 34, South 0°47'18" West, 2628.18 feet to the TRUE POINT OF BEGINNING.

SUBJECT to the following:

1. Subject to all existing patent reservations, zoning ordinances, and applicable building codes, laws and regulations, rights of way or easements for public roads, utilities, telephone or electric transmission lines.

2. General taxes for the year 1981 and thereafter.

3. Highway Right of Way reservations contained in Deed dated March 9, 1952, from County of Custer, State of Idaho, to Sam Hessen, recorded March 12, 1942, in Book 25, Deeds, Page 506, records of Custer County, Idaho.

JUN 26 1982

4. Restrictions in Right of Way Deed to the State of Idaho prohibiting buildings or other structures within 20 feet of the highway right of way across the NW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 33, recorded November 22, 1946, in Book 27, Deeds, Page 440, records of Custer County, Idaho.

5. Subject to ditch rights, if any, relating to the so-called "Genie Ditch".

6/11/50
C.R.B.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title, and interest in and to the said property, as well in law as in equity, of the said parties of the first part:

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seal the day and year first above written

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

_____	{	<i>Charles R. Boge</i>	[Seal]
_____		<i>Janeice Boge</i>	[Seal]
_____			[Seal]
_____			[Seal]

STATE OF IDAHO, }
County of Bonneville } ss.

On this 13 day of February in the year 1981, before me

Stephen E. Martin a Notary Public
in and for said State, personally appeared

CHARLES R. BOGE and JANEICE BOGE, husband and wife

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

The address of Cyprus Mines Corporation is:
P.O. Box 3299
Englewood, Colorado 80155

Stephen E. Martin
Notary Public
Residing at Idaho Falls, Idaho.
My commission expires: 1-2-82

JUN 26 1992

No. 157459

WARRANTY DEED

—TO—

Dated _____, 19____

STATE OF IDAHO, }
County of CUSTER } ss.

I hereby certify that this instrument was
filed for record at request of CUSTER
COUNTY TITLE
at 50 minutes past 4:00
o'clock P. M., this 17th day
of February, A. D. 1981
in my office, and duly recorded in Book _____
of _____ at page _____
Shepard A. Carter
Ex Officio Recorder.
By Brian A. Carter Deputy.

Fees, \$ 6.00

SYMS-YORK COMPANY, BOISE

C.C.T.

JUN 26 1992



NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NOS. 72-00051B, 72-00051N, 72-00051L, 72-00048

Notice is hereby given that CYPRUS THOMPSON CREEK MINING COMPANY of Clayton, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to Section 42-222 of the IDAHO CODE.

WATER RIGHT AS RECORDED

- ✓ Water right No. 72-00051B, Transfer #353
Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort, dated May 19, 1914 in 6th District Court, Custer County.
Source: Garden Creek tributary to Salmon River
Priority Date: May 15, 1880
Amount of water: .50 cfs Water use: irrigation
Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.
Place of use: 160 acres within S1/2NE1/4, N1/2SE1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

- ✓ Water Right No. A72-00051B
Name: Cyprus Thompson Creek Mining Co.
Basis of right: Decreed Right 72-00051B.
Priority Date: May 15, 1880
Source: Garden Creek tributary to Salmon River
Amount of Water: .50 cfs Water use: irrigation
Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.
Place of Use: 190 acres within SE1/4, S33, T14N, R19E; SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

- ✓ Water right No. 72-00051L, Transfer #372 & #2258
Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort dated May 19, 1914 in 6th District Court, Custer County.
Source: Garden Creek tributary to Salmon River
Priority Date: May 15, 1880
Amount of water: .25 cfs Water use: irrigation
Point(s) of diversion: NE1/4NW1/4, S32, T14N, R19E (Ivie Ditch); Custer County.
Place of use: 160 acres within S1/2NE1/4, N1/2SE1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED AS FOLLOWS:

JUN 26 1992

✓ Water Right No. A72-00051L

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051L.

Priority Date: May 15, 1880

Source: Garden Creek tributary to Salmon River

Amount of Water: .25 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch);
Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E;
SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

Water right No. 72-00051N, Transfer #776

Basis of right: Decreed to Charles F. Zilkey in case of Adams et al vs Vandervoort dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1880

Amount of water: .30 cfs Water use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch);
Custer County.

Place of use: 160 acres within SE1/4NW1/4, NE1/4SW1/4, NW1/4SW1/4,
SE1/4SW1/4, S33, T14N, R19E.

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED
AS FOLLOWS:

✓ Water Right No. A72-00051N

Name: Cyprus Thompson Creek Mining Co.

Basis of right: Decreed Right 72-00051N.

Priority Date: May 15, 1880

Source: Garden Creek tributary to Salmon River

Amount of Water: .30 cfs Water use: irrigation

Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch);
Custer County.

Place of Use: 190 acres within SE1/4, S33, T14N, R19E;
SW1/4NW1/4, W1/2SW1/4, S34, T14N, R19E.

WATER RIGHT AS RECORDED

✓ Water right no. 72-00048, Transfer #193 & #177

Basis of right: Decreed to John Q. Adams in case of Adams et al vs Vandervoort et al dated May 19, 1914 in 6th District Court, Custer County.

Source: Garden Creek tributary to Salmon River

Priority Date: May 15, 1901

Amount of water: 3.20 cfs Use: irrigation

Point(s) of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch);
Custer County.

Place of use: 140 acres within SE1/4NW1/4, NE1/4SW1/4, NW1/4SW1/4,
SE1/4SW1/4, S33, T14N, R19E.

JUN 26 1992

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN ADJUDICATION AND RECORDED
AS FOLLOWS:

Water Right No. A72-00048
Name: Cyprus Thompson Creek Mining Co.
Basis of right: Decreed Right 72-00048
Priority Date: May 15, 1901
Source: Garden Creek tributary to Salmon River
Amount of Water: 3.20cfs Use: irrigation
Points of Diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch);
Custer County.
Place of Use: 200 acres within NW1/4SW1/4, SW1/4SW1/4,
SE1/4SW1/4, S33, T14N, R19E; SW1/4NE1/4, NW1/4, E1/2SE1/4, S32,
T14N, R19E.

WATER RIGHT NO. 72-00051N & ADJUDICATION CLAIM NO. A72-00051N TO
BE CHANGED AS FOLLOWS:

Amount: .30 cfs Water use: irrigation

WATER RIGHT NO. 72-00051B & ADJUDICATION CLAIM NO. A72-00051B TO
BE CHANGED AS FOLLOWS:

Amount: .50 cfs Water use: irrigation

WATER RIGHT NO. 72-00051L & ADJUDICATION CLAIM NO. A72-00051L TO
BE CHANGED AS FOLLOWS:

Amount: .25 cfs Water use: irrigation

WATER RIGHT NO. 72-00048 & ADJUDICATION CLAIM NO. A72-00048 TO BE
CHANGED AS FOLLOWS:

Amount: 2.6 cfs Water use: irrigation

Total amount of water being transferred: 2.6 cfs

Source: Garden Creek tributary to Salmon River

Points of diversion: NW1/4NW1/4, S32, T14N, R19E (Ivie Ditch);
NW1/4NW1/4, S32, T14N, R19E (Upper Bradbury Ditch); Custer County.

Place of use: 130 acres within SE1/4, S33, T14N, R19E; W1/2SW1/4,
S34, T14N, R19E.

Any protest against approval of the application for transfer must
be filed with the Department of Water Resources, 222 Shoshone
Street East, Twin Falls, ID 83301 on or before September 2, 1991.

R. Keith Higginson, Director

Published in The Challis Messenger on 8/15 & 8/22/91.

RECORDED

JUN 26 1992

000000
 Expiration Date: December 31, 1991
 Priority Date: May 18, 1991
 Source: Canadian Intellectual Property

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971) using a Shimadzu 1010 spectrophotometer. The concentration of chlorophylls was expressed in mg g⁻¹ of dry weight.

The People's Right To Know

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PAGE 1

C O P Y

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the matter of the application of)

Lawrence Bradbury)
Challis, Idaho)

ORDER

No. 177

for a certificate of authorization)
for a change of point of diversion)

Lawrence Bradbury made application to the State Reclamation Engineer for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the waters of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e., one-fourth mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the east line of the NW $\frac{1}{4}$, Section 32, Township 14-North, Range 19-East, B.M.; 1.6 cubic feet per second with point of diversion 300 feet east from the west line of the NW $\frac{1}{4}$, Section 32, Township 14-North, Range 19-East, B.M.

and that a notice of the application was published in the Challis Messenger, a weekly newspaper published at Challis, Idaho, on three consecutive weeks in issues dated February 23, 1944, and ending March 6, 1944, stating that on the 14th day of March, A. D., 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

A protest against the granting of the certificate was received from Sam Hassen of Challis, Idaho, on March 11, 1944, objecting to the change, and the hearing was continued and held in the Custer County Court House at Challis, Idaho, on May 29, 1944, at 2:00 P. M. before the State Reclamation Engineer, and the decision of the State Reclamation Engineer is as follows:

(1) That the water has been diverted through the J. C. Adams ditch since 1918, and the legally stated point of diversion, i. e., one-fourth mile below the Seventh Street Bridge in Challis, Idaho, had never been used and could not be used for gravity diversion of the water to the lands to which it was transferred by Certificate No. 193, Office of State Engineer, on the 23rd day of November, 1916.

(2) That by diversion of the water through the J. C. Adams ditch, at a point 120 feet east from the west boundary of the NW $\frac{1}{4}$ of Section 32, Township 14-North, Range 19-East, B. M., did not permit irrigation of all of the lands to which it was transferred by the said Certificate No. 193.

(3) That the diversion of 1.6 cubic feet per second through the J. E. Bradbury ditch at a point 300 feet east from the west boundary of the NW $\frac{1}{4}$ of Section 32, Township 14-North, Range 19-East, B.M. will permit the irrigation of the lands not now covered by the J. C. Adams ditch.

MICROFILMED

Lawrence Bradbury
Hearing 5/29/44

(4) That the diversion of 1.6 cubic feet per second through the J. E. Bradbury ditch will not affect the Hesson water right in any way.

(5) That the allegation of the protestant, Sam Hesson, "That the proposed change of one point of diversion to two points of diversion, ---- will cause him serious damage, inasmuch as the proposed upper diversion into the Upper Bradbury Ditch would serve to legalize or make possible a continuation of applicant's use of a large portion of the water in question upon other lands not covered by the decree of said Bradbury, situated in Section 32, Township 14-North, Range 19-East, B. L." is without merit as the granting of the application legalizes nothing except the right to change the point of diversion of one-half the decreed water for the purpose of irrigating high land not possible of irrigation from the previous single point of diversion.

(6) That the J. E. Bradbury ditch has sufficient capacity to carry the 1.6 cubic feet per second in addition to the decreed water already diverted to the J. E. Bradbury ditch.

WHEREAS, it is found that no injury will be caused by the change in point of diversion, the application is approved, and the certificate will be issued.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 27th day of June, A. D., 1944.

Mark R. Kulp

Mark R. Kulp
State Reclamation Engineer.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

CERTIFICATE OF CHANGE IN POINT OF DIVERSION OF DECREED WATER RIGHT

No. 177

THIS IS TO CERTIFY THAT LAWRENCE BRADBURY, of Challis, Idaho, is the owner of and using a certain water right, bearing date of priority of May 15, 1901, for 3.2 cubic feet per second of the waters of Garden Creek, County of Custer, State of Idaho, decreed to J. L. Adams, by decree of Judge J. M. Stevens, of the Sixth Judicial District of the State of Idaho, in and for the County of Custer, in the case of

J. L. ADAMS, ET AL

Plaintiffs

vs.

R. B. VANDERVOORT, ET AL

Defendants

said decree bearing date of May 23, 1914, for the purpose of irrigating the following described lands, situate, lying and being in Water District No. 3, in the County of Custer and State of Idaho, to-wit:

SW¹/₄ NE¹/₄, S¹/₂ SE¹/₄ Section 22;
NW¹/₄ NE¹/₄ Section 27;
Township 14 North, Range 19 East, R. M.

That said decree is entered in the records of the Department of Reclamation of the State of Idaho, in Volume 3 of Decrees, at Page 681.

That by Certificate of Transfer of Water Right No. 193, issued by the Department of Reclamation of the State of Idaho, bearing date of November 23, 1916, said water right was transferred to the following lands, to-wit:

SE¹/₄ NE¹/₄, N¹/₂ S¹/₂, SE¹/₄ Section 33;
Township 14 North, Range 19 East, R. M.

said transfer being entered in the records of the Department of Reclamation of the State of Idaho in Volume 1 of Transfer of Water Rights, at Page 193.

That the said applicant, Lawrence Bradbury, has become the owner of said water right by mesne conveyance.

That now, upon the application of Lawrence Bradbury, of Challis, Idaho, for Certificate of Change in Point of Diversion, made before the State Reclamation Engineer of the State of Idaho, and the said application having been granted, the right to change the said point of diversion is hereby confirmed.

That said change in point of diversion shall not modify in effect said decree, water right or place of use. Said water right to be limited at any time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

3.2 cubic feet per second of the waters of Garden Creek, with priority date of May 15, 1901.

RECORDED

That said water right is now appurtenant to the following described lands:

SW 1/4, NE 1/4, SW 1/4, Section 33,
Township 14 North, Range 19 East, S. 1.,
being the place of use.

That the said water right above described, from Garden Creek, has been legally conducted from Garden Creek to place of use, with point of diversion located about one-fourth of a mile below the Seventh Street Bridge in Challis, County of Custer, State of Idaho.

That the water right above described will hereafter be conducted from Garden Creek to the place of use at the two following points of diversion, and divided as follows:

No. 1- 1.6 cubic feet per second diverted from Garden Creek at a point located approximately 120 feet west from the east boundary of the SW 1/4, NE 1/4, Section 32, Township 14 North, Range 19 East, S. 1., and conducted to the place of use through the J. W. Adams ditch.

No. 2- 1.6 cubic feet per second diverted from Garden Creek at a point located about 300 feet east from the east boundary of the NW 1/4, NE 1/4, Section 32, Township 14 North, Range 19 East, S. 1., and conducted to the place of use through the J. E. Bradbury ditch.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, this 1st day of July, A. D. 1944.

MARK R. KULP
State Reclamation Engineer
By

ROY L. THOMPSON
Supervisor of Water Distribution

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the matter of the application of)
(
Lawrence Bradbury)
Challis, Idaho) ORDER
(
for a certificate of authorization)
for a change of point of diversion)

Lawrence Bradbury made application to the State Reclamation Engineer for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the waters of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e., one-fourth mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the east line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 32, Township 14-North, Range 19-East, B.M.; 1.6 cubic feet per second with point of diversion 300 feet east from the west line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 32, Township 14-North, Range 19-East, B.M.

and that a notice of the application was published in the Challis Messenger, a weekly newspaper published at Challis, Idaho, on three consecutive weeks in issues dated February 23, 1944, and ending March 8, 1944, stating that on the 14th day of March, A. D., 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

A protest against the granting of the certificate was received from Sam Hessen of Challis, Idaho, on March 11, 1944, objecting to the change, and the hearing was continued and held in the Custer County Court House at Challis, Idaho, on May 29, 1944, at 2:00 P. M. before the State Reclamation Engineer, and the decision of the State Reclamation Engineer is as follows:

(1) That the water has been diverted through the J. Q. Adams ditch since 1918, and the legally stated point of diversion, i. e., one-fourth mile below the Seventh Street Bridge in Challis, Idaho, had never been used and could not be used for gravity diversion of the water to the lands to which it was transferred by Certificate No. 193, Office of State Engineer, on the 23rd day of November, 1916.

(2) That by diversion of the water through the J. Q. Adams ditch, at a point 120 feet east from the west boundary of NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 14-North, Range 19-East, B. M., did not permit irrigation of all of the lands to which it was transferred by the said Certificate No. 193.

(3) That the diversion of 1.6 cubic feet per second through the J. E. Bradbury ditch at a point 300 feet east from the west boundary of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 14-North, Range 19-East, B.M. will permit the irrigation of the lands not now covered by the J. Q. Adams ditch.

MICROFILMED

Lawrence Bradbury
Hearing 5/29/44

(4) That the diversion of 1.6 cubic feet per second through the J. E. Bradbury ditch will not effect the Hesson water right in any way.

(5) That the allegation of the protestant, Sam Hesson, "That the proposed change of one point of diversion to two points of diversion, --- will cause him serious damage, inasmuch as the proposed upper diversion into the Upper Bradbury Ditch would serve to legalize or make possible a continuation of applicant's use of a large portion of the water in question upon other lands not covered by the decree of said Bradbury, situated in S ection 32, Township 14-North, Range 19-East, B.M." is without merit as the granting of the application legalizes nothing except the right to change the point of diversion of one-half the decreed water for the purpose of irrigating high land not possible of irrigation from the previous single point of diversion.

(6) That the J. E. Bradbury ditch has sufficient capacity to carry the 1.6 cubic feet per second in addition to the decreed water already diverted to the J. E. Bradbury ditch.

WHEREAS, it is found that no injury will be caused by the change in point of diversion, the application is approved, and the certificate will be issued.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 27th day of June, A. D., 1944.

Mark R. Kulp
State Reclamation Engineer.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the matter of the application of)
Lawrence Bradbury)
Challis, Idaho)
for a certificate of authorization)
for a change of point of diversion)

ORDER

Lawrence Bradbury made application to the State Reclamation Engineer for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the waters of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e., one-fourth mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the east line of the NW¹/₄NE¹/₄, Section 32, Township 14-North, Range 19-East, B.M.; 1.6 cubic feet per second with point of diversion 300 feet east from the west line of the NW¹/₄NE¹/₄, Section 32, Township 14-North, Range 19-East, B.M.

and that a notice of the application was published in the Challis Messenger, a weekly newspaper published at Challis, Idaho, on three consecutive weeks in issues dated February 23, 1944, and ending March 3, 1944, stating that on the 14th day of March, A. D., 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

A protest against the granting of the certificate was received from Sam Hessen of Challis, Idaho, on March 11, 1944, objecting to the change, and the hearing was continued and held in the Custer County Court House at Challis, Idaho, on May 29, 1944, at 2:00 P. M. before the State Reclamation Engineer, and the decision of the State Reclamation Engineer is as follows:

(1) That the water has been diverted through the J. Q. Adams ditch since 1918, and the legally stated point of diversion, i. e., one-fourth mile below the Seventh Street Bridge in Challis, Idaho, had never been used and could not be used for gravity diversion of the water to the lands to which it was transferred by Certificate No. 193, Office of State Engineer, on the 23rd day of November, 1916.

(2) That by diversion of the water through the J. Q. Adams ditch, at a point 120 feet east from the west boundary of NW¹/₄NE¹/₄ of Section 32, Township 14-North, Range 19-East, B. M., did not permit irrigation of all of the lands to which it was transferred by the said Certificate No. 193.

(3) That the diversion of 1.6 cubic feet per second through the J. E. Bradbury ditch at a point 300 feet east from the west boundary of the NW¹/₄NE¹/₄ of Section 32, Township 14-North, Range 19-East, B.M. will permit the irrigation of the lands not now covered by the J. Q. Adams ditch.

MICROFILMED

Lawrence Bradbury
Hearing 5/29/44

(4) That the diversion of 1.6 cubic feet per second through the J. E. Bradbury ditch will not affect the Hesson water right in any way.

(5) That the allegation of the protestant, Sam Hesson, "That the proposed change of one point of diversion to two points of diversion, --- will cause him serious damage, inasmuch as the proposed upper diversion into the Upper Bradbury Ditch would serve to legalize or make possible a continuation of applicant's use of a large portion of the water in question upon other lands not covered by the decree of said Bradbury, situated in Section 32, Township 14-North, Range 19-East, B.M." is without merit as the granting of the application legalizes nothing except the right to change the point of diversion of one-half the decreed water for the purpose of irrigating high land not possible of irrigation from the previous single point of diversion.

(6) That the J. E. Bradbury ditch has sufficient capacity to carry the 1.6 cubic feet per second in addition to the decreed water already diverted to the J. E. Bradbury ditch.

WHEREAS, it is found that no injury will be caused by the change in point of diversion, the application is approved, and the certificate will be issued.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 27th day of June, A. D., 1944.

Lark R. Kulp
State Reclamation Engineer.

FILE 72-B 72-0048

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

-----OFFICE OF STATE ENGINEER -----

CERTIFICATE NO.193, AUTHORIZING TRANSFER OF WATER RIGHT.

WATER DISTRICT NO. 3-B

Permission is hereby granted John Q. Adams, of Challis, County of Custer, State of Idaho, to transfer the use of three and two-tenths (3.2) cubic feet per second of the waters of Garden Creek, in the County of Custer, and State of Idaho, from the lands upon which it is now used, i.e., SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and W $\frac{1}{2}$ of SE $\frac{1}{4}$, Section 22, and NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 27, Township 14 North, Range 19 East of Boise Meridian, to the following described tract: SE $\frac{1}{4}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 33, Township 14 North, Range 19 East of Boise Meridian, said water to be diverted at a point about one-fourth of a mile below the seventh street bridge, in Challis, Custer County, State of Idaho.

The water right appurtenant to the above described lands was adjudged by decree, dated May 23rd, 1914, of James M. Stevens, Judge of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Custer, in the case of John Q. Adams., et al, plaintiffs, vs. R.B. Vandervort, et al, defendants, in the following words, to-wit:

"Now, it is , therefore, ordered, adjudged and decreed that the waters of Garden Creek, and its tributaries, situated in the County of Custer, State of Idaho, be and the same are hereby distributed and awarded and decreed to the several parties to this suit, for beneficial purposes and uses, in amounts and of the dates and for the lands, with priority of rights in accordance with said dates, as follows, to-wit:- To the Plaintiff, John Q. Adams, 160 inches or 3.2 cubic feet per second of time, for the irrigation of SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec.22, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.27, Tp.14 N. R.19 East Boise Meridian, containing 120 acres, his right to date from May 15, 1901."

WITNESS, My hand and the seal of my office at Boise , Idaho,
this 23rd day of November, A.D. 1916.

J.H. SMITH,
State Engineer.

(SEAL)

Miner
11/23/16

72-B

[illegible]

1. The first part of the document is a letter from the President of the United States to the President of the Senate, dated January 1, 1901. The letter is signed by William McKinley and is addressed to John D. Long. The letter is a copy of a letter that was sent to the President of the Senate by the President of the United States. The letter is a copy of a letter that was sent to the President of the Senate by the President of the United States.

NOT FILMED

PLACE ALL FUTURE PAPERS IN FILE #2

Transfer 3745
WR# 72-00048/51 B,L

WRITTEN TESTIMONY
PREPARED FOR CYPRUS THOMPSON CREEK MINING COMPANY

SCOTT I. BENOWITZ, P.E.
JAMES M. MONTGOMERY, CONSULTING ENGINEERS, INC.

December 30, 1991

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Department of Water Resources
Southern Region Office

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OCT 25 1993

72-00048, 72-00051 B,L, T # 3 > 45



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 18, 1992

RE: Application for Transfer No. 3747; Permit Nos. 72-00048, 72-00051B, 72-00051L, 72-00051N, 72-00110, 72-00111 in the Name of Cyprus Thompson Creek Mining Co.

Dear Interested Party:

Please find enclosed a copy of the Order Adopting Proposed Memorandum Decision and Order on the above referenced permit.

Any party who disagrees with the decision of the Director may request a rehearing before the Director within twenty (20) days or may appeal to the district court within thirty (30) days from the date this decision is mailed.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 2, 1992

Dear Interested Party:

Enclosed are copies of the Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order.

Any party who appeared at the hearing is given the opportunity to file exceptions or briefs, or to request oral arguments within 15 days of the date of this mailing. At the end of that time, the director will issue his final decision adopting, modifying rejecting or replacing the proposed decision. Copies of that decision and order shall also be mailed to all parties.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads 'L. Glen Saxton'.

L. Glen Saxton
Chief, Water Allocation Bureau

Enc: Proposed Memorandum Decision and Order
Order Issuing the Proposed Memorandum Decision and
Order
Certificate of Mailing

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JUN 2 1992

JUN 2 1992

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FALLS OFFICE

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BOISE OFFICE

WM LYMAN BELNAP, P A
RANDALL B REED
RONALD D CHRISTIAN

ARTHUR W HOLDEN
(1877-1967)
ROBERT B HOLDEN
(1911-1971)
TERRY L CRAPO
(1939-1982)
WM S HOLDEN
(1907-1988)

May 1, 1992

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MAY 04 1992

Mr. Gary Spackman
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Department of Water Resources

RE: Cyprus Thompson Creek Mining Co. Transfer Applications

Dear Mr. Spackman:

We have prepared and are enclosing a Brief on behalf of our client, Mr. Mike Shannon, in the above entitled matter.

Yours very truly,



Kent W. Foster

#8719.00/srs

RECORDED

JUN 26 1992

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

Attorneys for Protestant Mike Shannon

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CYPRUS THOMPSON)
CREEK MINING COMPANY TRANSFER)
APPLICATIONS FOR WATER RIGHTS)
NOS. 72-0051B, 72-00051N)
72-00051L, 72-00048, 72-00110)
AND 72-00111)
_____)
)
)
)

BRIEF OF PROTESTANT
MIKE SHANNON

This Brief is submitted to set forth the concerns of the protestant herein, Mike Shannon. Mr. Shannon is the recent purchaser of a ranch of some 715 acres on Garden Creek west of the City of Challis, Idaho, primarily in Section 31 of Township 14 North range 19 East. Approximately 150 to 200 acres of the ranch (known locally as the Klug place) has historically been irrigated from Garden Creek with three water rights, one of which has a priority of March 1, 1879, and the other two of which have priorities of August 15, 1910.

Mr. Shannon has only owned his ranch for a short time and has not personally operated it. He has, however, attempted to learn about the historic water diversion and use practices so

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as to be able to evaluate the potential impact to his own water rights of the proposed Application for Transfer of Cyprus Thompson Creek Mining Company (hereafter "Cyprus").

Cyprus filed two Applications for Transfer of Water Rights with the Idaho Department of Water Resources on May 21, 1991. They appear to have been assigned Nos. 3745 and 3747. No. 3745 seeks the transfer of .3 CFS of right No. 72-00051N, .5 CFS of right No. 72-00051B, .25 CFS of right No. 72-00051L, and 2.6 CFS of right No. 72-00048, but for a combined total of 2.6 CFS, to be diverted from Garden Creek through the Upper Bradbury ditch and the Ivie ditch for the irrigation of 130 acres of land in Sections 33 and 34 of Township 14 North, Range 19 East of the Boise Meridian. Transfer No. 3747 seeks the transfer of 2.1 CFS of right No. 72-00110 and .86 CFS of right No. 72-00111 for a total for 2.96 CFS, through the Upper Bradbury ditch for the irrigation of 199 acres in Sections 33 and 32 of Township 14 North Range 19 East of the Boise Meridian.

All of the proposed points of diversion for Cyprus are downstream on Garden Creek from the points of diversion for Mr. Shannon's ranch. Right No. 72-00110 is senior to Mr. Shannon's 1879 right and all the rest of the Cyprus rights are senior to Mr. Shannon's 1910 rights.

Mr. Lawrence Bradbury, a predecessor in interest of Cyprus, is the individual who apparently purchased and operated

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the land now owned by Cyprus and essentially organized it as a farming unit between about 1941 and 1965. As we understood Mr. Bradbury's testimony, his recollection was that by the time he had acquired all of the land he ultimately operated (by about 1965) he was diverting water for irrigation purposes from three points of diversion on Garden Creek: (1) The Upper Bradbury ditch, through which he received, when available, up to 105 miners inches (2.1 CFS) with an 1879 priority, 55 miners inches (1.1 CFS) with an 1889 priority, and 80 miners inches (1.6 CFS) with a 1901 priority; (2) The Ivie ditch through which he received, when available, up to 12.5 miners ditches (.25 CFS) with an 1880 priority and 80 miners inches (1.6 CFS) with a 1901 priority; and (3) The Hesson (correct spelling unknown) ditch, through which he received, when available, up to 37.5 miners inches (.75 CFS) with an 1880 priority. Further, again as we understood his testimony, he recalled flood irrigating some 50 to 55 acres on the "home place" (the westernmost portion of the land), 160 acres of the "Ivie place", which is just west of the highway and approximately 80 acres east of the highway.

In recent years, since its acquisition by Cyprus, the irrigation practices have changed somewhat. The westernmost portion of the property (formerly much of which appears to have been referred by Mr. Bradbury as the "home place") has become a

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golf course. As we understood the testimony of Mr. Dan Strand, about 50 acres of golf course are now sprinkled by means of a 10 HP pump and a system which permits a maximum of 28 sprinkler heads having an output capacity of 10-14 gallons per minute each to be operated at one time, usually at night.

Mr. Tim Ingram testified he had most recently been responsible for irrigation of other portions of the land now owned by Cyprus. As we understand it, the Hesson ditch diversion, which was downstream from the city of Challis, is no longer used and hasn't been for several years. All of the water from Garden Creek for the irrigation of these lands now comes through either the Upper Bradbury ditch or the Ivie ditch diversions. Up to 120 acres east of the highway is presently irrigated by means of wheel-line sprinklers having a total of 90 or 91 heads, each with an output capacity of five gallons per minute. The land west of the highway has not been irrigated for two or three years. This field was sometimes referred to as the "Dump Road" field. There is apparently a sprinkler irrigation system on this "Dump Road" with 30 sprinkler heads having an output capacity of five gallons per minute each. Mr. Ingram believes that in order to properly irrigate the field, he needs to double the number of sprinkler heads.

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It appears then that for the foreseeable future, the proposal is to keep watering the golf course, the field east of the highway, and the "Dump Road" field as well. We do not know the actual diversion rate required to supply it, but the sprinkling system for the golf course uses a maximum of 280 to 392 gallons per minute (28 heads x 10 to 14 gallons per minute) or .6 to .9 CFS (30 to 45 miners inches). We likewise are not certain of the diversion rates required for the irrigation of the land east of the highway or the "Dump Road" field west of the highway, but the sprinkling system for the field on the east side appears to use about 455 gallons per minute or a little over one cubic foot per second or 50 miners inches. If an extra 30 sprinkler heads are placed on the "Dump Road" field, that system could use up to 300 gallons per minute which is just under .7 CFS or 35 miners inches. We did not hear evidence of the diversion rates required to supply .9 CFS to the golf course, 1 CFS to the field east of the highway, or .7 CFS to the "Dump Road" field. This would be a total of 2.6 CFS to come from the two remaining diversions (for the Upper Bradbury and Ivie ditches). We suspect the actual required diversion rate is substantially less than the combined total sought under the two transfer applications of 5.56 CFS (2.6 plus 2.96).

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Presumably there would be transmission losses in the ditches between the points of diversion and the places of use. Such probable transmission losses are apparently the basis for much of the concern of the protestants. Historically, Garden Creek has been a gaining stream somewhere between the point of diversion for Mr. Shannon's land and the city of Challis. A question that has bothered protestants is whether diversions in accordance with the proposed transfers will negatively affect stream flows and/or recharge to the creek in this reach.

Cessation of use of the Hesson ditch, which heads downstream from the reach, and increased diversions at the upper points clearly means stream flows will be or have been reduced at some locations in the reach. We did not understand there to have been any substantial analysis of the recharge impacts to the creek from the seepage losses in either the Upper Bradbury or Ivie ditches and we have not seen any measurements or analysis of the change in stream flows in this reach. If the flows in the mentioned reach are reduced as a result of the transfers then there will probably be injury to Mr. Shannon's water rights. Several rights with earlier priorities than his rights must be filled at diversions downstream from his. If there is less water in the stream to fill such rights at their respective points of diversion

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downstream, his rights will be the ones to take the "lion's" share of the cuts.

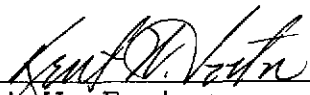
The sprinkling of the golf course may be an important matter for analysis. Crops are no longer grown and there may be some question whether sprinkling of grass for a golf course is irrigation in the same sense as sprinkling or flooding of hay and grain for agricultural purposes. In any event, we heard no significant testimony to indicate what, if any, changes might be expected in stream flows, seepage losses, diversions etc.

As we understand the law, the applicant for transfer has the initial burden of establishing that there will be no injury to other water rights as a result of the transfer. With all due respect to the written and oral testimony of Mr. Scott I. Benowitz, there was no analysis at all of the injury issues. Nor did we hear any other testimony or evidence offered by the applicant which bears on the potential injury issues.

In conclusion, we are left with the same concern with which we went to the hearing; what impacts have occurred or will occur as a result of the changes in irrigation practices on the Cyprus property. Perhaps this is an appropriate situation for the Department of Water Resources to retain jurisdiction and to require the development of better data upon which to base a satisfactory conclusion as to injury to other

water rights, including those of Mr. Shannon. While the use rates do not seem excessive on the face of it, there seems to be a dearth of information on diversion rates and seepage losses and no analysis of probable impacts on stream flows and other water rights.

RESPECTFULLY submitted this 1st day of May, 1992.



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

JUN 26 1992

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 1st day of May, 1990.

Document Served: BRIEF OF PROTESTANT MIKE SHANNON

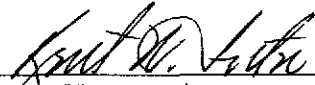
Attorneys Served: (Hand/Mail)

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Mark and Vicki Armbruster (MAIL)
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Challis, Idaho 83226



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

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Memorandum

Scott L. Campbell
Susan E. Buxton
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702
(208) 338-8200

Attorneys for Cyprus Thompson
Creek Mining Company

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

IN THE MATTER OF CYPRUS THOMPSON)	
CREEK MINING COMPANY TRANSFER)	
APPLICATIONS FOR WATER RIGHTS)	POST-HEARING BRIEF IN
NUMBERS 72-00051B, 72-00051N,)	SUPPORT OF APPLICATIONS
72-00051L, 72-00048, 72-00110)	FOR TRANSFER OF WATER
AND 72-00111.)	RIGHTS

Applicant Cyprus Thompson Creek Mining Company (Applicant) respectfully submits the following Post-Hearing Brief in Support of its Applications for Transfer of Water Rights pursuant to I.C. § 42-222. Applicant holds decreed Water Right Numbers 72-00110¹,

¹ Location of existing point of diversion is the NW 1/4 of the NW 1/4, Section 32, Township 14 N, Range 19 E, Boise Meridian, Custer County, Idaho. The priority date is May 15, 1899. Description of the existing diversion works includes; water is diverted with rock jetty into metal measuring flume, flow is controlled by wheel valve at diversion point. Water then flows into earthen ditch system and eventually flows into eight-inch steel buried pipeline with end point being sprinkler wheel lines. Length of ditch system is approximately 5,400 feet and buried pipe segment is approximately 3,800 feet, for total length of approximately 9,200 feet. Amount is .86 cfs. Total consumptive use claimed is 562.5 acre feet per annum.

JUN 26 1992

1 72-00111², 72-00051B, 72-00051N, 72-00051L³, and 72-00048⁴;

2
3 ² The priority date is May 15, 1878. Location of the existing
4 point of diversion is the NW 1/4 of the NW 1/4, Section 32,
5 Township 14 N, Range 19 E, Boise Meridian, Custer County, Idaho.
6 The description of existing diversion works is the same as that of
7 72-00110. The water is claimed in the amount of 2.1 cfs. The
8 total consumptive use claimed is 475 acre feet per annum.

9 ³ 72-00051N, priority date 5/15/1880, .30 cfs, diverted for
10 irrigation purposes, April 1st to November 1st, the points of
11 diversion are in the NW 1/4 of the NW 1/4, Section 32, Township 14
12 N, Range 19 E, Boise Meridian, Custer County, Idaho; 72-00051B,
13 priority date 5/15/1880, .50 cfs, diverted for irrigation purposes,
14 April 1st to November 1st, the points of diversion are in the NW
15 1/4 of the NW 1/4, Section 32, Township 14 N, Range 19 E, Boise
16 Meridian, Custer County, Idaho; 72-00051L, priority date 5/15/1880,
17 .25 cfs, diverted for irrigation purposes, April 1st to November
18 1st; all three rights are diverted from both the Upper Bradbury and
19 Ivie Ditches, the points of diversion are located in the NW 1/4 of
20 the NW 1/4, Section 32, Township 14 N, Range 19 E, Boise Meridian,
21 Custer County, Idaho. The local name for the diversions are the
22 Upper Bradbury Ditch and Ivie Ditch. The lands irrigated amount to
23 190 acres. There will be no change or effect upon existing
24 irrigated acres due to the fact that this place of use and change
25 of diversion has been in effect for a number of years.

26 ⁴ A 1944 Order, number 177, was filed in the matter of the
application of Lawrence Bradbury of Challis, Idaho for a change of
authorization and for a change of point of diversion. Mark R.
Kulp, for the State of Idaho, Department of Reclamation, State
Engineer, authorized the change in the point of diversion of 3.2
cfs of the waters of Garden Creek. A 1960 certificate, number 193,
authorizing transfer of the water right concerns water right number
72-0048 granted permission to John Q. Adams of Challis, Idaho, to
transfer their use of 3.2 cfs of waters from Garden Creek. On
April 25, 1991, the application for transfer of the water right,
including the water right number 72-0048, on behalf of Cyprus
Thompson Creek Mining Company, the Applicant, for the purpose of
transfer is to add diversion points and change place of use. The
Applicant wishes to formalize and document changes which have
occurred over a number of years since the water right was original-
ly decreed. Water right number 72-00048, priority date 5/15/1901
for 3.2 cfs for the purpose of irrigation from April 1st to
November 1st, the points of diversion are in the NW 1/4 of the NW
1/4, Section 32, Township 14 N, Range 19 E, Boise Meridian, Custer
County, Idaho. The total amount of water being transferred is 3.2
cfs. The source of the water is Garden Creek which is tributary to
the Salmon River. The local name for the diversions are the Upper
Bradbury and the Ivie Ditches. The total number of acres irrigated

1 collectively referred to as "water rights"⁵.

2 The water rights have been used on the same or similar
3 parcels of land since they were decreed. The decree, dated May
4 19, 1914, did not enumerate the points of diversion, it merely
5 set forth the legal description of the lands the water rights
6 were to be used upon.⁶ There will be no effect on the land now
7 irrigated if the place of use is changed pursuant to these
8 transfers because the changes have been in effect for a number of
9 years. The changes reflect actually irrigated acres and
10 represent a reduction from the amount of acres listed as the
11 place of use on the decree creating these rights, and a reduction
12 from the number of acres listed on the respective adjudication
13 claims. Applicant intends to amend the adjudication claims
14 through this transfer process.

15 Over time, the water rights came into the ownership of
16 Lawrence Bradbury. Mr. Bradbury testified at the March 11, 1992
17 hearing as to the changes in the place of use and the points of
18 diversion and that no protests to such changes were ever lodged.
19 Mr. Bradbury also testified that all other appropriators of

20
21 is 125.

22 ⁵ Transfer applications for water right numbers 72-00048, 72-
23 00051N, 72-00051B and 72-00051L, have been combined. The
24 application for transfer of water rights number 72-00110 and 72-
00111 are contained on one application form.

25 ⁶ See Exhibit A, pp. 2, 11. The 1914 decree established the
26 basic water rights on Garden Creek. This decree was official
noticed by the hearing officer during the March 11, 1992 hearing as
being part of the record.

1 Garden Creek in the area knew of these changes, including current
2 protester Ray Keppner, who diverted water from Garden Creek at
3 the same time. Mr. Bert Doughty of Cyprus, testified that the
4 reason the applications for transfer were filed was because the
5 water master, Dee Keppner, refused to deliver water to one of the
6 parcels.

7 This post-hearing brief will discuss:

8 (1) Whether the protesters are estopped from asserting that
9 the proposed change in points of diversion are injurious;

10 (2) Whether the proposed changes are in fact injurious to
11 other appropriators;

12 (3) Whether the changes constitute an enlargement of use;

13 (4) Whether the proposed changes are in the public interest
14 and coincide with the conservation of Idaho waters requirement of
15 I.C. §42-222; and

16 (5) Whether the changes fall within the parameters of I.C.
17 §42-1416. The Applicant contends that the applications for
18 transfer of water rights should be approved because the changes
19 requested have been in place for many years without protest.
20 Further, protesters have not met their burden of rebutting the
21 evidence offered by the Applicant in the record.

22 STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

23 The following factual discussion represents the evidence
24 present in the record. The record includes the oral and written
25 testimony presented during the March 11, 1992 hearing and the
26

JUN 26 1992

Davis Wright Tremaine
702 W Idaho, Suite 700
Boise, Idaho 83702
(208) 338-8200

1 decrees and orders that established the water rights in question.
2 These decrees and orders were official noticed as being part of
3 the record by the hearing officer during the March 11, 1992
4 hearing.

5 1. THE PROPERTY UTILIZING THE WATER RIGHTS TO BE
6 TRANSFERRED.

7 Lawrence Bradbury, and members of his family, at one time
8 owned much of what is now the property held by Cyprus Thompson
9 Creek Mining Company. In 1941, Lawrence Bradbury purchased the
10 hayfield parcel and irrigated it through the Upper Bradbury
11 Ditch. The irrigation system servicing the hayfield was upgraded
12 over the years. Most recently, the hayfield has been irrigated
13 with a mainline and fed by gravity flow to sprinkler wheel lines.
14 The parcel purchased in 1941 was formerly known as the Ivie
15 Place, which consisted of approximately 160 acres, and held a
16 water right from Garden Creek, designated as Water Right No. 72-
17 00048, with a 1901 priority date for 3.2 cfs, or 160 miners
18 inches. During the March 11, 1992 hearing, Mr. Bradbury
19 described that the points of diversion required changing because
20 all of the upper 40 acres and part of the southern-most 40 acres
21 of the Ivie Place was above the Ivie Ditch. (The Ivie Ditch is
22 also called the Middle Bradbury Ditch.)

23 Mr. Bradbury received permission from the State Water
24 Engineer, Roy Thompson, to transfer 80 miners inches (1.6 cfs.)
25 to the Upper Bradbury Ditch to service a portion of the Ivie
26 property not irrigable by the Ivie Ditch. In spite of the change

1 in point of diversion, there were still 17 acres across the big
2 draw that were not irrigable by flood irrigation. Therefore,
3 between 1948-1950, Mr. Bradbury testified that he extended the
4 Upper Bradbury Ditch across the big draw to a knoll north of the
5 present City Dump and installed a gravity sprinkling system. The
6 gravity sprinkling system irrigated the hayfield located along
7 the dump road. The old ditch and concrete headbox are still
8 visible on the knoll. The system had a pipeline that ran down
9 the hill to the hayfield and also utilized a portable mainline.

10 In 1955 or 1956, Mr. Bradbury installed a headbox on the
11 Upper Bradbury Ditch, approximately 200 yards south of the old
12 cemetery on what is now Cyprus property, and buried a pipeline
13 used to irrigate all of the original Ivie property, plus part of
14 an additional 40 acres. This system was in use when the Bradbury
15 property was sold in 1973.

16 At the time of the sale in 1973, the Bradbury property had
17 three water rights that were conveyed through the upper ditch
18 (Upper Bradbury Ditch). Water Right 72-00110 (2.1 cfs., priority
19 date 1878), Water Right 72-00111 (.8 cfs., priority date 1899),
20 and one-half of Water Right 72-00048 (1.6 cfs., priority date
21 1901), which were used on what is now the golf course and the
22 hayfield which are at issue in this case.

23 The Ivie Ditch (Middle Bradbury Ditch) diverted one-half of
24 Water Right 72-00048 (1.6 cfs., priority date 1901), and an
25 additional 15 miners inches of the Zilkey Water Right (Water
26 Right 72-0051N), and an additional 15 miners inches was available

1 from an unnamed spring near the Lenzingers property. This
2 unnamed spring had a water right filed upon it by Harry Waters
3 with a priority date of approximately 1900, plus 80 inches of
4 waste water filed upon it by Sam Hessen in 1936.

5 Mr. Bradbury was raised in a home located approximately 100
6 yards east of the unnamed spring. Mr. Bradbury's father
7 irrigated a small pasture, lawn and garden with the water from
8 that spring. The home site was sold by Mr. Bradbury's father in
9 1925, however, the spring remained inside the boundary of the
10 property owned by the Bradbury family. In the late 1920's or
11 early 1930's, Harry Waters filed on the waters of this spring for
12 use upon his property located across Highway 93 east of the
13 present Village Motel. In order to get the water across the Ivie
14 Ditch, Harry Waters constructed a flume across the ditch. Mr.
15 Waters used this water for a number of years.

16 Approximately 1938 or 1939, Harry Waters sold his property
17 to Sam Hessen. In an attempt to gain more water for irrigation,
18 Sam Hessen asked for permission from Mr. Floyd Bradbury, Lawrence
19 Bradbury's father, to enter the Bradbury property with a drag
20 line to dig through the clay dike that forced the groundwater to
21 the surface, hoping to release a greater flow of water from
22 behind the dike. These efforts were unsuccessful in generating
23 any additional flow of underground water. Sam Hessen did file on
24 a waste water right, of 80 miner's inches from the Bradbury
25 property. This waste water formerly had flowed into the Ivie
26 Ditch. In order to carry the waste water over the Ivie Ditch,

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1 Sam Hessen replaced the original Harry Waters' flume with a
2 larger flume.

3 The system used by Mr. Bradbury incorporated a pump system
4 that irrigated the present Cyprus subdivision and the hayfield
5 property below Highway 93. The lower ditch, the Hessen Ditch,
6 used by the Forest Service, and the Cranes, and the Bradbury
7 property, had 100 inches of Zilkey water, with a priority date of
8 1880. The Forest Service received 25 inches, Crane received 37
9 1/2 inches, and Mr. Bradbury received 37 1/2 inches from the
10 Zilkey water right. Mr. Bradbury acquired the Hessen property in
11 1945 and used the 37 1/2 inches to irrigate the land below the
12 highway not covered by sprinklers.

13 Mr. Bradbury stated that he believed all of the above
14 transfers of water to different diversion points were of record
15 with the State Department of Water Resources.

16 In 1960, Mr. Bradbury was in search of more irrigation water
17 and drilled an 18-inch diameter well on the property now owned by
18 Clyde Rigby. This well was unsuccessful as an irrigation well
19 but the static water level rose to within two feet of the ground
20 surface. From the Ivie Ditch, a 600 foot, 8-inch cement pipe
21 tapped the well casing approximately 9 feet below the surface.
22 This allowed the well to continuously flow approximately 15
23 miner's inches year around. Mr. Bradbury used this water, ~~supplied~~
24 for stockwater.

25 Sometime during the 1950's, it was determined that the Ivie
26 Ditch was not large enough to carry all of the decreed water,

1 waste water, and storm run-off. Occasionally, it caused some
2 flooding of streets and residences in the City of Challis. The
3 City of Challis threatened legal action in this matter. Mr.
4 Bradbury then entered into an agreement with the City of Challis
5 to share the cost of digging a 6 to 8 foot ditch on the side of
6 the Ivie Ditch to alleviate the threat of flooding.

7 After Mr. Bradbury sold his property in 1973, it was held by
8 JanMar Corp. Mr. George Turk testified as to the operation of
9 the property during the JanMar ownership and testified that he
10 did not make any changes in the irrigation system as were
11 existing when Mr. Bradbury sold him the property in 1973. The
12 only change made was in 1977 when Mr. Turk installed two Parshall
13 flumes; one on the Upper Bradbury ditch, and another on the Ivie
14 Ditch. This was the only change made upon the Bradbury water
15 delivery system and JanMar Corporation continued to irrigate the
16 same lands as Mr. Bradbury.

17 **2. PROCEDURAL BACKGROUND.**

18 Cyprus Thompson Creek Mining Company (Applicant) filed
19 applications with the Idaho Department of Water Resources (IDWR)
20 to add diversion points and change the place of use of those
21 decreed water rights. These applications were filed on May 21,
22 1991.

23 On September 3, 1991, IDWR received a protest to the
24 applications for transfer of water rights from the Garden Creek
25 Waterusers, District 72-B. The signatories to the protest were
26

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Davis Wright Tremaine
702 W. Idaho, Suite 700
Boise, Idaho 83702
(208) 338-8200

1 Mark and Vicki Armbruster, Michael Shannon, James A. Lynch, and
2 Ray Keppner.

3 A. Pre-Hearing Conference Attendance

4 On September 16, 1991, the IDWR sent a Notice of Pre-Hearing
5 Conference to the Applicant and the above-listed Protesters. The
6 Notice scheduled the pre-hearing conference for Monday, September
7 30, 1991 at the Custer County Courthouse in Challis, Idaho. This
8 conference was held and neither the Armbrusters nor Mr. Lynch
9 were present. The Notice contained a provision specifying that
10 failure of a protester to appear at a hearing gives IDWR the
11 discretion to dismiss the protest. At the March 11, 1992
12 transfer of water right hearing, Applicant challenged the
13 participation of Protesters Mark Armbruster and Nola Lynch.
14 Applicant noted that failure of protesters to participate in pre-
15 hearing conference prejudices the Applicant because there was no
16 notice as to their specific protests to the proposed transfers.
17 The IDWR hearing officer, Gary Spackman, refused to dismiss the
18 Armbrusters' and Lynchs' protests but agreed to limit their
19 participation to those issues already identified by Protesters
20 Shannon and Keppner.

21 B. Motion in Limine

22 Applicant filed a Motion in Limine before the March 11, 1992
23 hearing requesting that the IDWR exclude all written and oral
24 testimony submitted by Dee Keppner, the water master. The motion
25 was based upon conflict of interest principles because Dee
26 Keppner is the son of Protester Ray Keppner, resides on Ray

1 Keppner's property, and helps operate Ray Keppner's ranching
2 operation which uses irrigation water diverted from Garden Creek.

3 The IDWR hearing officer denied Applicant's motion.
4 Nevertheless, he agreed that questions of credibility and weight
5 could arise because of the relationship, and the Applicant could
6 raise those issues during cross-examination.

7 C. Written Testimony - Protesters' Post-Hearing Comments

8 The hearing officer allowed the written testimony of Scott
9 I. Benowitz, P.E. to be admitted into evidence. Based upon the
10 unfamiliarity with the use of prepared written testimony, the
11 hearing officer gave each Protester fourteen days to submit their
12 comments relative to the written testimony.

13 All post-hearing briefs are due from the Applicant and all
14 Protesters by Friday, May 1, 1992.

15 After the hearing, Applicant filed a Motion to Strike
16 comments submitted by Tom Jacob. This motion was prompted by the
17 filing, on behalf of Protester Shannon, of Mr. Jacob's comments
18 on the Written Testimony submitted at the March 11, 1992, hearing
19 by Scott Benowitz.

20 Protester Shannon and his counsel were in possession of Mr.
21 Benowitz' Written Testimony well in advance of the hearing. Mr.
22 Jacob, a friend of Protester Shannon, was present at all phases
23 of the hearing. He sat at counsel's table and provided input to
24 Shannon and his attorney, Kent Foster, during the hearing.

25 Applicant also must assume that Mr. Jacob had access to the
26 Written Testimony in advance of the hearing.

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1 Pursuant to IDWR Rule 9,5, all testimony to be considered by
2 the Director must be sworn. Mr. Jacob was not sworn, nor did he
3 testify at the hearing. To the contrary, Mr. Jacob had the
4 benefit of hearing all the testimony proffered by Applicant then
5 he submitted unsworn comments after the fact, thereby denying
6 Applicant any opportunity to cross-examine him concerning his
7 "comments."

8 Applicant's Motion to Strike Mr. Jacob's comments has yet to
9 be ruled upon.

10 In the event the Director decides to consider Mr. Jacob's
11 comments, Applicant should be granted the opportunity to cross-
12 examine Mr. Jacob, or, at the very least, be given the
13 opportunity to respond to those comments as to their scientific
14 accuracy. Procedural due process requires that Applicant be
15 afforded these measures.

16 Applicant also filed a Motion to Strike the comments
17 submitted by Mark and Vicki Armbruster as being untimely. The
18 Armbrusters' comments were not filed within the time period as
19 set forth by the hearing officer. The Armbrusters comments,
20 therefore, should be stricken.

21 **3. GEOLOGICAL FACTS.**

22 **A. The Make-Up of the Soils in the Area of Garden Creek**

23 Garden Creek flows along the northern boundary of the lands
24 covered under the decreed water rights numbered 72-00110 and 72-
25 00111. Existing soil information for the area was provided by
26 Karen Langersmith of The Soil Conservation Service of the United

1 States Department of Agriculture. According to the Soil
2 Conservation Service (SCS), lands to the north of Garden Creek,
3 adjacent to the Yacomella property, are well drained with good
4 permeability. The soils on the Yacomella property, and part of
5 the now-existing golf course, are poorly drained soils with
6 moderate permeability. The soils on the lands on the southern
7 portion of the golf course, and to the south of the golf course
8 are well drained with moderate permeability. The soils on the
9 land east of the golf course are excessively drained, with
10 moderate permeability.

11 Well driller's reports from the Idaho Department of Water
12 Resources establish that the deeper soils in the vicinity,
13 including the Yacomella and golf course properties, indicate the
14 presence of clay soils. These clay soils are usually underlain
15 with gravels and sands. In some locations, however, the clay is
16 overlain with boulders and gravels.

17 B. Stream Flow Measurements of Garden Creek

18 Scott Benowitz conducted a survey of the flows in Garden
19 Creek on November 5, 1991. During his visit, Mr. Benowitz
20 inspected Garden Creek at several locations, including three
21 measuring sites adjacent to the Yacomella property east of the
22 City of Challis water treatment facility, and one location on the
23 west end of the City of Challis within its city limits. Mr.
24 Benowitz also inspected three water diversion sites along the
25 reach of Garden Creek including the upper Bradbury ditch, the
26 City's diversion, and the Ivie Ditch. Mr. Benowitz also

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1 inspected the upper Bradbury ditch on the west and south side of
2 the City of Challis's water treatment facility, and followed the
3 Bradbury ditch to where it crosses the Garden Creek Road,
4 including Yacomella's diversion headgate and supply ditch, which
5 routes water from the upper Bradbury ditch onto Yacomella's
6 property.

7 The Yacomella property is managed predominately as pasture.
8 The vegetation existing thereon consists of grass, hay, with
9 large areas of deciduous shrub vegetation, including willow,
10 alder, dogwood, and rosehip. The northern parcel of the
11 Yacomella property appeared to have been cultivated, as the
12 surface was relatively smooth. The southern half, however,
13 appeared hummocky, as though the ground had not been cultivated
14 recently.

15 Mr. Benowitz also inspected the Challis Golf Course
16 beginning near the western boundary and proceeded in an easterly
17 direction. The drain system consisted of an approximately three
18 foot deep trench, in which perforated pipe and gravel were
19 placed. In some areas the trench was filled, and others
20 approximately one foot of the trench was not filled. Some drain
21 pipes run from east to west, and dump into two small ponds, one
22 up gradient from the other. The lower pond has what appears to
23 be a drain pipe exiting to the east. The drain pipe is buried in
24 a trench which continues to the east property line where it
25 apparently ends.

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1 Mr. Benowitz took stream flow measurements of Garden Creek
2 during his site visit in November of 1991. Those stream flow
3 measurements were recorded at the three above-described locations
4 along Garden Creek. Velocity measurements were obtained with a
5 Teledyne Gurly Pigmy Meter and flows calculated using a width
6 increment method which has approximately a 10% accuracy rating.
7 The flows were at site one -- 11.0 c.f.s.; site two -- 8.8 c.f.s.
8 and site three -- 6.6 c.f.s.

9 At the time of the measurements, the only diversion from
10 Garden Creek was the flow to the City of Challis' water system in
11 between sites one and two. Regardless, this flow was routed back
12 into Garden Creek upstream from measuring site two. The stream
13 flow measurements indicate that on this particular section of
14 Garden Creek is a losing reach, at least when irrigation is not
15 occurring on fields immediately adjacent to the creek.

16 A review of flow measurements taken on Garden Creek in
17 August, 1935; May, July, September and November, 1979; and April,
18 May, July and September, 1980 by the Idaho Department of Water
19 Resources, indicates that Garden Creek is a gaining stream
20 between the following locations: (1) upstream from the City's
21 diversion; and (2) where Garden Creek flows under the Challis
22 Creek Road.

23 It should be noted that the reach calculated by the Idaho
24 Department of Water Resources is different from the reach where
25 Mr. Benowitz took flow measurements during his site visit. The
26 reach measured by Mr. Benowitz began upstream from where the

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1 IDWR's reach began, and ended upstream from IDWR's reach ended.
2 Therefore, IDWR's data indicating that a portion of Garden Creek
3 is a gaining reach cannot be directly compared to the data
4 collected by Mr. Benowitz indicating that a portion of Garden
5 Creek is now a losing reach because two different sections of
6 Garden Creek were evaluated.

7 C. Recharge of Garden Creek

8 Mr. Benowitz testified that irrigation waste water and run-
9 off occurring on the north side of the Garden Creek Road would
10 generally drain to the east until encountering a physical
11 obstruction like the Ivie Ditch or other irrigation or drain
12 ditches. Upon this occurrence, the surface water is routed
13 wherever that ditch or obstruction takes it. It is common for
14 the surface water to flow to the southeast once it reaches the
15 Ivie Ditch. Nevertheless, when irrigation water run off occurs
16 immediately adjacent to Garden Creek, the local topography may
17 route it directly into Garden Creek. Some of the water collected
18 in the Ivie Ditch or other irrigation or drain ditches may also
19 seep into the underlying soils.

20 The groundwater in the vicinity of the property owned by
21 Cyprus appears to be influenced by two sources at two different
22 piezometric elevations. According to the well logs reviewed by
23 Mr. Benowitz, the static water levels in most wells is greater
24 than fifteen feet below the ground surface. These conditions are
25 apparently influenced by a deeper aquifer. Nevertheless, ground
26 water was observed by Mr. Benowitz seeping from field drain pipes

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1 into the small ponds on the golf course, and seeping into the
2 Ivie Ditch from adjacent ditch banks. Based upon information
3 supplied by Bill Yacomella and Joe Pyle regarding water
4 availability in the Ivie Ditch, historical flow measurements in
5 Garden Creek and the soils data, water is apparently held by the
6 poorly drained soils with a piezometric surface elevation near
7 the ground surface. This groundwater source is probably,
8 therefore, surface irrigation water.

9 There appears to be two distinct types of soils present in
10 the area: (1) that which is well-drained and highly permeable,
11 and (2) that which is poorly drained and moderately permeable.
12 The zone where the soils meet appears to be along Garden Creek
13 adjacent to the Yacomella parcel, the western limit of the City
14 of Challis, and the base of the hills on the south side of the
15 golf course. Poorly drained soils which are located on the
16 Yacomella property, and a portion of the Challis Golf Course
17 parcel, have a high water-holding capacity and retain irrigation
18 and surface run-off water for long periods of time. Any
19 irrigation water or surface run-off applied to these soils prior
20 to them becoming saturated is probably retained within the soils
21 then released down gradient, primarily to the east, parallel to
22 Garden Creek slowly over time. These soils probably do not dry
23 out at depths greater than approximately one foot due to the
24 annual application of surface irrigation water. The vegetation
25 growing on Yacomella's parcel indicates that the soils at a depth
26 of 1 to 2 feet retain water throughout the growing season.

1 The surficial soils, as described in the SCS survey, have
2 the capability to retain irrigation water. Such retention occurs
3 over a long period of time which reduces the recharge capacity of
4 the underlying soils.

5 The surface water applied to the Yacomella property most
6 likely will remain on-site for an extended period of time until
7 the soil becomes saturated. Upon saturation, additional surface
8 water will sheet flow down gradient to the east. Some of this
9 water will be picked up by the Ivie Ditch and routed to the
10 southeast away from Garden Creek. It is possible that a small
11 amount of surface water could be diverted by topographical features
12 back into Garden Creek, however, no such features were observed
13 by Mr. Benowitz.

14 Idaho Department of Water Resources' historical measurements
15 taken along Garden Creek indicate that the reach between a
16 location just upstream from the city's diversion and the point
17 where Garden Creek crosses under the Challis Creek Road is a
18 gaining reach. Nevertheless, the measurements taken by Mr.
19 Benowitz at different locations indicate that Garden Creek loses
20 water in the stream reach which he measured. Mr. Benowitz'
21 measurements indicate that Garden Creek is a losing reach. An
22 explanation for this losing reach is that the soils are well
23 drained, with high permeability under the creek, and some of this
24 flow is returning to the creek downstream from measuring site
25 three but upstream from the Challis Creek Road. Since the IDWR's
26 historical measurements were taken only at upstream and

1 downstream locations, with no intermediate locations observed,
2 there is no indication where along the creek the inflow is
3 occurring. There is no physical evidence indicating whether the
4 recharge source is from irrigation or alluvial ground water. All
5 that is known is that there is a gain between the two reaches
6 measured by the IDWR.

7 Once the poorly drained soils on the Yacomella and golf
8 course parcels become saturated, the water they contain will tend
9 to move down gradient to the east parallel to Garden Creek.
10 Because of the soils' low capacity to hydraulically transmit
11 water, this process will probably occur quite slowly. This water
12 may surface where there are either low topographical features
13 such as the Ivie Ditch, or Garden Creek, or where drain pipe
14 systems carry the water to a discharge location, like the golf
15 course drainage system. It is more likely, therefore, that the
16 water from the Yacomella property west of the Ivie Ditch, and the
17 water from the golf course property will be intercepted by the
18 Ivie Ditch than by Garden Creek.

19 D. Summary of the Area Geology and its Effect Upon
20 Recharge of Garden Creek

21 Surface irrigation water applied to the subject property
22 parcels will probably not influence flows in Garden Creek. Soils
23 in this area are well drained with good to moderate permeability.
24 These parcels are not located topographically up gradient of
25 Garden Creek. Irrigation water applied to these parcels would
26 probably drain to the east parallel to Garden Creek towards the

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1 Salmon River. Application of irrigation water to these parcels
2 as proposed by the transfers would not change flows in Garden
3 Creek, particularly since the changes have been in effect for
4 several decades.

5 **LAW & ANALYSIS**

6 **STATUTORY AUTHORITY FOR TRANSFER OF WATER RIGHTS**

7 **1. STATUTORY AUTHORITY.**

8 Idaho Code § 42-222(1) provides that a person with water
9 rights, i.e., license issued, or judicial decree, who wants to
10 change the point of diversion, place of use, period or nature of
11 use shall apply with the Idaho Department of Water Resources
12 (IDWR). The application shall include the right or license which
13 is to be changed, and the changes which are proposed.

14 If protested, the Director of the IDWR (the Director) shall
15 investigate and conduct a hearing. The Director must advise the
16 water master of the district in which the water is used of the
17 proposed change. The water master shall provide the Director a
18 recommendation on the application. The Director cannot make a
19 final decision prior to receipt of the water master's recommen-
20 dation.

21 Upon examination of the application, the Director shall
22 examine all evidence and information available, and shall approve
23 the change in whole, in part, or upon conditions. The Director's
24 decision must be based upon the determination that the change
25 will not injure other water rights, that the change does not
26 constitute an enlargement in use of the original right, that the

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1 change is consistent with the conservation of water resources
2 within the state of Idaho, and is in the local public interest.
3 A change in the nature of use shall not be allowed if it is
4 changed from agricultural use where such change would
5 significantly affect the agricultural base of a local area.

6 **2. APPLICATION OF AUTHORITY TO TRANSFER OF WATER RIGHTS.**

7 Absent injury, one has a constitutional right to make a
8 change in use of their water right. *Hillcrest Irr. Dist. v.*
9 *Nampa*, 57 Idaho 403, 409, 66 P.2d 115, 117 (1937); *First Sec.*
10 *Bank v. State*, 49 Idaho 740, 744, 291 P. 1064, 1065 (1930).
11 Idaho Code § 44-222(1) provides for approval of a transfer of a
12 water right by the director of the Department of Water Resources
13 if:

- 14 (1) no other water rights are injured,
- 15 (2) the change does not constitute an enlargement of the
- 16 use of the original right,
- 17 (3) the change is consistent with conservation of water
- 18 resources within the State,
- 19 (4) the change is in the local public interest, and
- 20 (5) the change does not affect the agricultural base of the
- 21 local area.

22 The first two elements are legal in nature where the next three
23 require a more subjective analysis of public interest concerns.

24 The burden of proof is on the appropriator applying for the
25 change to show no injury. No injury must be established by a
26 preponderance of the evidence. *Bongiovi v. Jamison*, 110 Idaho
734, 739, 718 P.2d 1172, 1177 (1986).

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1 A. Protesters are Estopped from Opposing the Transfer
2 Applications

3 A junior appropriator protesting the transfer application
4 must first have standing. To have standing, the junior
5 appropriator's priority must predate the date of the change in
6 the applicant's water right. In other words, a junior
7 appropriator has no right to complain of a change that occurred
8 prior to the junior's appropriation. *Hall v. Blackman*, 22 Idaho
9 539, 542, 126 P. 1045, 1047 (1912).

10 While it is not alleged that all of the protesters water
11 rights are junior, the Applicant contends that the changes in the
12 points of diversion and the places of use occurred many years
13 ago. Therefore, protesters are estopped by laches to contest the
14 formality of this proceeding to merely document those existing
15 changes.

16 "It is axiomatic that no appropriator can compel any other
17 appropriator to continue the waste of water whereby the former
18 may benefit." *In re Boyer*, 73 Idaho 152, 162, 248 P.2d 540, 550
19 (1952). In *Boyer*, a dam held seasonal storage water. The
20 protesting appropriators claimed a right to the waste water and
21 demanded its diversion onto other appurtenant land be prohibited
22 as it would endanger their water rights downstream. The Idaho
23 Supreme Court, however, held that, "[t]he rule that a junior
24 appropriator has the right to a continuation of stream conditions
25 as they were at the time he made his appropriation, could not
26

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1 compel [the senior appropriator] to waste his water for use on
2 [the senior appropriator's property]." *Id.* at 163.

3 Boyer applies directly to the Applicant's contention that
4 the use of the water on the golf course parcel, as well as the
5 hayfield and the parcel across the highway, have all been
6 previously irrigated under the same water rights before.
7 Further, it is the right of a water right holder to put the water
8 to beneficial use and change the point of diversion so long as
9 there is no injury, nor any enlargement. See *Jenkins v. State*
10 *Dept. of Water Resources*, 103 Idaho 384, 388, 647 P.2d 1256, 1260
11 (1982).

12 The holder of a water right is on equal footing with a real
13 property owner in that a water right may be transferred in regard
14 to its point of diversion and its place of use. *Hillcrest Irr.*
15 *Dist. v. Nampa & Meridian Irr. Dist.*, 57 Idaho 403, 409, 66 P.2d
16 115, 121 (1937). See also *In re Rice*, 50 Idaho 660, 299 p. 664
17 (1931). Additionally, "long and continuous knowing acquiescence
18 in another's use and enjoyment of a property or privilege may
19 preclude one from subsequently asserting his claim." *Id.* at 411,
20 66 P.2d at 123.

21 Mr. Bradbury testified that he had served as the water
22 district secretary for thirty (30) years and that the other
23 appropriators were aware of his change in points of diversion
24 attributable to the water rights. Mr. Bradbury went on to
25 testify with specificity regarding those diversion point changes
26 occurring with regard to the Hessen Ditch, the Upper Bradbury

1 Ditch, the Ivie Ditch, and the addition of the transfer box on
2 top of the knoll placed so water could be delivered to all
3 parcels owned by him.

4 Accordingly, the protesters are estopped from opposing the
5 transfer applications because the changes have been in place
6 since at least 1973 when Mr. Bradbury sold the parcel to JanMar
7 Corporation, and protesters have failed to demonstrate or even
8 assert any injury to their water rights until this transfer
9 process began.

10 B. The transfer applications mirror the presumed validity
11 of the changes afforded by Idaho Code §42-1416

12 The Idaho legislature mandated the adjudication of all water
13 rights located within the Snake River Basin in 1985 when it
14 enacted Idaho Code §§42-1406A through 42-1423. As part of that
15 legislation, Idaho Code §42-1416 established a rebuttable
16 presumption in a basin-wide adjudication that,

17 [t]he holders of previously adjudicated water rights
18 shall be presumed to have validly applied all water to
19 beneficial use on the lands being irrigated at the time
20 of the basin-wide adjudication with no change in the
21 priority dates of the original rights.

22 In the instant proceeding, the changes in place of use had
23 been instituted long before the commencement of the Snake River
24 Basin Adjudication (SRBA), which began in 1987. Consequently, in
25 the context of the adjudication process these changes would be
26 presumed to be valid.

Admittedly, the transfer process under Idaho Code §42-222 is
not the same as a basin-wide adjudication. However, it is

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1 important to note that the SRBA claims filed by the Applicant
2 listed these changes, in large part, and the transfer
3 applications were filed because continued delivery of the water
4 in conformance with the established changes was being denied by
5 Dee Keppner, the watermaster. Interim delivery of the water,
6 pending resolution of the claimed changes under the presumption
7 statute, would not be allowed. Therefore, the Applicant
8 proceeded with these filings.

9 Given this factual context, significant weight should be
10 given to the language of Idaho Code §42-1416. It gives a clear
11 expression of the legislature's intent as to the proper method of
12 handling the factual circumstances of the present case in the
13 adjudication process. This same approach of granting "amnesty"
14 to long-standing, historic variances of water rights from the
15 original decree should be extended to the instant case. This is
16 particularly so where, as here, the SRBA claims asserted the
17 changes and Dee Keppner's refusal to continue water deliveries
18 was the only reason the transfer applications were filed instead
19 of allowing the changes to be processed in the adjudication.

20 C. Water Right Changes Prior to 1969: Administrative
21 Approval Not Required

22 All, or virtually all, of the water right changes which are
23 requested in this transfer proceeding were instituted while
24 Lawrence Bradbury owned the subject properties. His testimony
25 established those facts and the testimony of several other
26 witnesses for the Applicant supported his statements. This

1 record clearly establishes that virtually all of these changes
2 occurred prior to 1969.

3 This date is significant in the context of this proceeding
4 because until July 1, 1969, Idaho Code §§42-222 and 42-108 did
5 not require administrative approval of water right changes. Such
6 approval became mandatory only after the amendments of those
7 sections by the legislature that year. 1969 Idaho Sess. Laws
8 905. Consequently, any water right changes instituted prior to
9 that date, such as those in the present case, could be validly
10 accomplished without compliance with the transfer process of
11 Idaho Code §§42-222 and 42-108.

12 Unfortunately, administrative enforcement, either through
13 the watermaster or the Department of Water Resources, failed to
14 acknowledge the validity of these pre-1969 changes. Beginning in
15 1989, the watermaster, apparently with the approval of the
16 Department, refused to allow the continued delivery of water
17 under these pre-1969 changes. Based upon this refusal (see
18 testimony of Bert Doughty), the Applicant submitted applications
19 for transfer to validate the changes through the administrative
20 process.

21 It is Applicant's position that such administrative
22 validation should not be necessary in order to receive continued
23 delivery of water under the pre-1969 changes. However, since the
24 administrative approval has been required, Applicant believes
25 that the legal status of the pre-1969 changes virtually mandates
26 administrative validation of these changes.

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1 D. No Injury Rule

2 A junior appropriator has a vested right to maintenance of
3 stream conditions existing at and after the time of the junior's
4 appropriation. *Crockett v. Jones*, 47 Idaho 497, 504, 277 P.2d
5 550, 552 (1929). An injury consists of making a junior
6 appropriator subject to a priority not previously subject to, or
7 the change increases the burden on the stream, or the change
8 reduces the volume of water flowing in the stream. *Jenkins v.*
9 *State Dept. of Water Resources*, 103 Idaho 384, 388, 647 P.2d
10 1256, 1260 (1982). The injury must be real and substantial.
11 *Beecher v. Cassia Creek Irr. Co.*, 66 Idaho 1, 8, 154 P.2d 507,
12 509 (1954). In the present case, the changes have been in place
13 for many years and no claim of injury, substantial or otherwise,
14 had been made previously.

15 Mr. Bradbury testified that the parcels he irrigated were
16 the same as those contained in the transfer applications. Mr.
17 Rukavino and Mr. Strand testified that the golf course parcel
18 actually used less water than if it were to be flood irrigated
19 because of the computerized sprinkler system. Mr. McGowan and
20 Mr. Butts testified that they had grown up in the area and had
21 helped move sprinkler lines on the hayfield site where the
22 watermaster has recently refused to deliver water, prompting this
23 proceeding. These uses demonstrate that no injury to other
24 appropriators has occurred as all of the parcels have been
25 irrigated by the water in question.

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1 Mr. Benowitz further demonstrated that the make-up of the
2 soils in the area are of the type that recharge to Garden Creek
3 is unlikely. Further, it was more likely, due to the geological
4 strata that the waste water flows predominantly south and east
5 and is intercepted by the Ivie Ditch without opportunity to
6 recharge Garden Creek.

7 The protesters have not provided any evidence to rebut these
8 facts. The standard is that of a preponderance. The Applicant
9 has clearly demonstrated, by more than a mere preponderance, that
10 the transfers would not and have not injured other appropriators.
11 Moreover, the facts contained in the record, if construed to
12 injure other appropriators, do not arise to the level of
13 "substantial injury" as required by *Beecher*. *Id.* Therefore, the
14 Director must find there is no injury, and grant the applications
15 to transfer the water rights.

16 E. No Enlargement of Use

17 An expansion in irrigated acreage is an enlargement that is
18 prohibited by I.C. §42-222. Nevertheless, § 42-222 allows expan-
19 sions in irrigated acreage of storage water, therefore,
20 expansions in irrigated acreage of direct flow rights are not
21 authorized and are considered an enlargement. *Hall v. Blackman*,
22 22 Idaho 556, 126 P. 1047 (1912). In the present case, the
23 number of acres under irrigation is actually reduced from the
24 amount described in the decree establishing the rights.

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1 As demonstrated by the transfer applications, the total
2 amount of land to be irrigated is approximately 329 acres. This
3 does not constitute an enlargement of the area irrigated.

4 Under the transfer applications, water rights 72-00110 and
5 72-00111 propose to irrigate approximately 199 acres with 2.96
6 cfs. Under the original decree, these two water rights were
7 designated to irrigate approximately 240 acres.

8 Under water rights 72-00048 and 72-00051B, N & L, the
9 transfer proposes to irrigate approximately 160 acres with 2.6
10 cfs. Originally, these water rights irrigated approximately 320
11 acres with 4.25 cfs.

12 Further, since the golf course parcel uses a computerized
13 sprinkler system, the use is smaller than if irrigation was
14 continued thereon.

15 Accordingly, the Director should find there to be no
16 enlargement of use and grant the transfer applications.

17 F. Public Interest Elements: conservation, public
18 interest, agricultural base of local area

19 The burden is on the applicant to show that the change is
20 either in the local public interest or that there are factors
21 that outweigh the local public interest in favor of the change.
22 *Shokal v. Dunn*, 109 Idaho 330, 339, 707 P.2d 441, 450 (1985).
23 The determination of what elements of the public interest are
24 impacted and what the public interest requires is within the
25 sound discretion of the IDWR. *Id.* The IDWR shall weigh: the
26 economic effects of the change; the effect on water quality;

1 effect of alternative changes in place of that applied for;
2 impact of change on recreational and scenic uses; and the effect
3 on vegetation, wildlife, and fish. *Id.* See also, In re Collins
4 Bros. Corp., 114 Idaho 600, 606, 759 P.2d 891, 897 (1988).

5 The proposed uses do not change the nature of use. The
6 uses, in fact, are in the public interest. By developing a golf
7 course, the public interest is served, as evidenced by the
8 testimony of long time Challis resident and businessman Danny
9 Strand. Mr. Strand testified that with the increase of tourism
10 in the area, like white water rafters, cyclists and sightseers,
11 the golf course is an attractive amenity of Challis. It also
12 provides the citizens of Challis a relaxing activity that can be
13 enjoyed by many people. It also represents a community-supported
14 project that required a large degree of cooperation.

15 The transfer applications also provide for sustained
16 agricultural use of the parcels. In fact, absent transfer
17 approval, the hayfield would not be cultivated because the
18 watermaster refuses to divert water to it.

19 As stated by Mr. Bradbury, Mr. Butts and Mr. McGowan at the
20 hearing, the hayfield is a good hay producing parcel and should
21 not be held fallow. Further, the Ingrams testified that they had
22 rented the hayfield with the expectation of growing hay for their
23 herd on it. It has been uncultivated for three years even though
24 a valid water right exists that has historically irrigated that
25 field.

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1 The protesters have not supplied any evidence that
2 cultivation of the hayfield is contrary to the public interest in
3 the area. Therefore, the Director should approve the transfer
4 applications.

5 CONCLUSION

6 The Applicant has shown, by more than a preponderance of the
7 evidence, that the transfer applications meet and exceed the
8 elements set forth by I.C. §42-222 governing transfers of water
9 rights. Specifically, the proposed transfers merely formalize
10 and document changes which have occurred over a number of years
11 since the water rights were originally decreed. Neither the
12 protesters, nor their predecessors, have ever contested the
13 points of diversion or places of use of any of the water rights
14 in the past. No proof of injury has been made to defeat the
15 Applicant's evidence of no injury. The changes constitute no
16 enlargement of use, and the changes are within the public
17 interest, comply with conservation concerns, and do not adversely
18 affect the agricultural base of the local area.

19 DATED this 1st day of May, 1992.

20
21 DAVIS WRIGHT TREMAINE

22 By: Scott L. Campbell
23 SCOTT L. CAMPBELL
24 Attorneys for Cyprus Thompson
25 Creek Mining Company
26

1
2 CERTIFICATE OF SERVICE

3 I HEREBY CERTIFY that on the 1st day of May, 1992, a true
4 and correct copy of the within and foregoing document was hand
5 delivered to the following:

6 Mr. Gary Spackman
7 State of Idaho
8 Department of Water Resources
9 1301 N. Orchard Street
10 Boise, Idaho 83706

11 and mailed, postage prepaid, to the following:

12 Mark and Vicki Armbruster Protestants
13 P. O. Box 1127
14 Challis, Idaho 83226

15 Kent W. Foster Attorney for Protestant
16 HOLDEN KIDWELL HAHN & CRAPO Michael Shannon
17 330 Shoup Avenue
18 P. O. Box 50130
19 Idaho Falls, Idaho 83405

20 Ray Keppner Protestant
21 P. O. Box 243
22 Challis, Idaho 83226

23 Mr. & Mrs. James A. Lynch Protestants
24 P. O. Box 847
25 Challis, Idaho 83226

26 Scott L. Campbell

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POOR QUALITY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CUSTER.

72-B

John J. Adams, J. A. Harrington, Charles F. Zilkey,
Thomas Chivers, W. D. Bradbury, Belle W. Thompson,
George Thompson, Ethel Philips, Lizzie Chivers,
George W. Keyser, Peter McInney, George E. Keyes,
W. W. Keyes, W. T. Oster, C. P. Wilson, Ida B.
Wilson, Ralph Baxter, Julia Metzgar, Lynn Wilkin-
son, Clyde Wilkinson, Alice B. Chamberlain,
Rodger Brassuer, John Boyd, Lockhart Boyd, M. M.
A. L. Small and W. Millick, Plaintiffs,

vs.

R. B. Vandervoort, M. M. Sweet, Lavantia McGowan,
Ernest Hosford, Kate Cameron, Della McGowan,
C. J. Wilkinson, Elizabeth Tells, Mary Horton,
G. E. Fuchs, J. H. Horton, Perry Shull, Hannah
Hain, Guy Bradbury, Thomas Jose, Jr., James A.
Mcadden, Esther Van Camp, Ed. O'Neal, Custer
County, Lillie S. McVendrick, Challis Independent
School District No. 1, J. C. Fox, Gertrude D.
Brown, Paul Gardiol, H. A. Brown, P. Nickerson,
Chas. E. Wilkinson, A. M. Wilson, P. M. Deane,
W. H. Pock, Thomas Jose, Ethel Kerr, First
Congregational Church of Challis, George Coryell,
Leo Watson, Jos. Rodgers, E. J. Michael and
M. M. Sweet as Executors of the Estate of J. G.
Winnell, L. Blume, J. H. VanCamp, G. T. Potter,
Audore Puffman, J. L. Riley, L. L. Moats,
L. L. Moats, Henry Horton, Carl J. Michael,
David B. Drake, Nabel Rowles, Consuelia Howell,
Idalene Michael, P. J. Michael as Executor of the
Estate of M. H. Johnston, Hollie Elder, Joseph
L. Abbotts, L. C. Glennon, Nick Z. Kiser,
Julius Blume, Sr., A. F. Blume, William Klug,
John P. Bradbury, William Buster, Barbara E.
Watson, Barbara A. Watson as Guardian of the
Estate of William Treloar, Rodger Brassuer,
L. Pock, Maggie Jose, W. L. Adamson, Mattie
Waters, Lillian Chivers, William Nickson,
Village of Challis, Alex. Klug, Margaretha
Klug, Nabel Adamson, Louise S. Treloar,
L. Violet Bradford, Jennie Dodge, T. J. Kerr,
Leo Kerr, Mackay and Central Idaho Stage
Company, a corporation,

DECREE

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JUN 28 1942
OFFICE OF STATE ENGINEER

This cause having heretofore come on for hearing before
Andrew J. Higgins, a referee who had been regularly appointed by the
Court for that purpose, and said hearing having been had without a
jury;

The evidence and the proofs of the respective parties having
been submitted to the said referee for his consideration, and he having
filed herein his findings of fact and conclusions of law, and this
Court having adopted said findings of fact and conclusions of law,
WHEREFORE by reason of the law and the findings and con-
clusions aforesaid:

JUN 26 1942

EXHIBIT A

Now, it is therefore ordered, adjudged and decreed that the waters of Garden Creek, and its tributaries, situated in the County of Custer, State of Idaho, be, and the same are hereby distributed, awarded and decreed to the several parties to this suit, for beneficial purposes and uses, in amounts and of the dates, and for the lands, with priority of rights in accordance with said dates, as follows, to-wit:

72 0047 1. To the plaintiff, John Q. Adams, One Hundred and Two (102) inches, or Two and Four (2.04) cubic feet per second of time, for the irrigation of

East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$), East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$), Section Twenty-two (22), Township Fourteen (14) North, Range Nineteen (19) East of the Boise Meridian, containing One Hundred and Sixty (160) acres

his right to date from October 24, 1877.

72 0048 2. To the plaintiff, John Q. Adams, 160 inches, or 2.2 cubic feet per second of time for the irrigation of

SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 22, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 27, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from May 15, 1901.

72 0049 3. To the plaintiff, J. A. Harrington, ~~60 inches, or 1.5 cubic feet per second of time~~ and the waters of a slough known as the Tewart Slough consisting of about 20 inches, or .4 cubic feet, for the irrigation of

NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, Lot 3, Sec. 23, T. 14 N., R. 19 E., B. M. containing 171.9 acres

his right to date from March 22, 1878.

72 0050 4. To the plaintiff, J. A. Harrington, 60 inches, or 1.2 cubic feet for the irrigation of

N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 27; N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 28, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from June 21, 1908.

72 0051 5. To the plaintiff, Charles F. Zilkey, 160 inches, or 2.2 cubic feet for the irrigation of

SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 27, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from May 15, 1880.

72 0052 6. To the plaintiff, Thomas Chivers, 10 inches, or 1/5 cubic feet for the irrigation of a tract of land described as follows:

Commencing at the corners of Secs. 28, 29, 32 and 33, T. 14 N., R. 19 E., B. M., running thence North 18 rods and 8 links, thence East 20 rods, thence North 4 rods, thence East 20 rods, thence South 22 rods and 8 links, thence West 80 rods to place of beginning, containing 10.3 acres

his right to date from May 15, 1895.

- 72 6056. To the plaintiff, W. D. Bradbury, 55 inches, or 1.1 cubic feet for the irrigation of

that portion of the NW¹/₄ NE¹/₄ Sec. 32, T. 14 N., R. 19 E., B. M., which lies North of the Challis-Bonanza wagon road which wagon road is a continuation of the main street of Challis Village in Custer County, Idaho, containing 100 acres more or less

his right to date from May 15, 1878.

- 72 6057. To the plaintiffs, Belle W. Thompson, George Thompson, Ethel Philips and Lizzie Chivers, 74 inches, or 1.48 cubic feet for the irrigation of

SE¹/₄ NE¹/₄, SW¹/₄ NE¹/₄, SE¹/₄ NW¹/₄, Sec. 31, T. 14 N., R. 19 E., B. M., containing 160 acres

their right to date from March 5, 1879.

- 72 6058. To the plaintiff, George Thompson, 47 inches, or .94 cubic feet for the irrigation of

NE¹/₄ NW¹/₄, NW¹/₄ NE¹/₄, Sec. 31, T. 14 N., R. 19 E., B. M., containing 160 acres,

his right to date from March 5, 1879.

- 72 6059. To the plaintiff, George E. Keyser, 94 inches, or 1.88 cubic feet, for the irrigation of

NE¹/₄ NW¹/₄, SW¹/₄ NW¹/₄, NW¹/₄ SW¹/₄, Sec. 28, T. 14 N., R. 19 E., B. M., containing 160 acres

his right to date from February 2, 1910.

- 72 6060. To the plaintiff, Peter McKinney, 55 inches, or 1.1 cubic feet for the irrigation of

W¹/₂ SE¹/₄, SW¹/₄, Sec. 15; E¹/₂ SE¹/₄, Sec. 16; E¹/₂ NE¹/₄, Sec. 21; NW¹/₄ NE¹/₄, NE¹/₄ NW¹/₄, Sec. 22, T. 14 N., R. 19 E., B. M. containing 520 acres

his right to date from May 15, 1887.

- 72 6061. To the plaintiffs, George E. Keyes and E. W. Keyes, 5 inches, or .1 cubic foot for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at a point 57.7 feet South of the Northeast corner of Block 2, thence West 150 feet, thence North 57.7 feet to the North line of Block 2, thence North 75 feet, thence West 75 feet, thence South 75 feet, thence West to a point 40 feet East of the West line of Sec. 32, T. 14 N., R. 19 E., B. M., thence North and parallel with said West line of Sec. 32 to the North line of said Sec. 32, thence East to a point directly North of the Northeast corner of Block 3, thence South to the Northeast corner of said Block 3, thence West to the Northwest corner of said Block 3, thence South 57.7 feet, thence West to the point of commencement, containing about 4 acres

their right to date from May 15, 1885.

- 72 6053^{13.} To the plaintiff, W. T. Oster, 3 inches, or .06 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at a point 25 feet South of the Northwest corner of Block 2, thence East 75 feet, thence North 100 feet, thence West 75 feet, thence South 100 feet to the point of beginning, containing an area of about 2 town lots of the said Village of Challis

his right to date from May 15, 1895.

- 72 6060^{14.} To the plaintiffs, E. P. Wilson and Ida B. Wilson, 8 inches, or .16 cubic feet for the irrigation of

Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 6, also that piece of land described as commencing at the Northwest corner of Block 8, running thence North 87.5 feet to the North line of Sec. 28, T. 14 N., R. 19. E., B. M., thence East 200 feet, more or less to a point opposite the Northeast corner of said Block 8, thence South to the Northeast corner of Block 8, thence West 200 feet more or less to the point of commencement

their right to date from May 15, 1888.

- 72 6061^{15.} To the plaintiffs, E. P. Wilson and Ida B. Wilson, 2 inches, or .04 cubic feet, more or less, being all the water of a certain stream rising in a cellar on Lot 6, Block 24 of the said Townsite of Challis, and which water is conveyed by box and drain to a point at the West end of the alley in Block 26 of said Townsite, for the irrigation of

Lots 1 and 3 in Block 27 of the Townsite of Challis, Custer County, Idaho

their right to date from November 1, 1909.

- 72 6062^{16.} To the plaintiff, Ralph Baxter, 2 inches, or .04 cubic feet for the irrigation of

Lot 8 in Block 17 of the Townsite of Challis, Custer County, Idaho

his right to date from May 15, 1894.

- 72 6063^{17.} To the plaintiff, Julia Metzgar, 3 inches, or .06 cubic feet for the irrigation of

Lots 6 and 8 in Block 18 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1890.

- 72 6064^{18.} To the plaintiff, Lynn Wilkinson, 5 inches, or .1 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at the Northwest corner of Block 7, thence North to the North line of Sec. 33, T. 14 N., R. 19 E., B. M.; thence East 200 feet more or less, thence South to the Northeast corner of said Block 7, thence West to the place of commencement; also Lots 2, 4, 6 and 8 of said Block 7

his right to date from April 15, 1888.

72 6065 19. To the plaintiff, Clyde Wilkinson, 5 inches, or .1 cubic foot for the irrigation of

Lots 2, 4, 6 and 8 of Block 9 and a strip of ground commencing at the Northeast corner of said Block 9 and running thence North 90 feet more or less to the North line of Sec. 32, T. 14 N., R. 19 E., B. M., thence West along said section line 200 feet, thence South to the Northwest corner of said Block 9, thence East 200 feet to the place of commencement

his right to date from May 15, 1888.

72 6066 20. To the plaintiff, Alice B. Chamberlain, 10 inches, or .2 cubic foot for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:-

Commencing at the Northwest corner of Block 1 and running thence South to the Southwest corner of Lot 2, Block 12, thence East to the Southwest corner of Lot 6, Block 12, thence North 10 feet, thence East 102.2 feet, thence North to the Northeast corner of Block 1, thence West to the point of commencement

her right to date from May 15, 1880.

72 6067 21. To the plaintiff, Rodger Brassuer, 2 inches, or .04 cubic foot for the irrigation of

Lot 6 in Block 36 of the Townsite of Challis, Custer County, Idaho

his right to date from June 15, 1894.

72 6068 22. To the plaintiffs, John Boyd and Lockhart Boyd, 5 inches, or .1 cubic foot for the irrigation of

Lots 5, 6, 7 and 8 in Block 50 of the Townsite of Challis, Custer County, Idaho

their right to date from May 15, ~~1884~~ 1884.

72 6069 23. To the plaintiffs, E. J. Kerr and Lee Kerr, 1 inch, or .02 cubic foot for domestic purposes, to-wit, watering stock on

Lot 4 in Block 15 of the Townsite of Challis, Custer County, Idaho,

their right to date from May 15, 1885.

72 6070 24. To the defendant, M. H. Sweet, 3 inches, or .06 cubic foot for the irrigation of

The East 41.6 feet of Lot 3; the West 41.6 feet of Lot 5; all of Lot 4 except 10 feet on the West side and 7 feet on the East side, all in Block 2 of the Townsite of Challis, Custer County, Idaho,

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his right to date from May 15, 1882.

72 6071 25. To the defendant, Lavantia McGowan, 4 inches, or .08 cubic feet for the irrigation of

Lots 2, 4 and 6 in Block 39 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 6072 26. To the defendant, Emmett Rosford, 3 inches, or .06 cubic feet for the irrigation of

Lots 1 and 3 in Block 3 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1910.

72 6073 27. To the defendant, Kate Cameron, 3 inches, or .06 cubic feet, for the irrigation of Lots

Lots 1 and 3 in Block 17 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 6074 28. To the defendant, Della McGowan, 5 inches, or .1 cubic foot for the irrigation of

Lots 1, 3, 5 and 7 in Block 18 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1885.

72 6075 29. To the defendant, C. E. Wilkinson, 6 inches, or .18 cubic feet for the irrigation of

Lots 1, 2, 3, 4 and 6 in Block 25 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1882.

72 6076 30. To the defendant, Elizabeth Wells, 3 inches, or .06 cubic feet for the irrigation of

Lots 5 and 7 in Block 7 of the Townsite of Challis, Custer County, Idaho.

her right to date from May 15, 1883.

72 6077 31. To the defendant, Mary Horton, 6 inches, or .12 cubic feet, for the irrigation of

Lots 1, 2, 3, 4 and 5 and 50 feet adjoining Lot 1 in Block 6 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1880.

72 6078 32. To the defendant, G. E. Fuohs, 5 inches, or .1 cubic feet, for the irrigation of

Lots 1 and 3 in Block 5; Lots 2 and 4 in Block 16 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1881.

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33. 33. To the defendant, Hannah Malm, 3 inches, or .06 cubic feet for the irrigation of

72 1079

Lots 1 and 3 in Block 24 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1895.

72 1080 To the defendant, Guy Bradbury, 40 inches, or .8 cubic feet for the irrigation of

SW¹/₄ NW¹/₄, Sec. 32, T. 14 N., R. 19 E., B. M., containing 40 acres,

his right to date from June 20, 1910.

72 1081 To the defendant, Thomas Jose, Jr., 4 inches, or .48 cubic feet for the irrigation of

Lots 5, 7 and 8 and 6.6 feet of Lot 6 in Block 6 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1882.

72 1082 36. To the defendant, James A. McFadden, 8 inches, or .15 cubic feet for the irrigation of

Lots 1, 2, 3, 4, 5, 6, 7 and 8 in Block 21; and 20 feet of the West side of Lots 1 and 2 in Block 22 of the Townsite of Challis, Custer County, Idaho.

his right to date from May 15, 1885.

72 1083 To the defendant, Father VanCamp, 5 inches, or .1 cubic feet for the irrigation of

Lots 5 and 7 in Block 40; Lots 6 and 8 in Block 52 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1889.

72 1084 39. To the defendant, Ed. O'Moal, 3 inches, or .06 cubic feet for the irrigation of

Lots 2 and 4 in Block 27 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1886.

72 1085 40. To the defendant, Custer County, 8 inches, or .16 cubic feet for the irrigation of

Block 29 of the Townsite of Challis, Custer County, Idaho,

its right to date from May 15, 1901.

72 1086 40. To the defendant, Lillie S. McKendrick, 3 inches, or .06 cubic feet for the irrigation of

Lots 1 and 3 in Block 38 of the Townsite of Challis, Custer County, Idaho,

JUN 26 1992 her right to date from May 15, 1885.

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POOR QUALITY

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41. To the defendant, Challis Independent School District No. 1,
8 inches, or .16 cubic feet for the irrigation of
72 6087 Block 30 of the Townsite of Challis, Custer County,
Idaho,

its right to date from May 15, 1896.

42. To the defendant, J. C. Fox, 3 inches, or .06 cubic feet,
72 6088 for the irrigation of

Lots 6 and 8 in Block 15 of the Townsite of Challis,
Custer County, Idaho,

his right to date from May 15, 1886.

72 6089 To the defendant, J. C. Fox, 5 inches, or .1 cubic feet
for the irrigation of a tract of land situate within the Townsite of
Challis, Custer County, Idaho, and more particularly described as
follows, to-wit:-

Commencing at the corner of Sixth Street and the alley
between North and Main Avenues, Block 16, Lot 8, thence West
100.4 feet, thence North 300 feet, thence East 100.4 feet, thence
South 300 feet to the place of beginning.

his right to date from May 15, 1882-1887.

44. To the defendant, Gertrude D. Brown, 6 inches, or .1 cubic
72 6090 feet, for the irrigation of

Lots 1, 3, 5 and 7 in Block 37 of the Townsite of
Challis, Custer County, Idaho,

her right to date from May 15, 1882-1887.

72 6091 To the defendant, Paul Gardiol, 8 inches, or .16 cubic
feet for the irrigation of

Lots 1, 3, 5 and 7 in Block 47; Lots 6 and 8 in
Block 48; Lots 2 and 4 and the West Half of Lot 1 in Block
47 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1912.

72 6092 To the defendant, J. L. Riley, 3 inches, or .06 cubic feet
for the irrigation of

Lots 6 and 8 in Block 54 of the Townsite of Challis,
Custer County, Idaho,

his right to date from May 15, 1910.

72 6093 To the defendants, A. L. Moats and J. E. Moats, 6 inches
or .1 cubic feet for the irrigation of

Lots 1, 3, 5 and 7 in Block 54 of the Townsite of
Challis, Custer County, Idaho,

their right to date from May 15, 1910.

JUN 26 1992 45. To the defendant, Henry Horton, 5 inches, or .1 cubic feet
72 6094

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POOR QUALITY

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for the irrigation of

Lots 1, 2, 3 and 4 in Block 31 of the Townsite of
Challis, Custer County, Idaho,

his right to date from May 30, 1912.

72 6095 To the defendant, Earl J. Michael, 3 inches, or .06 cubic
feet for the irrigation of

Lots 1 and 3 in Block 9 of the Townsite of Challis,
Custer County, Idaho,

his right to date from May 15, 1885.

72 6096 To the defendant, Earl J. Michael, 2 inches, or .04 cubic
feet for the irrigation of

Lot 4 in Block 19 of the Townsite of Challis, Custer
County, Idaho,

his right to date from May 15, 1885.

72 6097 51. To the defendant, David B. Drake, 9 inches, or .18 cubic
feet for the irrigation of

Lots 5 and 7 in Block 9; Lots 1, 3, 5 and 7 in Block
10; Lots 1, 2, 3, 4, 5, and 6 and 8 feet on the west side of
Lots 7 and 8 in Block 20 of the Townsite of Challis, Custer
County, Idaho,

his right to date from May 15, 1885.

72 6098 52. To the defendant, Mabel Rowles, 3 inches, or .06 cubic
feet for the irrigation of

Lots 1 and 3 in Block 7 of the Townsite of Challis,
Custer County, Idaho,

her right to date from May 15, 1883.

72 6099 To the defendant, Consuella Howell, 3 inches, or .06 cubic
feet for the irrigation of

Lots 6 and 8 in Block 38 of the Townsite of Challis,
Custer County, Idaho,

her right to date from May 15, 1907.

72 6100 To the defendant, Idalene Michael, 3 inches, or .06 cubic
feet for the irrigation of

Lots 6 and 8 in Block 19 of the Townsite of Challis,
Custer County, Idaho,

her right to date from May 15, 1885.

72 6101 To the defendant, Earl J. Michael, Executor of the Will of
E. H. Johnston, deceased, 4 inches, or .08 cubic feet, for the irri-

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Lots 6 and 8 in Block 71; Lots 2, 4, 6 and 8 in
Block 72 of the Townsite of Challis, Custer County, Idaho,

his right to date from May 15, 1898.

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72 11462. To the defendant, Nellie Elder, 5 inches, or .1 cubic feet
for the irrigation of

lots 1, 3, 5 and 7 in Block 23 of the Townsite of
Challis, Ouster County, Idaho,

his right to date from May 15, 1882.

72 11463. To the defendant, Joseph L. Ebberts, 2 inches, or .04 cubic
feet, for the irrigation of

lot 1 in Block 4 of the Townsite of Challis, Ouster
County, Idaho,

his right to date from May 15, 1911.

72 11464. To the defendant, Joseph L. Ebberts, 3 inches, or .06 cubic
feet for the irrigation of,

lots 5 and 7 in Block 16 of the Townsite of Challis,
Ouster County, Idaho,

his right to date from May 15, 1883.

72 11465. To the defendant, E. W. Glennon, 3 inches, or .04 cubic
feet for the irrigation of

lots 2 and 4 in Block 54 of the Townsite of Challis,
Ouster County, Idaho,

his right to date from May 15, 1910.

72 11466. To the defendant, Elmer A. Kiser, 70 inches, or 1.4 cubic
feet for the irrigation of

SE1/4, Lot 4, Sec. 2; NE1/4, SE1/4, Sec. 3, T. 13
N., R. 12 E., B. M.,

his right to date from May 15, 1890.

72 11467. To the defendant, Julius Blume, Sr., 3 inches, or .06 cubic
feet, for the irrigation of

lots 1 and 3 in Block 39 of the Townsite of Challis,
Ouster County, Idaho,

his right to date from May 15, 1899.

72 11468. To the defendant, J. E. Blume, 3 inches, or .06 cubic feet
for the irrigation of

lots 5 and 7 in Block 28, of the Townsite of Challis,
Ouster County, Idaho,

his right to date from May 15, 1904.

72 11469. To the defendant, William Klug, 60 inches, or 1.2 cubic feet
for the irrigation of

NE1/4, NW1/4, Sec. 2, T. 13 N., R. 12 E., B. M.;
SE1/4, NE1/4, Sec. 35; NW1/4, Sec. 36, T. 14 N.,

his right to date from May 15, 1889.

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POOR QUALITY

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54. To the defendant, John F. Bradbury, ¹⁴⁸ ~~255~~ inches or ^{2.96} ~~5.06~~ cubic feet for the irrigation of

72-0110

INVESTED, HENSEL, SPOONER, S. SWING, HENSEL, Sec. 32, T. 14 N., R. 19 E., S. 14; also

All that land embraced in the following description, to-wit:- Commencing at a point on the West line of the Challis Townsite known as the old Challis and Bonanza road, said point of commencement being the Northeast corner of said tract of land, and running from said point of commencement along the South line of the Challis and Bonanza road, $3\frac{1}{4}$ mile in a Westerly direction to the West line of Sec. 32, T. 14 N., R. 19 E., S. 14; thence South to the South line of the INVESTED of said Section, Township and Range, thence East $1\frac{1}{8}$ mile, thence South $1\frac{1}{8}$ mile, thence East $1\frac{1}{8}$ mile to the West line of the Challis Townsite, thence North along the West line of said Challis Townsite to the place of beginning, all in Sec. 32, T. 14 N., R. 19 E., S. 14 and containing about 240 acres.

J. F. Bradbury
Defendant
4/12/11

his right to the use of 195 inches, or 2.1 cubic feet, of the said water

to date from May 15, 1870; and to the use of ⁴³ ~~186~~ inches, or ^{1.11} ~~2.1~~ cubic

72-0111

feet of the said water to date from May 15, 1899.

72-0112 To the defendant, William Buster, 5 inches, or .1 cubic feet

for the irrigation of

Lot 1 and the West 10 feet of Lot 2 throughout its entire length, the South 75 feet of Lot 2, the West 10 feet of Lot 3 to the depth of 75 feet from the alley North, approximating 4 lots, all in Block 2 of the Townsite of Challis, Blaine County, Idaho.

his right to the use of 3 inches, or .06 cubic feet of the said water

to date from May 15, 1881; and to the use of 2 inches, or .04 cubic

72-0113

feet of the said water to date from May 15, 1894.

72-0114 55. To the defendants, Barbara E. Watson and Barbara E. Watson as Guardian of the estate of William Treloar, 5 inches, or .1 cubic

feet for the irrigation of

Lots 6 and 8 in Block 37; Lots 6 and 7 in Block 39 of the Townsite of Challis, Blaine County, Idaho,

their right to date from May 15, 1884.

72-0115 To the defendant, Rodger Brassner, 2 inches, or .04 cubic

feet for the irrigation of a tract of land situate within the Townsite of Challis, Blaine County, Idaho, and more particularly described as follows.

To-wit:-

Commencing at a point 50 feet North of the Southeast corner of Lot 7 in Block 2 and running thence West 65 feet, thence in a southerly direction 50 feet to a point on the South line of Lot 3 in Block 7, 11 feet from the Southeast corner of said Lot 3, thence continuing in a southerly direction 25 feet, thence East 60 feet, thence North 75 feet to place of beginning, approximating 1 lot.

July 25 1899

his right to date from May 15, 1881.

56. To the defendant, H. Beck, 10 inches, or .2 cubic feet for

72-0116

7-266

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POOR QUALITY

-12-

the irrigation of

All that lot, piece or parcel of land situate in the NW 1/4, Sec. 32, T. 14 N., R. 19 E., B. M., in Custer County, Idaho and described more particularly as follows, to-wit:

Beginning at a point 390 feet West of the Southwest corner of Block 12 of the Townsite of Challis, said point being on the North line of Main Street of said Challis, extended, being at line fence between the J. D. Bradbury property and defendant's land, running thence Northerly 604 feet, more or less, to the North line of Sec. 32, T. 14 N., R. 19 E., B. M., thence East along said North line of said Sec. 32 to the Northeast corner of the NW 1/4, Sec. 32, thence South along the East line of said NW 1/4, thence East along the line of said Main Street, extended, to place of commencement, containing about 5 acres more or less.

his right to date from May 15, 1872.

72 01169. To the defendant, L. Beck, 9 inches, or .18 cubic feet, for the irrigation of

Lots 2, 4, 6 and 8 in Block 73; Lots 2, 4, 6 and 8 in Block 74; Lots 2, 4, 6 and 8 in Block 75 of the Townsite of Challis, Custer County, Idaho

his right to date from May 15, 1884.

72 01170. To the defendant, Aggie Jose, 5 inches, or .1 cubic feet, for the irrigation of

the North Half of Block 13 of the Townsite of Challis, Custer County, Idaho, containing 4 lots,

his right to date from May 15, 1892.

72 01171. To the defendant, J. A. Wamson, 5 inches, or .08 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:

Commencing at the Southeast corner of Lot 8 in Block 2, thence following along the South line of Lots 8, 6 and 4, a distance of 112 feet, thence at right angles South a distance of 65 feet, thence at right angles East a distance of 112 feet to the East line of Lot 7, thence at right angles North along the East line of said Lot 7, a distance of 65 feet to place of beginning, all in Block 2.

his right to date from May 15, 1881.

72 01172. To the defendant, Mattie Waters, 3 inches, or .06 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:

Commencing at the Southeast corner of Lot 8 in Block 2, running thence North 56.8 feet, thence West 112 feet, thence South 56.8 feet, thence East 112 feet to place of beginning, the same being a portion of Lots 4, 6 and 8 in Block 2.

his right to date from May 15, 1895.

JUN 26 1992

POOR QUALITY

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73. To the defendant, William Chivers, 3 inches, or .06 cubic feet for the irrigation of a tract of land situate within the Townsite of Challis, Custer County, Idaho, and more particularly described as follows, to-wit:

All that parcel of land lying between Lots 2 and 4 in Block 14 of Lots 1 and 3 in Block 3, the same being 80 feet wide and 102 feet long,

his right to date from May 15, 1907.

72 0122 74. To the defendant, William Hickson, 3 inches, or .06 cubic feet for the irrigation of

Lots 5 and 7 in Block 33 of the Townsite of Challis, Custer County, Idaho.

his right to date from April 15, 1880.

72 0123 75. To the defendant, Village of Challis, 7 inches, or .12 cubic feet for the irrigation of a tract of land situate within the corporate limits of the Village of Challis, County of Custer, State of Idaho, and more particularly described as follows, to-wit:-

Commencing at the intersection of the center lines of 7th tract with Border Avenue as shown by a stone monument at said street intersection: Bear S. 17° 55' E. 157.35 feet (Mag. Var. 19° 45'); thence N. 87° 55' E. 646 feet to the Northeast corner; thence S. 2° 5' E. 306 feet to the Southeast corner; thence N. 87° 55' W. 646 feet to the Southwest corner; thence N. 87° 5' W. 306 feet to the Northwest corner, the place of beginning; including all of what is now known as the Challis Cemetery besides 2.22 acres in addition thereto, all of which is shown more fully by the official plat thereof on file with the County Recorder of Custer County.

his right to date from May 15, 1884.

72 0124 76. To the defendant, Alex. Klug, 51 inches, or 1.03 cubic feet for the irrigation of

S1/4, NW1/4, NE1/4, Sec. 36, T. 14, N., R. 18 E., B. M.,

his right to date from May 15, 1879.

72 0125 77. To the defendant, Alex. Klug, 53 inches, or 1.06 cubic feet for the irrigation of

Lots 2 and 3, Sec. 31, T. 14 N., R. 19 E., B. M., containing 52 acres, more or less,

his right to date from August 15, 1910.

72 0126 79. To the defendant, Margaretha Klug, 80 inches, or 1.6 cubic feet for the irrigation of

NW1/4, NE1/4, SEC. 31, T. 14 N., R. 19 E., B. M., containing 50 acres,

his right to date from August 15, 1910.

POOR QUALITY

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79. To the defendant, Mabel Adamson, 5 inches, or .1 cubic foot for the irrigation of

72-0127 The North Half of Block 3 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1909.

72-0128 To the defendant, Louise S. Treloar, 6 inches, or .12 cubic feet for the irrigation of a tract of land described as follows,
to-wit:-

Commencing at a corner stone 2.3 chains to the Southeast of the center of the SW1/4, Sec. 28, T. 14 N., R. 19 E., S. 1 E., running North 48 rods to the North line of the said SW1/4, thence East 4 rods to section line between Secs. 28 and 29, thence South along said section line 48 rods, thence East 48 rods to place of beginning, containing about 14.75 acres,

her right to date from May 15, 1901.

72-0129 To the defendant, E. Violet Bradford, 4 inches, or .08 cubic feet for the irrigation of

lots 2, 4 and 6 in Block 17 of the Townsite of Challis, Custer County, Idaho,

her right to date from May 15, 1882.

72-0130 82. To the defendant, Jennie Dodge, 3 inches, or .06 cubic feet for the irrigation of

lots 1 and 3 of Block 40 of the Townsite of Challis, Custer County, Idaho,

72-0188

84. To the defendant Joseph H. Horton three inches or six one hundredths of a cubic foot for the irrigation of lots one and

three in Block 30 of the townsite of the town of Challis, Custer county, Idaho, his right to date from May 15th, 1884.

We are of the well aware, in the order of priority herein set forth, or in the manner or to the extent above set forth.

It is further ordered and decreed that each of the parties

shall bear his own costs and expenses in this action.

JUN 26 1992

dated this 19th day of May, 1914.

Filed May 23rd 1914
F. H. C. Clerk

14-

J. W. Stevens
District Judge.

POOR QUALITY

State of Idaho)
) ss.
County of Custer)

I, E. J. Michael, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Custer, hereby certify that I have compared the foregoing copy with the record, which appears in the Judgment Book of said county and state, at pages 788 to 798, inclusive, and that the same is a full, true and complete copy of such record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 25th day of May, 1914.

E. J. Michael
Clerk of the District Court.

RECORDED

JUN 26 1914

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Department of Water Resources

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

Attorneys for Protestant Mike Shannon

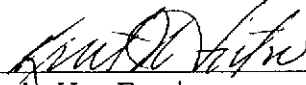
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CYPRUS THOMPSON)
CREEK MINING COMPANY TRANSFER)
APPLICATIONS FOR WATER RIGHTS)
NOS. 72-00051B, 72-00051N,)
72-00051L, 72-00048, 72-00110)
AND 72-00111.)
_____)

RESPONSE TO MOTION TO
STRIKE COMMENTS BY
TOM JACOB

The comments of Tom Jacob were presented pursuant to specific authorization of the Hearing Officer granted at the hearing on March 11, 1992, and, we thought, the agreement of applicant. Protestant, Michael Shannon, has no objection to making Mr. Jacob available for cross-examination if the Hearing Officer so orders.

DATED this 10th day of April, 1992.



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

RECEIVED

JUN 26 1992

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 10th day of April, 1992.

Document Served:

RESPONSE TO MOTION TO STRIKE
COMMENTS BY TOM JACOB

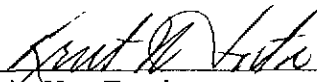
Attorneys Served:

Scott L. Campbell, Esq. (MAIL)
DAVIS, WRIGHT, TREMAINE
702 West Idaho Street
Suite 700
Boise, Idaho 83702

Mark and Vicki Armbruster (MAIL)
P.O. Box 1127
Challis, Idaho 83226

Mr. Ray Keppner (MAIL)
P.O. Box 243
Challis, Idaho 83226

Mr. and Mrs. James A. Lynch (MAIL)
P.O. Box 847
Challis, Idaho 83226



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

#8557.00
8193j/srs

Scott L. Campbell
Susan E. Buxton
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702
(208) 338-8200

Attorneys for Cyprus Thompson
Creek Mining Company

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

IN THE MATTER OF CYPRUS THOMPSON	)	
CREEK MINING COMPANY TRANSFER	)	
APPLICATIONS FOR WATER RIGHTS	)	
NUMBERS 72-00051B, 72-00051N,	)	MOTION TO STRIKE COMMENTS
72-00051L, 72-00048, 72-00110	)	BY TOM JACOB OF TESTIMONY
AND 72-00111.	)	OF SCOTT BENOWITZ ADMITTED
	)	INTO THE ADMINISTRATIVE
	)	RECORD

Pursuant to Idaho Department of Water Resources (IDWR) Rule 9,19, Applicant Cyprus Thompson Creek Mining Company objects to the admission of comments submitted by Tom Jacob regarding the testimony of Scott Benowitz, P.E., admitted into the administrative record during the hearing of this matter conducted March 11, 1992. IDWR Rule 9,5 provides that "[a]ll testimony to be considered by the Director or the Board in hearings, . . . shall be sworn testimony." Rule 14,10 allows the presiding officer to request supplemental statements from persons presenting oral and/or written testimony be submitted and included as part of the record.

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Tom Jacob was not sworn, nor did he testify at the hearing in Challis on March 11, 1992. Applicant objects to consideration and inclusion of Mr. Jacob's comments in the record because his credentials as an expert were not established under oath, nor has Applicant been given the opportunity to cross-examine him.

Protestant Michael Shannon's counsel, Kent Foster, had been given a copy of Scott Benowitz' written testimony in advance of the March 11, 1992 hearing. Protestant Shannon, therefore, had ample opportunity to have Mr. Jacob testify at the hearing regarding the contents of Mr. Benowitz' written testimony. As Mr. Jacob admits in his written comments, he was present at the hearing yet did not testify. Accordingly, admission of Mr. Jacob's written comments would be extremely prejudicial to Applicant and unjustly deprive applicant of its due process rights.

DATED this 8th day of April, 1992.

DAVIS WRIGHT TREMAINE

By: Scott L. Campbell
SCOTT L. CAMPBELL
Attorneys for Applicant,
Cyprus Thompson Creek Mining Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of April, 1992, a true and correct copy of the within and foregoing document was hand delivered to the following:

Mr. Gary Spackman
State of Idaho
Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83706

and mailed, postage prepaid, to the following:

Mark and Vicki Armbruster
P. O. Box 1127
Challis, Idaho 83226

Protestants

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
330 Shoup Avenue
P. O. Box 50130
Idaho Falls, Idaho 83405

Attorney for Protestant
Michael Shannon

Ray Keppner
P. O. Box 243
Challis, Idaho 83226

Protestant

Mr. & Mrs. James A. Lynch
P. O. Box _____
Challis, Idaho 83226

Protestants

Scott L. Campbell

Scott L. Campbell
Susan E. Buxton
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702
(208) 338-8200

Attorneys for Cyprus Thompson
Creek Mining Company

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

IN THE MATTER OF CYPRUS THOMPSON	)	
CREEK MINING COMPANY TRANSFER	)	
APPLICATIONS FOR WATER RIGHTS	)	
NUMBERS 72-00051B, 72-00051N,	)	MOTION TO STRIKE COMMENTS
72-00051L, 72-00048, 72-00110	)	BY MARK AND VICKI
AND 72-00111.	)	ARMBRUSTER AS UNTIMELY
	)	

Pursuant to Idaho Department of Water Resources (IDWR) Rule 9,19, Applicant Cyprus Thompson Creek Mining Company objects to the admission of comments submitted by Protestants Mark and Vicki Armbruster regarding the testimony of Scott Benowitz, P.E., admitted into the administrative record during the hearing of this matter conducted March 11, 1992.

At the March 11, 1992, transfer of water rights application hearing, Hearing Officer Gary Spackman granted Protestants two weeks to submit comments to the written and oral testimony submitted by Scott Benowitz, P.E. The two-week period ran as of Thursday, March 26, 1992. See IDWR Rule 12.15. The Armbrusters'

MOTION TO STRIKE - 1

JUN 26 1992

comments were dated March 29, 1992, and were received by the Idaho Department of Water Resources on March 31, 1992. Due to the untimely filing of the Armbrusters' comments, they should be stricken from the record and not considered in conjunction with the pending transfer of water rights application.

DATED this 8th day of April, 1992.

DAVIS WRIGHT TREMAINE

By: 
SUSAN E. BUXTON
Attorneys for Applicant,
Cyprus Thompson Creek Mining Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of April, 1992, a true and correct copy of the within and foregoing document was hand delivered to the following:

Mr. Gary Spackman
State of Idaho
Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83706

and mailed, postage prepaid, to the following:

Mark and Vicki Armbruster
P. O. Box 1127
Challis, Idaho 83226

Protestants

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
330 Shoup Avenue
P. O. Box 50130
Idaho Falls, Idaho 83405

Attorney for Protestant
Michael Shannon

Ray Keppner
P. O. Box 243
Challis, Idaho 83226

Protestant

Mr. & Mrs. James A. Lynch
P. O. Box _____
Challis, Idaho 83226

Protestants

Susan E. Buxton

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MAR 3 1 1992

Mr. Gary Spackman
Id. Dept. of Water Resources
Statehouse
Boise, Id. 83720

Mark and Vicki Armbruster
Box 1127
Challis, Id. 83226
29 March 1992

To; Gary Spackman
From; Mark and Vicki Armbruster
Re: Cyprus Thompson Creek Water Rights Application for Transfer- 72-00051L,
72-00051N, 72-00051B, 72-00048, 72-00110 and 72-00111.
Subject: Final Arguments and Comments from 11 March Hearing

We, the Protestants contend that the water transfer proposal will adversely effect, by shortening the time of useage, our 1910 water right. By moving a water diversion upstream on a gaining reach, our water will be cut off sooner to satisfy senior water users.

Mr. Benowitz's testimony and report is based on a one-time, one-day observation of topography, soils and water behavior of the area approximately one month after the irrigating season. He determined that Garden Creek was a losing reach between Measuring Sites 1 and 3. That may have been an accurate assessment on 5 November 1991. However, testimony given by Lawrence Bradbury, George Turk and Dee Keppner indicated that Garden Creek, as a whole, in the area of Challis City, is a gaining reach, at least during the irrigating season. This is substantiated by the undisputed fact that the creek is, at times, completely dried up below the City water diversion while downstream water users (Johnny Smith and USFS) still receive water. No matter how you look at it, there is a gain there somewhere. Obviously, the Creek behaves differently during irrigation season than it does after the season as admitted by Mr. Benowitz during questioning.

Mr. Benowitz, in his written report, referred four times to vegetation types indicating the presence or lack of surface or sub-surface water. As stated in testimony, he has no formal schooling in botany to identify such vegetative types and even made two conclusions in the report based on vegetation.

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JUN 26 1992

Finally, referring to Mr. Benowits' report, he could only state that he did not think there would be an adverse impact on the lower portion (below the Bradbury diversion) of Garden Creek with a confidence level somewhere over 50%. One- time measurements, during a time when no one except the City of Challis was using water, would lead a reasonable person to believe that he (Benowtiz) is not totally familiar with the hydrological system and that placing a confidence level only a 50% - no adverse effect on water rights- is ludicrous.

We are not contesting the fact that water was, at times, used on a portion or portions of land under application for use under the Cyprus proposal. It is IDWR's decision on the historical use pattern. We are however, concerned about additional land receiving application for irrigation which had no historical use and which may require more water than was ever used historically.

We appreciate the opportunity to comment and hope that the decision you make will be a fair one.

Sincerely,

Mark Armbruster

Mark Armbruster
Vicki Armbruster

Vicki Armbruster

JUL 23 1992

To Gary Spackman
130 N. Orchard
Statehouse mail
Boise, ID 83720

RECEIVED
MAR 26 1992
Department of Water Resources

From Michael Shannon
P.O. Box 1039
Challis, ID 83226

Re. This is copy of written comments
regarding the Benowity report concerning
Cyrus Thompson creek application for transfer
of water rights 72-0005K, -72 00051N, 72-00051B,
72-00048 and 72-00111.

Copies have been forwarded to
Scott Campbell, and Kent Foster.

Sincerely

Michael Shannon

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JUN 26 1992

RECEIVED

MAR 20 1992

Department of Water Resources
Southern Nevada Division

Kelli, Idaho

March 19 - 1992

Water Resources

Protest of Water Transfer

To letter I received I want to declare that the Cyprus Watermaster doesn't own land or water on this ranch, as it is a Wright Fremont Claim -

Cyprus transferring their water up stream will hurt all water rights up stream. The water users will lose their water 30 days earlier on average year. Plus water at the lower end of garden Creek has not been used since Cyprus owned the land.

Also the point where Cyprus engineer measured garden Creek Point No 1 to Point No. 2 there is 9 springs that raised the river

back in Garden Creek, plus
80 inches of waste water runs
back in garden creek in irrigation
season.

Between points No. 2 & 3. there
springs & pipeline drains back
in the creek.

When all ranch irrigate springs
rise & runs back in creek.

Respectfully

Ray Tappner

JUN 26 1992

Ray Keener
P.O. Box 243

April 20 8 3226

29 USA



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Department of Water Resources

MAR 20 1952 222 Shoreline St. East

Department of Water Resources
Twin Falls, Idaho 83301

To:
Gary Spackman
Idaho Department of Water Resources

From:
Tom Jacob
Box 31
Challis, ID 83226

Date: March 18, 1992

Subject: Comments on Scott Benowitz testimony regarding Cyprus Thompson Creek application for transfer of water rights numbers 72-00051L, 72-00051N, 72-00051B, 72-00048, 72-001100, and 72-00111.

Qualifications

My qualifications are B.S. (1979 Boise State University) and M.S. (1985 University of Idaho) degrees in geology, familiarity with the Challis area, and 12 years geologic experience in the field of minerals exploration which includes work in soils, stream sediment (alluvium), geologic mapping, bedrock geology, and drill log interpretation.

Introduction

At the request of Mr. Michael Shannon, I've reviewed the report titled "Written Testimony, Scott L. Benowitz P.E., James M. Montgomery, Consulting Engineers Inc., Prepared for Cyprus Thompson Creek Mining Company, December 30, 1991." I also attended the 3-11-92 hearing held in Challis.

Mr. Shannon is concerned about potential adverse effects to his water right should the Cyprus proposal be allowed. Specifically, if water previously applied to N1 2 sec32 T14NR19E (golf course area) is diverted to S1 2 sec32, 33, & 34, will recharge diminish? And will diminished recharge reduce flow in "gaining" stretches of Garden Creek below the Cyprus diversion points, thereby increasing demand by downstream users to draw water away from upstream users (including Mr. Shannon)?

These questions were not addressed by Mr. Benowitz. Conclusion number 4 (p.6) of the Benowitz report approaches the recharge topic, but considers only parcels which cannot influence flows in N1 2 sec32 for reasons of topography.

Geology

Lower Garden Creek (T14NR19E sec 31, 32, 33) drainage is underlain by crudely stratified alluvium comprising mainly gravel, sand, and cobbles in varying proportion, and local clay-rich horizons.

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Drill reports (appendix A of Benowitz) confirm that alluvium, locally clay-rich, underlies the area in question to the depth of bedrock or weathered bedrock. Additional reference can be made to the "Geologic Map of the Challis Quadrangle" (U.S.G.S. Map GQ-1599) by D.H. McIntire and S.W. Hobbs, 1987, in which lower Garden Creek valley is designated unit Qf (Pleistocene alluvial fan deposits).

The Gosthwaite report (appendix B of Benowitz) outlines similar geology, notes the high permeability of the alluvium to water, and recognizes the importance of surface irrigation to subsurface recharge within the alluvium.

Conclusions

Stream-flow research done by Mr. Benowitz is not conclusive because data are minimal. Garden Creek apparently "loses" water overall (because of subsurface permeability in the alluvium), but may "gain" in reaches influenced by local subsurface conditions (e.g. changes in gradient and or alluvial stratigraphy), or by heavy surface recharge (irrigation).

In verbal testimony, Mr. Benowitz appeared unaware of the ordinary changes in stream flow which accompany seasonal fluctuations in temperature, amount of precipitation, rate of runoff, and use of water by diversion during irrigation.

The area of poorly drained soil outlined in the Benowitz report (p.4,5) and located on portions of the Yacomella and golf course properties is a localized occurrence, likely restricted in depth to the near surface (1 to 5 feet). I believe that beneath this poorly drained, clay-rich horizon lies highly permeable alluvium which is a medium for recharge.

Groundwater recharge in the Garden Creek area is strongly affected by irrigation practices. Major loss of surface recharge through changes in irrigation practice in N1 2 sec32 will diminish subsurface water levels and volume, and hence any "gaining" zones immediately downstream. Such changes cannot be quantified without expenditure of much time and money to produce a good data base.

Respectfully submitted,


Tom Jacob

Re: Cyprus Thompson Creek applications for transfer

Place: Challis

Date: 11-Mar-1992

Hearing Officer: Gary Spackman

Assisted by: Loren Holmes

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Susan Buxton	DAVIS WRIGHT TREMAINE 702 W IDAHO SUITE 700	CYPRUS
Scott Campbell	Same	CYPRUS
Michael Shannon	P.O. Box 1039 Challis ID 83226	
KENT W. FOSTER	P.O. Box 50130 IDAHO FALLS ID 83405	MIKE SHANNON
Tom Jacob	Box 31 Challis ID 83226	MIKE SHANNON
Lawrence F. Bradbury	Lewiston, Ida 4082 Fairway Dr 83501	CYPRUS
John S. Smith	Box 27 Challis Id.	water user
Will Ingram	HC 61 Box 3030 Challis Id	Ingram Ranch - Cyprus
Satt Bohowitz	Montgomery Engineers 161 Mallard Drive Boise ID	CYPRUS
PABIS ALMOND	Box 1039, CHALLIS, ID 83226	
Aime King	Box 301 Challis	self
Nola Lynch	Box 847 Challis	
Bert Doughty	P.O. Box 62 Clayton	CYPRUS
Jim McGowan	HC 63 BOX 1530	CYPRUS
Dave Berger	P.O. Box 62 Clayton Id	CYPRUS
Doc Kappner	Box 241 Challis Id	Watermaster
Ray Kappner	Box 243 " "	Ranch

JUN 26 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR TRANSFER OF WATER RIGHTS)
NO. 72-0048, 72-0051B, 72-0051N,)
72-0051L, 72-0110, 72-0111)

NOTICE OF HEARING

Cyprus Thompson Creek Mining)
Company,)

Applicant)

SOURCE: Garden Creek

Garden Creek Waterusers District)
72-B,)

COUNTY: Custer

Protestant)

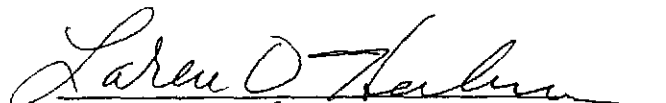
On May 21, 1991, Cyprus Thompson Creek Mining Company, applicant, applied to the Department of Water Resources to add diversion points and change place of use of decreed water rights. On September 3, 1991, the Department received a protest against the approval of said application from Garden Creek Waterusers, District 72-B. Signators to the protest were Mark & Vicki Arnbruster, Michael Shannon, James A. Lynch, and Ray Keppner.

A pre-hearing conference on the matter was held on September 30, 1991, in Challis.

The department has set the matter for hearing for Wednesday, March 11, 1992, in the County Commissioners room of the Custer County Courthouse, Challis.

The hearing will be held in accordance with chapter 2, Title 42 of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 28 day of February, 1992.


Loren O. Holmes
Southern Region Manager

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JUN 26 1992

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1,2,3,4,& 6 above, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with the both the applicant and protestant as to factors which they are most knowledgeable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

AND
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IDWR

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3	1273	45-7690 Norman/Kevin/Delores Singer										
4	1274	Bonnie Singer										
5	1275	Black Jack Ranch Inc. (45-7687)										
6	1276	Rick Baller, Atty.										
7	1277	Earl L. Warthen										
8	1278	SCA Violation Rogay Crandlemire 36-S-29	.29	1.00	1.00	2.29						
9	1279	2/28/92 TR 72-0048 00518 Cyrus Thompson 72-6051 L N 72-3745, 3747 72-0110, etc	.29	1.00	1.00	2.29						
10	1280	Scott Campbell, Esq										
11	1281	Garden Cr. Watersiders Dist 72-B										
12	1282	Michael Shannon										
13	1283	Kent Foster										
14	1284	Ray Keppner										
15	1285	Lee Ray Keppner										
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State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Cyprus Thompson Creek Mining Co.
c/o David Bergey
P.O. Box 62
Clayton, ID 83227

Re: Hearing date for Cyprus applications for transfer

Dear Mr. Bergey:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

Sincerely,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

JUN 26 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Scott L. Campbell, Esq.
Davis Wright Tremaine
702 West Idaho St., Suite 700
Boise, ID 83702

Re: Hearing date for Cyprus applications for transfer

Dear Mr. Campbell:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

Enclosed are copies of available watermaster records. Not all the daily record books could be located. There is a chance they are still in possession of the water district.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

644 5 2 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Garden Creek Waterusers Dist 72B
c/o Mark & Vicki Armbruster
P.O. Box 1127
Challis, ID 83226

Re: Hearing date for Cyprus applications for transfer

Dear Protestants:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

Sincerely,

A handwritten signature in cursive script that reads 'Loren O. Holmes'.

Loren O. Holmes, P. E.
Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Re: Hearing date for Cyprus applications for transfer

Dear Mr. Foster:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

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Sincerely,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Ray Keppner
P.O. Box 243
Challis, ID 83226

Re: Hearing date for Cyprus applications for transfer

Dear Mr. Keppner:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

Sincerely,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Dee Ray Keppner
P.O. Box 281
Challis, ID 83226

Re: Hearing date for Cyprus applications for transfer

Dear Mr. Keppner:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

JUN 26 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

14-Feb-1992

R. KEITH HIGGINSON
Director

Michael Shannon
P.O. Box 1039
Challis, ID 83226

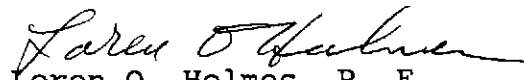
Re: Hearing date for Cyprus applications for transfer

Dear Mr. Shannon:

I am planning on setting the hearing for March 11, 1992, in Challis.

Notices will be mailed about February 24 if this date remains firm.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

Scott L. Campbell
DAVIS WRIGHT TREMAINE
702 West Idaho St., Suite 700
Boise, ID 83702
(208) 338-8200

Attorneys for
Settlers Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In Re: Applications for Cyprus	)	
Thompson Creek Mining Company for	)	NOTICE OF
Change in the Place of Use and	)	SUBSTITUTION OF COUNSEL
Point of Diversion of Water Rights,	)	
Water Right Nos. 72-00051B,	)	
72-00051N, 72-00051L, 72-00048,	)	
72-00100 and 72-00111.	)	
	)	
	)	
	)	

Scott L. Campbell, of the firm of Davis Wright Tremaine, hereby provides Notice of Substitution of Counsel for Cyprus Thompson Creek Mining Company hereinafter "Company." Scott L. Campbell will continue to appear on behalf of the Company, but will be affiliated with the law firm of Davis Wright Tremaine, instead of the law firm of Elam, Burke and Boyd. Any future pleadings or correspondence should be addressed to:

Scott L. Campbell, Esq.
Davis Wright Tremaine
702 West Idaho St., Suite 700
Boise, ID 83702

JUN 26 1992

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8219

January 30, 1992

Loren O. Holmes
Southern Regional Manager
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Applications for Cyprus Thompson Creek Mining Company for Change in the
Place of Use and Point of Diversion of Water Rights - Water Right Nos. 72-
00051B, 72-00051N, 72-00051L, 72-00048, 72-00100 and 72-00111

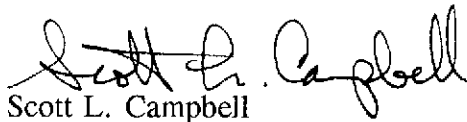
Dear Loren:

Enclosed for filing regarding the above-entitled matter are an original and one copy of
a Notice of Substitution of Counsel submitted on behalf of Cyprus Thompson Creek Mining
Company.

Thank you for your assistance.

Very truly yours,

DAVIS WRIGHT TREMAINE


Scott L. Campbell

SLC:md
Enclosures

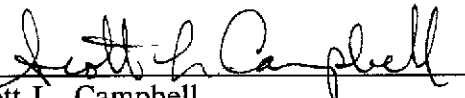
JAN 26 1992

FAX (208) 338-8299

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • HONOLULU, HAWAII • LOS ANGELES, CALIFORNIA
PORTLAND, OREGON • RICHLAND, WASHINGTON • SAN FRANCISCO, CALIFORNIA • SEATTLE, WASHINGTON • WASHINGTON, D.C.

DATED this 30th day of January, 1992.

DAVIS WRIGHT TREMAINE

By: 
Scott L. Campbell
Attorneys for
Cyprus Thompson Creek Mining Company

CERTIFICATE OF SERVICE

I hereby certify that on this ^{31st}~~30th~~ day of January, 1992, a true and correct copy of the foregoing NOTICE OF SUBSTITUTION OF COUNSEL was mailed, postage prepaid, to:

Garden Creek Water User
District No. 72B
P. O. Box 1127
Challis, ID 83226

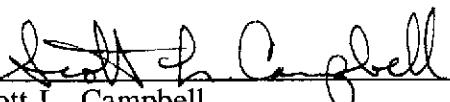
Michael Shannon
P. O. Box 1039
Challis, ID 83226

David Bergey
P. O. Box 62
Clayton, ID 83227

Ray Keppner
P. O. Box 243
Challis, ID 83226

De Ray Keppner
P. O. Box 281
Challis, ID 83226

Kent Foster
P. O. Box 50130
Idaho Falls, ID 83405


Scott L. Campbell

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

RECEIVED

JAN 07 1992

January 7, 1992

Loren O. Holmes
Southern Regional Manager
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Applications for Water Right Transfers in the Name of Cyprus Thompson
Creek Mining Company

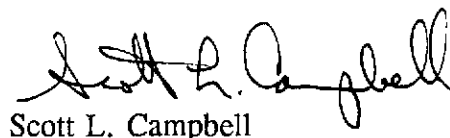
Dear Loren:

I attempted to reach you by telephone on January 7, 1992. Unfortunately, you were unavailable. This is to advise you that a conflict has arisen with regard to the availability of two key witnesses for the hearing date which had been tentatively scheduled during the second week of February, 1992, with regard to the above-referenced matters. These witnesses would be available during the first week of February.

Please contact me by telephone at your earliest convenience to discuss a possible alternative date for the hearing. Thank you for your cooperation.

Very truly yours,

DAVIS WRIGHT TREMAINE



Scott L. Campbell

SLC:md

cc: Burt Doughty
David Bergey
Ralph W. Godell, Esq.

FAX: (208) 338-8299

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • LOS ANGELES, CALIFORNIA • PORTLAND, OREGON
RICHLAND, WASHINGTON • SEATTLE, WASHINGTON • WASHINGTON, D C



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

29-Oct-1991

R. KEITH HIGGINSON
Director

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Re: Transfer applications 3745, 3747; Cyprus Thompson Creek

Dear Mr. Foster:

Enclosed, as requested by Mike Shannon, are copies of the transfer applications.

I have also enclosed a map prepared by me showing Cyprus' ownership, a copy of which was handed to Scott Campbell at the pre-hearing conference.

If any questions arise, please contact me.

Sincerely,

A handwritten signature in cursive script, reading 'Loren O. Holmes'.

Loren O. Holmes, P. E.
Southern Region Manager

cc: Mike Shannon

[illegible]



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

24-Sep-1991

R. KEITH HIGGINSON
Director

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

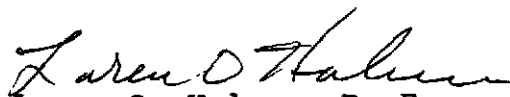
Re: Cyprus Thompson Creek Transfer applications

Dear Mr. Campbell:

Attached is an amended notice of pre-hearing conference in the matter of the transfers.

Only the caption has been changed to properly reflect the water right numbers. The time and place for the conference remain the same.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

C: David Bergey

RECEIVED

JUN 26 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

24-Sep-1991

R. KEITH HIGGINSON
Director

GARDEN CREEK WATERUSERS DIST 72-B
BOX 1127
CHALLIS ID 83226

Re: Cyprus Thompson Creek Transfer applications

Dear Protestants:

Attached is an amended notice of pre-hearing conference in the matter of the transfers.

Only the caption has been changed to properly reflect the water right numbers. The time and place for the conference remain the same.

Sincerely,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

JUN 28 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR TRANSFER OF WATER RIGHTS)
NO. 72-0048, 72-0051B, 72-0051N,)
72-0051L, 72-0110, 72-0111)

Cyprus Thompson Creek Mining)
Company,)

Applicant)

Garden Creek Waterusers District)
72-B,)

Protestant)

AMENDED

NOTICE OF
PRE-HEARING CONFERENCE

SOURCE: Garden Creek

COUNTY: Custer

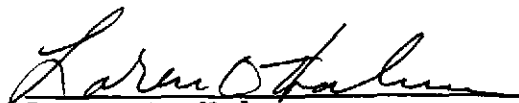
On May 21, 1991, Cyprus Thompson Creek Mining Company, applicant, applied to the Department of Water Resources to add diversion points and change place of use of decreed water rights. On September 3, 1991, the Department received a protest against the approval of said application from Garden Creek Waterusers, District 72-B. Signators to the protest were Mark & Vicki Arnbruster, Michael Shannon, James A. Lynch, and Ray Keppner.

The Department has set the matter of protest for a pre-hearing conference for Monday, September 30, 1991, at 1:00 PM, in the County Commissioners meeting room in the Custer County Courthouse, Challis.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with chapter 2, Title 42 of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 24 day of September, 1991.


Loren O. Holmes
Southern Region Manager

RECEIVED

SEP 22 1991

Department of Water Resources
Southern Region Office

SCOTT L. CAMPBELL

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

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

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

September 19, 1991

Mr. Loren O. Holmes, P.E.
Southern Region Manager
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

RE: Applications for Transfer of Water Right
Numbers 72-00051B, 72-00051L, 72-00051N,
72-00048, 71-00010, 71-00011
(Cyprus Thompson Creek Mining Co.)

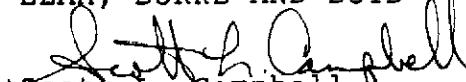
Dear Mr. Holmes:

On September 18, 1991, I received a copy of the Notice of Pre-Hearing Conference with regard to the above captioned Applications for Transfer of Water Rights. I have enclosed a copy of that Notice of Pre-Hearing Conference for your review. Please note that the reference on the caption does not properly reflect the water rights which are subject to the transfer proceedings. Water Right Nos. 72-0051N and 72-0110 are both listed twice in the caption. Water Right No. 72-0051B is not listed, nor is Water Right No. 72-00111. I think it is important that any future pleadings in this matter properly refer to those water right numbers.

Thank you for your attention to this matter.

Very truly yours,

ELAM, BURKE AND BOYD


Scott L. Campbell

SLC:jm

cc: Ralph W. Godell, Esquire
David Bergey

RECEIVED
JUN 26 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR TRANSFER OF WATER RIGHTS)
NO. 72-0048, 72-0051N, 72-0051N,)
72-0051L, 72-0110, 72-0110)

Cyprus Thompson Creek Mining)
Company,)
Applicant)

Garden Creek Waterusers District)
72-B,)
Protestant)

NOTICE OF
PRE-HEARING CONFERENCE

SOURCE: Garden Creek

COUNTY: Custer

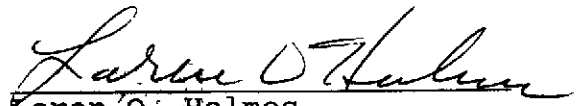
On May 21, 1991, Cyprus Thompson Creek Mining Company, applicant, applied to the Department of Water Resources to add diversion points and change place of use of decreed water rights. On September 3, 1991, the Department received a protest against the approval of said application from Garden Creek Waterusers, District 72-B. Signators to the protest were Mark & Vicki Arnbruster, Michael Shannon, James A. Lynch, and Ray Keppner.

The Department has set the matter of protest for a pre-hearing conference for Monday, September 30, 1991, at 1:00 PM, in the County Commissioners meeting room in the Custer County Courthouse, Challis.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with chapter 2, Title 42 of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 16 day of September, 1991.


Loren O. Holmes
Southern Region Manager

JUN 15 1992

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR TRANSFER

In accordance with IDAHO CODE, Section 42-222, the following issues are involved in the consideration of the application and protest(s):

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

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not predjudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without predjudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

JUN 26 1992

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below

Twin Falls, ID 83401



PENALTY FOR PRIVATE
USE, \$300

JUN 26 1992

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: 72-0051, 72-0110
GARDEN CREEK WATERUSERS DIST 72B
C/O BOX 1127
CHALLIS ID 83226

4 Article Number
1186

Type of Service:

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

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

9/17/91

JUN 26 1992

ADDRESSEE'S ADDRESS (NAME)
requested and fee paid

SEP 18 1991

Department of Water Resources

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

**Print your name, address and ZIP Code
in the space below**

- Complete items 1, 2, 3, and 4 on the reverse
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below

~~CONFIDENTIAL~~

Twin Falls, ID 83301



PENALTY FOR PRIVATE
USE, \$300

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "TURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

- 1 ☐ Show to whom delivered, date, and addressee's address. (Extra charge) 2 ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: 72-0051, 72-0110

SCOTT CAMPBELL ESQUIRE
ELAM BURKE & BOYD
PO BOX 1539
BOISE ID 83701

4 Article Number

1185

Type of Service:

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

RECEIVED
JUN 26 1992
SEP 19 1991
Obtain signature of addressee
and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

7-18-91

8 Addressee's Address (ONLY if requested and fee paid)

Department of Water Resources
Southern Region Office

NAME AND
ADDRESS
OF SENDER

IDWR

Indicate type of mail

☐ Registered
☐ Insured
☐ COD
☒ Certified ☐ Express Mail

Check appropriate block for

☐ Registered Mail
☐ With Postal Insurance
☐ Without Postal Insurance
Affix stamp here if issued as
certificate of mailing or for
additional copies of this bill

POSTMARK AND DATE OF REGISTRATION

PS Form 3877, Feb. 1982 FOR REGISTERED, INSURED, C.O.D., CERTIFIED, AND EXPRESS MAIL

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act Value (If Regs)	Insured Value	Due Sender If COD	R R Fee	S D Fee	S H Fee
1	1173	Vanco 45-7572-14 C/o Gary Sletter 45-7573-14	.29	1.00	1.00	2.29					
2	1174	C/o Alfred Barrus Neil/Katherine Adams									
3	1175	(3) Id. Dept. Fish & Game									
4	1176	Mike & m Dabba Courtney 47-8269									
5	1177	Ruth / R. J. Owen 8/30/91									
6	1178	(3) H. H. N. Roger Jones Jones Corp									
7	1179	(1) WEEKS, Drilling 1832 Smith, 3000 East Broomfield, CO 80022 09/13/91 Violation	.29	1.00	1.00	2.29					
8	1180	Wm. J. Meadows 9-16-91 740 Ranches LH/41-7080	.29	1.00	1.00	2.29					
9	1181	Richard Nelson									
10	1182	Glen / Ida Cox									
11	1183	Arthur Nielson									
12	1184	(5) James Robinson									
13											
14	1185	Scott Campbell Esq 9-16-91 LH/Cypress 72-0051, etc	.29	1.00	1.00	2.29					
15	1186	(2) Gordon C. Waters 72-0110, etc									
Total Number of Pieces Listed by Sender		Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)			The full declaration of value is required on all domestic and international. The maximum indemnity payable for nonnegotiable documents under Ement reconstruction insurance is \$50,000 per piece subject to a limit occurrence. The maximum indemnity payable on Express Mail merchandise is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$400 for Insured Mail. Special handling charges apply only to Third-parcels. Special delivery service also includes special handling service.					

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

U S GOVERNMENT PRINTING OFFICE



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

09-Sep-1991

R. KEITH HIGGINSON
Director

GARDEN CREEK WATERUSERS DIST. 72B
C/O BOX 1127
CHALLIS, ID 83226

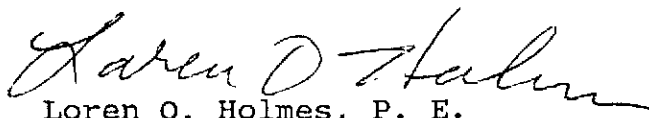
Re: Rescheduling pre-hearing conference on CYPRUS Transfer

Dear Protestants:

Due to a scheduling conflict, the pre-hearing conference in the matter of the CYPRUS applications for transfer is being rescheduled to the afternoon of September 30, 1991 in Challis.

Formal notice will be served about Sept. 16.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

09-Sep-1991

R. KEITH HIGGINSON
Director

ATTN: SCOTT L. CAMPBELL, ESQUIRE
ELAM BURKE & BOYD
P.O. BOX 1539
BOISE, ID 83701

Re: Rescheduling pre-hearing conference on CYPRUS Transfer

Dear Mr. Campbell:

Due to a scheduling conflict, the pre-hearing conference in the matter of the CYPRUS applications for transfer is being rescheduled to the afternoon of September 30, 1991 in Challis.

Formal notice will be served about Sept. 16.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

04-Sep-1991

R. KEITH HIGGINSON
Director

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

RE: APPLICATION FOR TRANSFER NOS. 72-00051B, 72-00051L, 72-00051N,
72-00048; 72-00110, 72-00111 (CYPRUS THOMPSON CREEK MINING CO)

Dear Mr. Campbell:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to the above referenced applications filed on behalf of your client.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

This office is tentatively scheduling the matter of protest for a pre-hearing conference for September 24, 1991. Notices formally setting the conference time and place will be mailed about September 12, 1991.

The attachment to this letter describes the issues which the Department must consider in taking action on an application for transfer. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB
Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

04-Sep-1991

R. KEITH HIGGINSON
Director

GARDEN CREEK WATERUSERS DIST #72-B
C/O MARK & VICKI ARNHRUSTER
PO BOX 1127
CHALLIS ID 83226

RE: APPLICATION FOR TRANSFER NOS. 72-00051B, 72-00051L, 72-00051N,
72-00048; 72-00110, 72-00111 (CYPRUS THOMPSON CREEK MINING CO)

Dear Protestants:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

This office is tentatively scheduling the matter of protest for a pre-hearing conference for September 24, 1991. Notices formally setting the conference time and place will be mailed about September 12, 1991.

The attachment to this letter describes the issues which the Department must consider in taking action on an application for permit. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB
Enclosure(s)

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR TRANSFER

In accordance with IDAHO CODE, Section 42-222, the following issues are involved in the consideration of the application and protest(s):

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

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

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

TELEPHONE
208-343-5454
TELECOPIER
208-384 5844

SCOTT L. CAMPBELL

September 9, 1991

Mr. Loren O. Holmes, P.E.
Southern Region Manager
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

RECEIVED

SEP 11 1991

Department of Water Resources
Southern Region Office

RE: Application for Transfer Nos. 72-00051B,
72-00051L, 72-00051N, 72-00048, 72-00110, 72-00111
(Cyprus Thompson Creek Mining Co.)

Dear Mr. Holmes:

This correspondence will serve to document our telephone conversation of September 9, 1991, concerning your correspondence to me of September 4, 1991.

As I indicated during our telephone conversation, I will not be able to attend a pre-hearing conference scheduled for September 24, 1991, due to previously scheduled matters before the Department of Water Resources on that date. Accordingly, I requested that a different date close to that time frame be selected for formally scheduling the pre-hearing conference. You agreed to change the pre-hearing conference date to September 30, 1991 in the afternoon of that date to accommodate travel time. You indicated that you would mail written formal notices indicating that time and also indicating that the pre-hearing conference will be conducted in Challis, Idaho.

Thank you for your accommodation in this regard. I look forward to receiving the formal notice and to meeting with you on September 30, 1991.

Very truly yours,

ELAM, BURKE AND BOYD


Scott L. Campbell

SLC:jm

cc: David Bergey
Ralph W. Godell

Aug 29, 1991

TO: IDAHO DEPARTMENT of Water Resources
FROM: GARDEN Creek Water Users Dist 72-B

We, the undersigned, protest Cyprus's
proposal for water right transfers numbers
3745 AND 3747.

Sincerely,

Mark & Vicki Ambuster
Michael Shannon
James A Lynch
Ray B. Jones

RECEIVED

SEP 03 1991

Department of Water Resources
Southern Region Office

10-10-01

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: LSH

1. Right number 72-0051N, B, L
22-0048 Applicant CYPRIUS Thompson Co.
Miners CO.
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☐ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
 - b. ☒ Description of original point of diversion. → P/D for 72-0051L incorrectly described in our database
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☒ All of right.
 - b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
 - c. ☒ Check description of point(s) of diversion.
 - d. ☒ Check description of place of use.
 - e. ☒ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee. Originally Received 7/25/90
Receipt # CO17791
 - g. ☒ Check proof of ownership of right &/or land from which water is transferred.
 - h. ☒ Check for expansion in use of right. Comments Rights being Continued -
No expansion of lands
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) _____
 - j. ☐ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 72-B Garden Creek

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☐ Yes ☐ No
3. Protest received? ☐ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* _____

4. By _____ Date _____

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

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

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

SCOTT L. CAMPBELL

August 16, 1991

RECEIVED

AUG 19 1991

Department of Water Resources
Southern Region Office

Mr. Loren O. Holmes, P.E.
Southern Region Manager
IDAHO DEPARTMENT OF WATER RESOURCES
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Cyprus Thompson Creek Mine Applications for Transfer
of Water Right Nos. 72-0051N, 72-00051B, 72-00051L,
72-00048, 72-00110 and 72-00111

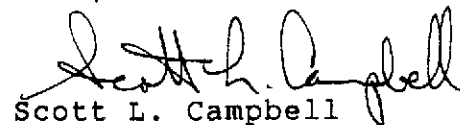
Dear Loren:

Pursuant to your most recent correspondence of August 5, 1991, I have enclosed a data sheet for the officers of the Cyprus Thompson Creek Mining Company. I am hopeful that the corporate address will be sufficient and that it will be unnecessary to provide the home addresses for the officers.

Please notify me if this does not satisfy the Department's requirements on this issue.

Very truly yours,

ELAM, BURKE AND BOYD


Scott L. Campbell

SCL:jm

cc: Ralph W. Godell, Esquire
Dave Bergey

January 16, 1991

CYPRUS THOMPSON CREEK MINING COMPANY
(formerly Tuscarora Mining Corporation)

Work Location: 35 miles Southwest of Challis Highway 75
Clayton, Idaho 83227

Mailing Address: P.O. Box 62
Clayton, Idaho 83227

Incorporation:

State	Nevada
Date	January 26, 1970
Existence	Perpetual

Annual Stockholders' Meeting:

Date	First Tuesday in April, 10:45 a.m.
Location	9100 East Mineral Circle Englewood, Colorado 80112

Resident Agent in State of Incorporation: Corporation Trust Company of Nevada
One East First Street
Reno, Nevada

Qualified to Do Business In: Colorado, Idaho, Nevada

Capital Stock:

Authorized	10,000 shares - \$10.00 par value
Outstanding	100 shares
Ownership	Cyprus Copper Company

Principal Activity: Owns and operates Thompson Creek molybdenum
mine near Challis, Idaho

IRS Identification Number: 95-2834610

Officers:

President	F. S. Mooney	October 30, 1988
Senior Vice President	R. S. DeCesare	July 15, 1988
Senior Vice President	C. G. Janes	August 1, 1989
Senior Vice President	G. J. Malys	August 1, 1989
Senior Vice President and Secretary	K. Loughrey	December 10, 1990/October 4, 1987
Vice President	R. C. Kellner	February 1, 1990
Vice President	J. Timmers	January 16, 1991
Vice President and General Manager	P. H. Fitch	January 10, 1988
Vice President and Treasurer	D. C. Haugh	July 1, 1985
Vice President and Controller	L. A. Shonk	May 21, 1990
Vice President, General Counsel and Assistant Secretary	D. J. Friedman	December 10, 1990/July 1, 1985
Assistant Treasurer	F. S. Hakimi	July 31, 1987
Assistant Treasurer, Tax	J. D. Flemming	May 2, 1990

Directors:

F. S. Mooney	June 21, 1990
G. J. Malys	August 1, 1989
D. J. Friedman	December 10, 1990

RECEIVED

AUG 19 1991

Department of Water Resources
Southern Region Office

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 3745

AUG 20 1991

RECOMMENDATION OF WATERMASTER

Department of Water Resources
Southern Region Office

I, DeRay Kappner, watermaster of Harlow CK,
of Water District No. 7213, County of Custer, State of Idaho,
whose address is Box 281 Challis, ID
have read the attached copy of the application for transfer of water right for _____
Cyrus Mene, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: _____

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: It is the 1910

water under app. and the ^{water} down
stream gate "Waist"

Dated at Challis, Idaho, this 15 day of August 1991.

DeRay Kappner
(signature)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

07-Aug-1991

R. KEITH HIGGINSON
Director

CUSTER PUBLISHING COMPANY
PO BOX 405
CHALLIS ID 83226

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

5-Aug-1991

R. KEITH HIGGINSON
Director

SCOTT L. CAMPBELL ESQUIRE
PO BOX 1539
BOISE ID 83701-1539

Re: Applications for Transfer, Cyprus Thompson Creek Mining Co:
Nos. 72-0110, 72-00111; 72-0051N, 72-0051B, 72-0051L, 72-0048

Dear Mr. Campbell:

The Department of Water Resources acknowledges receipt of the Applications for Transfer on behalf of Cyprus Thompson Creek Mining Company.

This office will be advertising the applications in The Challis Messenger on 8/14 & 8/21/91. The advertisements will be published for two weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

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

In order to complete regional review, a list of corporate officers and addresses should be submitted to this office.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

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

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

5-Aug-1991

R. KEITH HIGGINSON
Director

DEE KEPPNER WATERMASTER
WATER DISTRICT #72-B
PO BOX 282
CHALLIS ID 83226

Re: (2) Application for Transfer of Water Right Nos.
72-0110, 72-0111; 72-0051N, 72-0051B, 72-0051L, 72-0048

Dear Mr. Keppner:

Enclosed are copies of Applications for Transfer of a Water Right within your District, and Watermaster's Recommendation Forms.

Section 42-222 of the IDAHO CODE requires that the watermaster must be advised of proposed changes in water rights in the water district and must notify the Department of his recommendation on the application.

Please complete the enclosed recommendation forms and return them to this office.

Processing of an application can be completed in 20 days, therefore, your prompt response to this request will be appreciated.

If you have any questions about the application, please contact this office or the applicant.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

Enclosures

ELAM, BURKE AND BOYD

ATTORNEYS AND COUNSELORS AT LAW

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

TELEPHONE
208 343-5454
TELECOPIER
208-384 5844

SCOTT L. CAMPBELL

June 24, 1991

RECEIVED
JUN 25 1991

Loren O. Holmes
Southern Region Manager
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

Department of Water Resources

Re: Applications for Transfer of Water Rights
Nos. 72-0051N, 72-00051B, 72-00051L, 72-00048,
72-00110 and 72-00111

Dear Loren:

Thank you for taking the time to discuss the above-referenced applications for transfer of water rights on June 21, 1991.

As I indicated during our conversation, my client, the Cyprus Thompson Creek Mining Company, is extremely interested in having these applications processed as soon as possible by the Department of Water Resources. If I can provide any additional information or assistance to expedite the processing by the Department, please contact me at your earliest convenience.

You indicated during our telephone conversation that you would personally review the applications for completeness and submit them for publication of notice as soon as reasonably possible. You indicated that the next available publication dates would be July 11 and 18, 1991. I indicated to you that I would contact you by telephone on July 11, 1991, to determine whether or not the publication had occurred.

Again, I would like to offer any additional assistance or information you would require in the timely processing of these applications. As always, I and my client sincerely appreciate the expedited treatment of this matter by you and your staff.

Very truly yours,

ELAM, BURKE AND BOYD


Scott L. Campbell

SCL:lj1

cc: Jim Johnson
Gary Spackman

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

VABM Challis
6730

30

29

29

Radio
Relay Sta

28

27

1966

CHALLIS
(BM 5283)

Creek

34

31

20

20

20

30

30

10

 CYPRUS OWNERSHIP

 72-00048 OFFSHORE

 A72-00048 - Adj. Claim
xx = Acres in Tract

 PROPOSED TRANSFER
OF 72-00048

N

4

3

VABM Challis 6730

Radio Relay Sta

CHALLIS (BM 5283)

Upper Bad Butte Headgate

Lower Bad Butte Headgate

Creek

DITCH

-  CYPRUS OWNERSHIP
-  72-00051N as recorded
-  72-00051B as recorded
-  72-00051L
-  A72-00051B
-  A72-00051N as claimed
-  A72-00051L
-  Proposed 72-00051B,N,L after transfer





b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

$$R \approx L$$

N

Total number of acres to be irrigated _____

July 13, 1945.

Mr. F. E. Tydeman
Attorney at Law
Fietrich Bldg.
Pocatello, Idaho

Dear Mr. Tydeman:

In reply to your letter of July 12th relative to the Bradbury "change in point of diversion" on Garin Creek, Water District No. 3-B, at Challis, Idaho:

Said application for change in point of diversion was protested by Sam Hessen and a hearing on same was held at Challis, Idaho, under date of May 29, 1944. On July 7, 1944, a letter was sent to Mr. Hessen enclosing a copy of the decision or order of the State Reclamation Engineer. A copy of same is herein enclosed for your information.

The Watermaster of Water District No. 3-B, Mr. Fred Green, has been directed by this Department to follow the decree relative to the delivery of Mr. Hessen's water, and we have no reason to think otherwise than that the decree is being followed in detail, and that Mr. Hessen's water right is being delivered to the amount of available water supply. We are of the opinion that Mr. Bradbury cannot be forced to waste water to supply the right of Mr. Hessen.

Very truly yours,

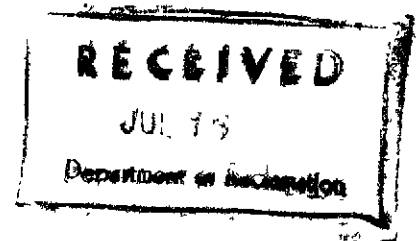
MARK T. KILP
State Reclamation Engineer
By

Ray L. Thompson
Supervisor of Water Distribution

T:A
Encl.

F. E. TYDEMAN
ATTORNEY AT LAW
DIETRICH BUILDING
POCATELLO, IDAHO

July 17, 1945



Department of Reclamation
State of Idaho
 Boise, Idaho

Gentlemen:

About a year ago we had some correspondence in regard to the distribution of the water in Water Users District District No. 5-- of Shells, Idaho. I may not have all of the correspondence, but the letters that I have indicate that at the time there had been no official decision rendered in the case between Clarence Bradbury and Sam Messon. Messon advises me that he has never received any notice of official decision in the matter, however, he does advise me that on account of the changes in the point of diversion authorized and unauthorized he is not receiving the water that was decreed to him and that in his opinion, the two users involved ~~xxxxxxx~~ in this matter are receiving more than the amount decreed to them. He has talked to the water master about the matter but has had no satisfactory explanation from him.

I would appreciate having you let me know what the final decision of the Engineer was and whether it is possible to have an official record your office act under the distribution of this water and determine whether the water will be distributed according to the decree or whether or not the continued excessive use by the Bradburys will be allowed to continue.

Very truly yours,

F. E. Tydeman

FLT/mjs

July 7, 1944

Mr. Carlo L. Drake
Attorney at Law
Challis, Idaho

Dear Mr. Drake:

We are enclosing herewith Order and Certificate of Change in Point of Diversion issued by the State Reclamation Engineer, all in connection with the application and hearing of Lawrence Bradbury.

The copy is for your files.

The State Reclamation Engineer was out of the office the greater part of June; therefore the delay in getting these papers to you.

We are also returning abstract of title which accompanied the application.

Very truly yours,

MARK A. CHAP
State Reclamation Engineer
By

Roy L. Thompson
Superior of Water Distribution

T:A
Encls.

RECEIVED

July 7, 1944

Mr. Sam Hassen:
Challis, Idaho

Dear Mr. Hassen:

We are enclosing herewith a copy of the Order issued by the State Reclamation Engineer, in connection with the hearing held at Challis, on May 29, 1944, relative to the change in point of diversion of the Lawrence Bradbury water right.

Very truly yours,

RAY A. RULP
State Reclamation Engineer
By

Roy L. Thompson
Supervisor of Water Distribution

T:A
Encl.

RECORDED
INDEXED

July 7, 1944

Mr. Fred Greene, Watermaster,
Water District No. 3-b,
Challis, Idaho

Dear Mr. Greene:

We are enclosing herewith Order and Certificate of Change in Point of Diversion, all in connection with the Lawrence Bradbury application for change in point of diversion of his water right.

This Certificate should be filed with the decree and other papers retained by the watermaster and belonging to the Water District, and at the end of the irrigation season should be delivered or turned over to the Secretary of the District, and in turn delivered to the succeeding watermaster the following spring.

We would be interested to know how the water users got together and how they fared up to date, - Mr. Hessen, Bradbury, and others. Hope they got together in a satisfactory manner, and thanks for any information you wish to give us.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
by

Loy L. Thompson
Supervisor of Water Distribution

T:A
Encl.

MICROFILMED

June 15, 1944

Mr. F. E. Tydeman
Dietrich Bldg.
Pocatello, Idaho

Dear Mr. Tydeman:

We wish to acknowledge receipt of your letter of June 12th, in which you request to be advised whether or not the Department's letter of August 23, 1943, to Mr. Fred Green, Watermaster of Water District No. 3-B, of Challis, Idaho, relative to the delivery of the Hessen Water right, has been rescinded or amended.

In reply to the above stated question, our answer will be negative, our only instructions to Mr. Green having been to deliver said water according to the decree.

A copy of our letter to Mr. Green is enclosed herewith.

Very truly yours,

MA. K. KULP
State Reclamation Engineer
By

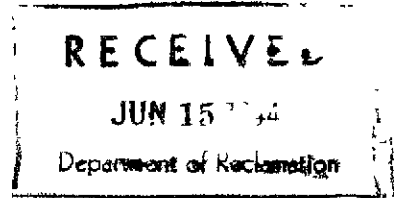
Roy L. Thompson
Supervisor of Water Distribution

T:4
Encl.

RECEIVED

F. E. TYDEMAN
ATTORNEY AT LAW
DIETRICH BUILDING
POCATELLO, IDAHO

June 12, 1944



Department of Reclamation
Boise, Idaho

Gentlemen:

I would appreciate having you advise me whether or not you letter dated August 23, 1943, addressed to Mr. Fred Green, Watermaster, Water District No. 3-B, Challis, Idaho, relative to the water used by Mr. Hessen has ever been recinded or amended. Thanking you for this information, I beg to remain,

Very truly yours,

F. E. Tydeman
F. E. Tydeman

FET:rec

Mark A. Rulp

June 8, 1944

Mr. Fred Greene, Watermaster,
Water District No. 3-B,
Challis, Idaho

Dear Mr. Greene:

The decision of the State Reclamation Engineer on the recent hearing in Challis on the Clarence Bradbury change of point of diversion, Sam Hessen, protestant- has not been officially rendered, due to unavoidable reasons. However, it is the intention of the State Reclamation Engineer to grant the change in points of diversion as applied for by the applicant, which will give Bradbury the right to divert from Carlen Creek at two different points.

Relative to the division of water in the lower ditch, namely the J. J. Adams ditch, between Mr. Bradbury and Mr. Hessen, it will be necessary to measure the Bradbury water at the diversion point from Carlen Creek and again at a point in the ditch below the Hessen point of diversion, to determine the amount of water flowing into said ditch belonging to Hessen.

As this unnamed gulch from which Hessen's water is decreed (60 inches from the flow in said gulch and the seepage and spring water rising therein) is in your water district and under your supervision, you are thereby instructed to deliver and divide such water in accordance with the terms of the Decree.

As soon as the State Reclamation Engineer returns from a trip to the northern part of the state, you will be supplied with a copy of his decision, and certificate of change in point of diversion for Mr. Bradbury.

Hoping that the parties concerned in the above stated controversy have come to some agreement, we are,

Very truly yours,

MARK A. RULP
State Reclamation Engineer
By

Roy A. Thompson
Supervisor of Water Distribution

T:A

ORIGINAL FILED

May 19, 1944

Mr. Merle L. Drake
Attorney at Law
Challis, Idaho

Dear Sir:

This is to notify you that the hearing in connection with the application of Lawrence Bradbury for change in point of diversion of 3.2 cubic feet per second of the waters of Garden Creek, will be held in the Courthouse at Challis, Idaho, on May 29th, 1944, at 2:00 o'clock P. M.

Continued hearing from date of March 14, 1944,
as per publication notice in the Challis Messenger.

Very truly yours,

WILLIAM L. GULF
State Reclamation Engineer
By

Roy L. Thompson
Supervisor of Water Distribution

T:A

RECORDED

May 18, 1944

Mr. Sam Hessen
Challis, Idaho

Dear Mr. Hessen:

This is to notify you that the hearing in connection with the application of Lawrence Bradbury for change in point of diversion of 3.2 cubic feet per second of the waters of Garden Creek, will be held in the Courthouse at Challis, Idaho, on May 19th, at 2:00 o'clock P. M.

Continued hearing from date of March 14, 1944,
as per publication notice in the Challis Messenger.

Very truly yours,

MARK W. KULP
State Reclamation Engineer
By

Woy W. Thompson
Supervisor of Water Distribution

T:A

RECEIVED
MAY 19 1944

May 19, 1944

Mr. Lawrence Bradbury
Challis, Idaho

Dear Mr. Bradbury:

This is to notify you that the hearing in connection with your application for change in point of diversion of 3.2 cubic feet per second of the waters of Garden Creek, will be held in the Courthouse at Challis, Idaho, on May 25th, 1944, at 2:00 o'clock P. M.

Continued hearing from date of March 17, 1944,
as per publication notice in the Challis Messenger.

Very truly yours,

MARK M. KULP
State Reclamation Engineer
By

Roy L. Thompson
Supervisor of Water Distribution

1:A

RECEIVED
MAY 25 1944
CHALLIS, IDAHO

Ship 14

, Range 19 East

Boise

Meridian.

NORTH

R

TP

EAST

TP

SEC 31	SEC 32	SEC 33	SEC 34	SEC 35	SEC 36	SEC 31
SEC 6	SEC 5	SEC 4	SEC 3	SEC 2	SEC 1	SEC 6
SEC 7	SEC 8	SEC 9	SEC 10	SEC 11	SEC 12	SEC 7
SEC 18	SEC 17	SEC 16	SEC 15	SEC 14	SEC 13	SEC 18
SEC 19	SEC 20	SEC 21	SEC 22	SEC 23	SEC 24	SEC 19
SEC 30	SEC 29	SEC 28	SEC 27	SEC 26	SEC 25	SEC 30
SEC 31	SEC 32	SEC 33	SEC 34	SEC 35	SEC 36	SEC 31
SEC 6	SEC 5	SEC 4	SEC 3	SEC 2	SEC 1	SEC 6

Point of Division
Point of Division

Garden Creek

Shoshone
Bull
Pete

SOUTH

COYOTE PRINT J-32

March 13, 1944

Mr. Floyd Bradbury
Challis, Idaho

Dear Mr. Bradbury:

This morning your telegram was received in which you stated as follows: "Not possible to attend hearing on Tuesday as advertised Stop March 30 agreeable with me".

The change of the point of diversion, as applied for by Lawrence Bradbury, of the 3.2 second foot of water on Garden Creek from the legally stated point of diversion, that is, one-fourth mile below the Seventh Street Bridge in Challis, to two different points of diversion, has been protested by Mr. Sam Hessen of Challis. A copy of this protest is inclosed for your information.

On account of the expense to people interested in this transfer in attending a hearing in regard to this matter, the place of the hearing will now be changed to Challis, Idaho, and the time will be sometime in May, the exact date to be announced later.

Very truly yours,

James Spofford
State Reclamation Engineer.

RECEIVED
MARCH 14 1944
CHALLIS, IDAHO

CLASS OF SERVICE

This is a full-rate telegram or Cablegram unless its de-ferred character is in-duced by a suitable symbol above or pre-ceeding the address.

WESTERN UNION

A. N. WILLIAMS
PRESIDENT

1201

SYMBOLS

DL = Day Letter

NL = Night Letter

LC = Deferred Cable

NLT = Cable Night Letter

Ship Radiogram

(40) ..

The time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

KHA72 NL COLLECT=CHALLIS IDA MAR 11

1944 MAR 13 AM 8 43

JAMES SPOFFORD=

RECLAMATION ENER STATE HOUSE ECISE IDN=

NOT POSSIBLE TO ATTEND HEARING ON TUESDAY AS ADVERTISED STOP
MARCH 30 AGREEABLE WITH ME=

FLOYD BRADBURY.

MICROFILMED

30.

**NOTICE OF PROPOSED CHANGE
OF POINT OF DIVERSION OF
WATER RIGHT**

Notice is hereby given that Lawrence Bradbury of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 32 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one fourth-mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

16 cubic feet per second with point of diversion 120 feet west from the East line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19 East, B. M., 16 cubic feet per second with point of diversion 300 feet East from the West line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19, East, B. M.

And that on the 14th day of March A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reasons or reasons why a certificate should not be issued authorizing such change.

JAMES SPOFFORD

49-3 State Reclamation Engineer

**NOTICE OF PROPOSED CHANGE
IN POINT OF DIVERSION OF
WATER RIGHT**

Notice is hereby given that Lawrence Bradbury of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one fourth-mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the East line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic feet per second with point of diversion 300 feet East from the East line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19, East, B. M.

And that on the 14th day of March A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

JAMES SPOFFORD
State Reclamation Engineer

PROTEST AGAINST GRANTING APPLICATION FOR
CHANGE IN POINT OF DIVERSION

Comes now SAM HESSEN, of Challis, Idaho, and protests against the granting of the application of Lawrence Bradbury, of Challis, Idaho, made before the State Reclamation Engineer of the State of Idaho, to change the point of diversion of 3.2 second feet of the waters of Garden Creek.

The said application for change in point of diversion states that the water is now diverted from Garden Creek with point of diversion located one-fourth mile below Seventh Street Bridge in Challis, Idaho, and is being transferred to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet West from the East line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic feet per second with point of diversion 300 feet East from the West line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19 East, B. M.

Said protestant objects to the above described change in the point of diversion for the following reasons, to-wit:

Protestant alleges that the proposed change of one point of diversion to two points of diversion, as set forth in the published notice thereof, will cause him serious damage, inasmuch as the proposed upper diversion into the Upper Bradbury ditch would serve to legalize or make possible a continuation of applicant's use of a large portion of the water in question upon other lands/of said Bradbury situated in Section 32, Township 14 North, Range 19 East, B. M.
not covered by the decree

Wherefore, said Sam Hessen protests and objects to the granting of said application for change in point of diversion.

Subscribed and sworn to before me this 11th day of March, 1944

Sam Hessen
[Signature]
Notary Public for Idaho
Residing at Borje

PROTEST AGAINST GRANTING APPLICATION FOR
CHANGE IN POINT OF DIVERSION

Comes now SAM HESSEN, of Challis, Idaho, and protests against the granting of the application of Lawrence Bradbury, of Challis, Idaho, made before the State Reclamation Engineer of the State of Idaho, to change the point of diversion of 3.2 second foot of the waters of Garden Creek.

The said application for change in point of diversion states that the water is now diverted from Garden Creek with point of diversion located one-fourth mile below Seventh Street Bridge in Challis, Idaho, and is being transferred to the following described points of diversion:

1.6 cubic foot per second with point of diversion 120 feet east from the east line of the NW_{1/4} Sec. 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic foot per second with point of diversion 300 feet east from the west line of the NW_{1/4} Sec. 32, Township 14 North, Range 19 East, B. M.

Said protestant objects to the above described change in the point of diversion for the following reasons, to-wit:

Protestant alleges that the proposed change of one point of diversion to two points of diversion, as set forth in the published notice thereof, will cause him serious damage, inasmuch as the proposed upper diversion into the Upper Bradbury ditch would serve to legalize or make possible a continuation of applicant's use of a large portion of the water in question upon other lands of said Bradbury situated in Section 32, Township 14 North, Range 19 East, B. M.

Wherefore, said Sam Hessen protests and objects to the granting of said application for change in point of diversion.

Subscribed and sworn to before me this 11th day of March, 1944

Notary Public for Idaho
Residing at

RECORDED
11-11-44

PROTEST AGAINST GRANTING APPLICATION FOR
CHANGE IN POINT OF DIVERSION

Comes now SAM HASTEN, of Challis, Idaho, and protests against the granting of the application of Lawrence Bradbury, of Challis, Idaho, made before the State Reclamation Engineer of the State of Idaho, to change the point of diversion of 3.2 second feet of the waters of Carden Creek.

The said application for change in point of diversion states that the water is now diverted from Carden Creek with point of diversion located one-fourth mile below Seventh Street Bridge in Challis, Idaho, and is being transferred to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet east from the west line of the NW_{1/4} NW_{1/4} Section 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic feet per second with point of diversion 300 feet east from the west line of the NW_{1/4} NW_{1/4} Section 32, Township 14 North, Range 19 East, B. M.

Said protestant objects to the above described change in the point of diversion for the following reasons, to-wit:

Protestant alleges that the proposed change of one point of diversion to two points of diversion, as set forth in the published notice thereof, will cause him serious damage, inasmuch as the proposed upper diversion into the Upper Bradbury ditch would serve to legalize or make possible a continuation of Applicant's use of a large portion of the water in question upon other lands/of said Bradbury situated in Section 32, Township 14 North, Range 19 East, B. M.

Wherefore, said Sam Hassen protests and objects to the granting of said application for change in point of diversion.

Subscribed and sworn to before me this 11th day of March, 1944

Notary Public for Idaho
Residing at

AFFIDAVIT OF PUBLICATION

State of Idaho, }
County of Custer, } ss:

NOTICE OF PROPOSED CHANGE
IN POINT OF DIVERSION OF
WATER RIGHT

Notice is hereby given that Lawrence Bradbury of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one fourth-mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the East line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic feet per second with point of diversion 300 feet East from the West line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19, East, B. M.

And that on the 14th day of March A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

JAMES SPOFFORD

State Reclamation Engineer

I, Halsey M. Gridley, manager of The Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of The Challis

Messenger for 3 consecutive weeks, commencing with the issue dated February 23, 1944, and ending with the issue dated March 8, 1944.

Halsey M. Gridley

Subscribed and sworn to before me this 8th

day of March, 1944
A. B. Schickel

Notary Public, Residing at
Challis, Idaho

My Commission expires 8/12/45

THE CHALLIS MESSENGER

HALSEY M. GRIDLEY, PUBLISHER

PRINTING, PUBLISHING, ADVERTISING
SINCE 1881

CHALLIS, IDAHO

March 9, 1944

RECEIVED

MAR 13

Department of Reclamation

James Spofford,
State Reclamation Engineer,
Boise, Idaho.

Dear Sir:

Merle L. Drake, attorney, who is handling this water matter for Lawrence Bradbury, in Challis, requested that I send your office a copy of the affidavit of publication of the notice, which I am enclosing here.

I am also furnishing one for him to file with the records that he has on the case.

Yours truly,

Halsey M. Gridley

March 1, 1944

Mr. Earl W. Drake
Attorney at Law
Challis, Idaho

Dear Mr. Drake:

We wish to acknowledge receipt of your letter of February 2nd, enclosing the corrected application and notice in reference to the Paulbury transfer.

In answer to your question, "Will it be necessary for the applicant to be represented at Boise on March 14, date of hearing?" No hearing will be held unless protest is filed, or if protest is filed a later date will be set for regular hearing. Therefore, it is not necessary for any one to appear.

Very truly yours,

JOHN L. THOMPSON
State Reclamation Engineer
BY

Loy L. Thompson
Supervisor of Water Distribution

T:4

RECORDED

MERLE L. DRAKE
ATTORNEY AT LAW
CHALLIS, IDAHO

February 22, 1944

James Spofford
State Reclamation Engineer
Boise, Idaho

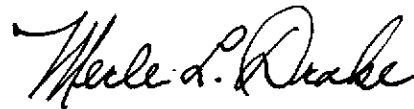
Dear Mr. Spofford:

This is to acknowledge receipt of your letter under date of February 17th, pertaining to the application of Lawrence Cradbury of Challis, Idaho, to make change in point of diversion and other matters, and the contents is very carefully noted.

Pursuant to the provisions of paragraph four of your letter, I wish to advise that I have amended the application and notice to conform with the map. An error was made in the application and likewise the same error appeared in the notice of proposed change in point of diversion. I return herewith the application and copy of notice as amended.

In your opinion, will it be necessary for the applicant to be represented at Boise, Idaho, on March 14, 1944 or at the time set for the hearing?

Yours very truly,



Merle L. Drake

MLD/ey
Encs. 2

AFFIDAVIT FOR CLARGE OF POINT OF DIVERSION
OF DECREED WATER RIGHT.

STATE OF WASHINGTON

County of

Thurston

ss.

Lawrence Bradbury being first duly sworn, deposes and says:
That his post office address is Challis, Idaho in care of Floyd
Bradbury; that he is the owner of and using a certain water right,
bearing date of priority May 15, 1901, for 3.2 cubic feet per second
of the waters of Garden Creek, County of Custer, State of Idaho, de-
creed to J. L. Adams by decree of Judge J. M. Stevens of the Ninth
Judicial District of the State of Idaho, in and for the County of
Custer, in the case of J. L. Adams, et al, vs. R. O. Vandervort, et
al, said decree bearing date of May 26, 1914, for the purpose of ir-
rigating the following described lands situate, lying and being in
Water District #3 in the County of Custer and State of Idaho, to-
wit: SW $\frac{1}{4}$ PL $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 22, T $\frac{1}{2}$ N $\frac{1}{2}$ R $\frac{1}{2}$, Section 27, Township 14
North, Range 19, East Boise Meridian, and by Certificate #193 author-
izing transfer of water, issued by the Office of the State Engineer,
Department of Reclamation, said water right was transferred to the
following lands, to-wit: SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 33, Town-
ship 14 North, Range 19, East Boise Meridian.

That he has become the owner thereof in the following man-
ner: Mesne conveyances as per abstract of title.

That according to the terms and provisions of said Cer-
tificate #193 authorizing transfer of water right, an error was
made in defining the point of diversion in this particular: Said
Certificate provides: "That said water be diverted at a point about
one-fourth of a mile below the Seventh Street Bridge in Challis,
Custer County, State of Idaho", whereas it was the intent of the
applicant, J. L. Adams, to divert said water at a point approxi-
mately 120 feet west from the East boundary of the NW $\frac{1}{4}$ PL $\frac{1}{4}$, Section

MICROFILMED

32, Township 14 North, Range 19, East Boise Meridian, and convey said water to and upon the lands to which it was transferred through a new ditch constructed by the applicant, J. J. Adams, for that purpose. Affiant states that said water has been diverted from said stream at the point last above described since the year 1917 and conducted upon said lands through the Adams Ditch as per map filed herewith and of this affidavit made a part, and this error was not detected until December 15, 1943. Affiant further states that it would be impossible to construct a ditch and convey water from said Garden Creek to and upon said lands at the point designated in said Certificate #193 for the reason that the point of diversion is at a lower elevation than said lands.

That affiant desires to correct the error in said Certificate #193 and to change the point of diversion of 1.5 cubic feet per second of time of the waters of Garden Creek, County of Custer, State of Idaho, to a point located approximately 120 feet west from the East boundary of the NW 1/4, Section 32, Township 14 North, Range 19, East Boise Meridian, and thereafter conduct the same to the above described land through the J. J. Adams ditch as per map above referred to; and to change the point of diversion as to 1.5 cubic feet per second of time of said water of Garden Creek, Custer County, State of Idaho, from the point described in said Certificate #193 to a point located about 300 feet East from the West boundary of the NW 1/4, Section 32, Township 14 North, Range 19, East Boise Meridian, and thereafter conduct the same to the above described lands through the W. E. Bradbury ditch as per map filed herewith and to this affidavit made a part.

That his reasons for desiring to make such changes are as follows:

1. To correct the error above mentioned in Certificate

#193, authorizing transfer of water right.

2. To divert said water from points of diversion with sufficient elevation whereby said water can be conveyed to and upon the premises owned by affiant.

3. In order to cultivate and irrigate a greater portion of said land by diverting and conveying 1.5 cubic feet per second of time through the J. L. Bradbury Ditch.

4. To conserve water during the low water season.

That no one will be injured by such change and that such change will be made at affiant's own risk.

Lawrence Bradbury

Subscribed and sworn to before me this 15 day of
January, 1944.

W. F. Hanny
Notary Public Residing at:
Olympia,
Washington
My commission expires:
April 4, 1945

NOTICE OF PROPOSED CHANGE IN POINT OF DIVERSION OF WATER RIGHT

Notice is hereby given that Lawrence Bradbury of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one fourth-mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the East line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19 East, B. M.; 1.6 cubic feet per second with point of diversion 300 feet East from the West line of the NW $\frac{1}{4}$ -NW $\frac{1}{4}$ Section 32, Township 14 North, Range 19, East, B. M.

And that on the 14th day of March A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change

JAMES SPOFFORD

NOTICE OF PROPOSED CHANGE IN POINT OF DIVERSION
OF WATER RIGHT

Notice is hereby given that Lawrence Bradbury, of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one fourth-mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet west from the East line of the E $\frac{1}{2}$ A $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$, Section 32, Township 14 North, Range 19 East, S. M.; 1.6 cubic feet per second with point of diversion 300 feet East from the West line of the NW $\frac{1}{4}$ N $\frac{1}{2}$ W $\frac{1}{2}$ Section 32, Township 14 North, Range 19, East, S. M.

And that on the 14th day of March, A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

JAMES SPOFFORD

State Reclamation Engineer

MICROFILMED

AFFIDAVIT FOR CHANGE OF POINT OF DIVERSION
OF DECREEED WATER RIGHT.

STATE OF WASHINGTON

County of Thurston

} ss.

Lawrence Bradbury being first duly sworn, deposes and says:
That his post office address is Challis, Idaho in care of Floyd
Bradbury; that he is the owner of and using a certain water right,
bearing date of priority May 15, 1901, for 3.2 cubic feet per second
of the waters of Garden Creek, County of Custer, State of Idaho, de-
creed to J. Q. Adams by decree of Judge J. M. Stevens of the Sixth
Judicial District of the State of Idaho, in and for the County of
Custer, in the case of J. Q. Adams, et al, vs. R. B. Vandervort, et
al, said decree bearing date of May 23, 1914, for the purpose of ir-
rigating the following described lands situate, lying and being in
Water District #3 in the County of Custer and State of Idaho, to-
wit: SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 22, N. $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27, Township 14
North, Range 19, East Boise Meridian, and by Certificate #193 author-
izing transfer of water, issued by the Office of the State Engineer,
Department of Reclamation, said water right was transferred to the
following lands, to-wit: SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 33, Town-
ship 14 North, Range 19, East Boise Meridian.

That he has become the owner thereof in the following man-
ner: Mesne conveyances as per abstract of title.

That according to the terms and provisions of said Cer-
tificate #193 authorizing transfer of water right, an error was
made in defining the point of diversion in this particular: Said
Certificate provides: "That said water be diverted at a point about
one fourth of a mile below the Seventh Street Bridge in Challis,
Custer County, State of Idaho", whereas it was the intent of the
applicant, J. Q. Adams, to divert said water at a point approxima-
120 feet East from the West boundary of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section

RECORDED

32, Township 14 North, Range 19, East Boise Meridian, and convey said water to and upon the lands to which it was transferred through a new ditch constructed by the applicant, J. Q. Adams, for that purpose. Affiant states that said water has been diverted from said stream at the point last above described since the year 1917 and conducted upon said lands through the Adams Ditch as per map filed herewith and of this affidavit made a part, and this error was not detected until December 15, 1943. Affiant further states that it would be impossible to construct a ditch and convey water from said Garden Creek to and upon said lands at the point designated in said Certificate #193 for the reason that the point of diversion is at a lower elevation than said lands.

That affiant desires to correct the error in said Certificate #193 and to change the point of diversion of 1.0 cubic feet per second of time of the waters of Garden Creek, County of Custer, State of Idaho, to a point located approximately 120 feet ^{West} ~~East~~ from the ^{East} ~~West~~ boundary of the N $\frac{1}{4}$ NW $\frac{1}{4}$, Section 32, Township 14 North, Range 19, East Boise Meridian, and thereafter conduct the same to the above described land through the J. Q. Adams ditch as per map above referred to; and to change the point of diversion as to 1.0 cubic feet per second of time of said water of Garden Creek, Custer County, State of Idaho, from the point described in said Certificate #193 to a point located about 300 feet East from the West boundary of the N $\frac{1}{4}$ NW $\frac{1}{4}$, Section 32, Township 14 North, Range 19, East Boise Meridian, and thereafter conduct the same to the above described lands through the J. E. Bradbury Ditch as per map filed herewith and to this affidavit made a part.

That his reasons for desiring to make such changes are as follows:

1. To correct the error above mentioned in Certificate

#193, authorizing transfer of water right.

2. To divert said water from points of diversion with sufficient elevation whereby said water can be conveyed to and upon the premises owned by affiant.

3. In order to cultivate and irrigate a greater portion of said land by diverting and conveying 1.0 cubic feet per second of time through the J. L. Bradbury Ditch.

4. To conserve water during the low water season.

That no one will be injured by such change and that such change will be made at affiant's own risk.

Lawrence Bradbury

Subscribed and sworn to before me this 15 day of
January, 1944.

W. J. Hanes
Notary Public residing at:
Olympic,
Washington.
My commission expires:
April 4, 1945

February 14, 1944

The Challis Messenger
Challis, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks, prior to the date set for hearing- the cost of the publication to be paid by the applicant, Lawrence Bradley, of Challis, Idaho, to whom you should furnish proof of publication on or prior to the date set for hearing.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

JAMES SPOFFORD

State Reclamation Engineer

By

Roy W. Thompson
Supervisor of Water Distribution

MICROFILMED

NOTICE OF PROPOSED CHANGE IN POINT OF DIVERSION OF WATER RIGHT

Notice is hereby given that Lawrence Bradbury, of Challis, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion of 3.2 cubic feet per second of the water of Garden Creek, located in Custer County, Idaho, from the legally stated point of diversion, i. e. one-fourth mile below Seventh Street Bridge in Challis, Idaho, to the following described points of diversion:

1.6 cubic feet per second with point of diversion 120 feet east; and
1.6 cubic feet per second with point of diversion 300 feet East; from
the west line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, Township 14 North, Range
19 East, B. M.

And that on the 14th day of March, A. D. 1944, at Room 107, State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such change.

JAMES SPOFFORD

State Reclamation Engineer

February 14, 1944

Mr. Merle L. Drake
Attorney at Law
Challis, Idaho

Dear Mr. Drake:

We are enclosing herewith prepared Notice of publication, to be published by the Challis Messenger, relative to the Lawrence Bradbury change in point of diversion.

Please feel free to make any changes you think necessary; however, if it meets your approval, have the same published for two issues, as per letter to the Challis Messenger attached.

We will return your abstract of title at the time of issuance of certificate by the Department of Reclamation.

We are returning one copy of the application for change of point of diversion, and will ask you to either correct map to conform with the allocation, or application to conform to the map. According to the map, the names of the ditches are reversed as stated in the application.

Please return with corrections noted, and upon receipt of the affidavit of publication, and the amount of \$1.00 for recording fee, a certificate will be issued, provided no protests are received prior to the date fixed in the published notice.

Very truly yours,

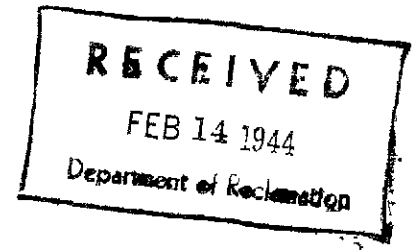
JAMES SPOFFORD
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:A
Encs.

MICROFILMED

MERLE L. DRAKE
ATTORNEY AT LAW
CHALLIS, IDAHO



February 11, 1944

James Spofford
State Reclamation Engineer
Department of Reclamation
Boise, Idaho

Dear Mr. Spofford:

Enclosed find Affidavit in duplicate for change of point of diversion of decreed water right, authorization to have notice published at expense of applicant in the Challis Messenger, together with abstract of title covering 3.2 cubic feet per second of flow of the waters of Garden Creek, with date of priority May 15, 1901.

The applicant, Lawrence Bradbury, is now in the armed forces of the United States. Please address all communications pertaining to this transaction direct to me at Challis, Idaho.

I have personal knowledge of the facts as set forth in the application for change of point of diversion and I am of the opinion that there should be no objections to such a change. According to my information there is no one interested in what is commonly known as the J. W. Adams Ditch. It is owned solely by the applicant.

Yours very truly,

A handwritten signature in cursive script that reads "Merle L. Drake".

Merle L. Drake

MLD/ey
Encs. 3

RECEIVED
FEB 14 1944

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MEMORANDUM

Subject GARDEN CREEK (Challis)

August 16, 1943

File _____

Upon telephoned instructions from the State Reclamation Engineer, a field investigation was made upon water distribution matters relating to the Bradbury and Hessen interests.

As obtained at this time, the facts appear to be substantially as follows:

The Hessen land in question (SW₄ NE₄, NW₄ SE₄ Sec. 33, Twp. 14 N., Range 19 E.) has a water right of 1.6 second feet of water from a slough so-called which consists of rising water which reaches the surface in irrigated fields about one mile west of the Hessen property, in Section 32.

The Hessen water right is confirmed by court decree dated November 27, 1922, between "Harry S. Waters vs. J. G. Swendsen and Water Master Stanton Van Camp".

This is the only decree upon the above mentioned slough, although several small plots of land make use of water from this source; there have been two recorded filings (now void) upon "Seepage" water, both filings locating a point of diversion in the SE₄ NE₄ of Section 32, and identical with the Hessen diversion point; these filings were dated in 1911 and 1912 respectively, and have lapsed.

The seepage area from which the Hessen decree diverts is all located upon the Senior Bradbury lands in Section 32 and is evidently due to irrigation of the upper portion of said fields. In this connection Mr. Bradbury stated in effect that "In the early days when the nearby mines were active the present swampy land had been in sage brush and that it was later all included in a potato field".

The water for the Junior Bradbury tract lying adjacent to the Hessen property has a decreed right to 3.2 second feet of Garden Creek water, which was acquired by transfer from lands in Sections 22 and 27, under date of June 27, 1917, the point of diversion being designated as a point about one-fourth mile below the Seventh Street bridge in Challis; it is understood that this diversion point is not now in use, as the water master, Mr. Fred Green, states that the Garden Creek water has been taken from the creek in approximately the SE₄ NW₄ Section 32, about one-half mile above the West city line, during the three seasons of possession by the present owner, whose Father owns the swampy lands in Section 32, and farms both places. Apparently no objection has been raised to this change from the point designated in the transfer.

RECEIVED
AUG 17 1943

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MEMORANDUM

Subject GARDEN CREEK (Challis)

File Page 2

The main point at issue between the parties to this dispute is due to the use by Bradbury of a pick-up ditch across the swamp area above the Hessen diversion point, and conducting water thus gathered, to and over a saddle located at the head of a gulch between two small hills and thus delivering water claimed by Hessen into the Bradbury ditch, a very short distance below the Hessen headgate.

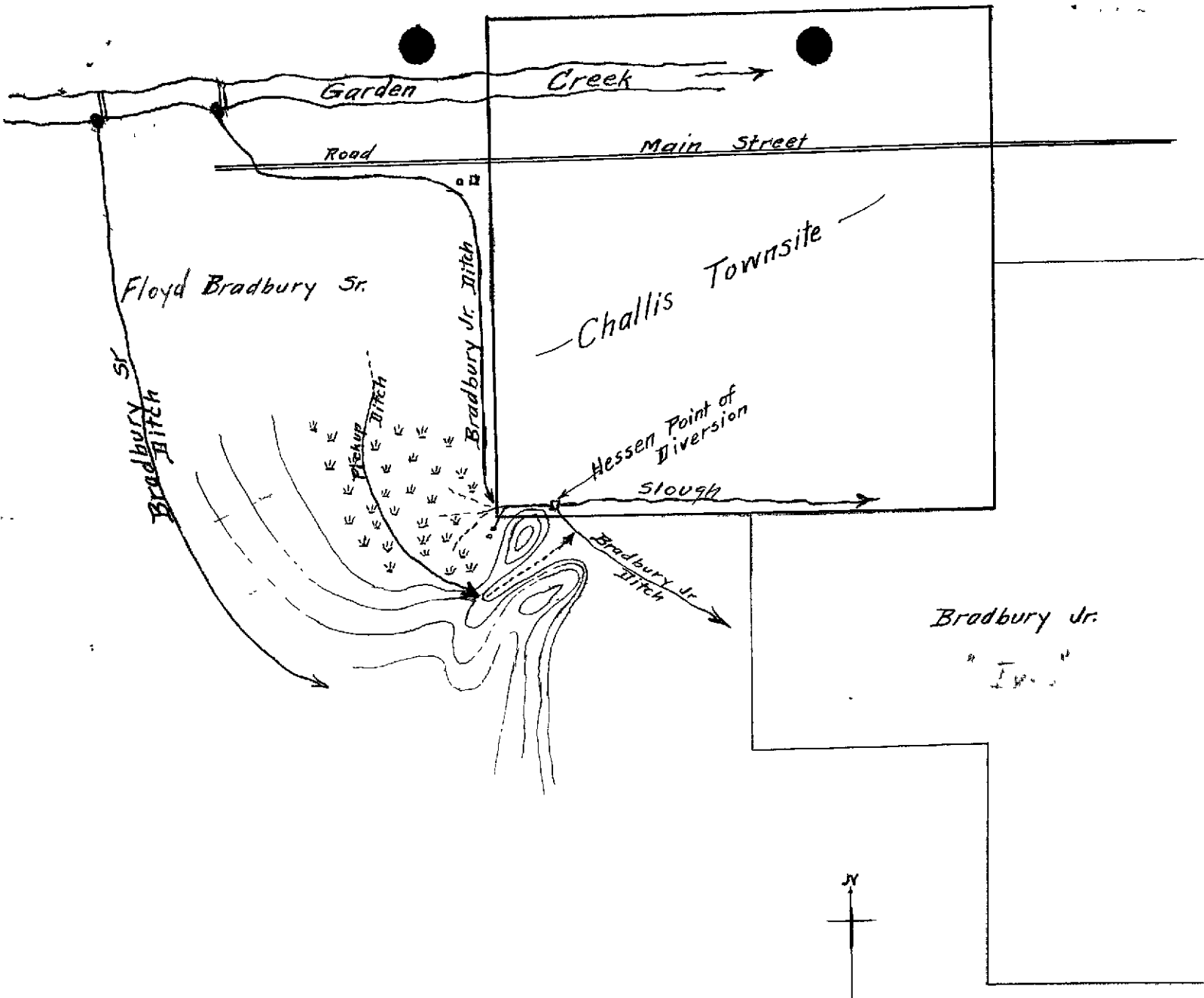
The local topography is such that nearly all of the run-off from the fields of the upper Bradbury property is directly tributary to the swamp or slough from which the Hessen water is derived, and any pick-up and re-diversion, as above noted, will necessarily reduce the slough supply accordingly; and furthermore, it could be possible for a person having control of the water use of both the upper ranch with its apparent surplus supply, and the lower ranch with an inferior priority, to irrigate the land above the intercepting ditch more liberally under present conditions than would be the case if surface run-off from the upper ranch were permitted to run its natural course. Mr. Bradbury stated that the Garden Creek ditch leading from the lower diversion point, and which has been used for the lower ranch since its purchase (Dec. 16, 1940), makes some gain as it flows south adjacent to the West city line and intercepts some of the seepage from above. This gain has, I understand, been given to the lower Bradbury ranch, in addition to the amount diverted from Garden Creek. Mr. Green asked what he should do with this surplus, and was told to abide by the decree and to consider it as slough water, and to deliver only the amount diverted from Garden Creek to the Bradbury headgate at the Hessen point of diversion. I was informed by Mr. Bradbury that the irrigated area of the lower place had been increased by 40 or 50 acres since its purchase in 1940.

Asked for ruling on the controversy, I declined to rule, but as a personal opinion stated that, as I saw the equity of the matter, no water should be diverted from the slough supply to be dumped over the natural divide and delivered to the Junior Bradbury ditch immediately below the Hessen headgate, as has been the recent practice.

Aside from the foregoing, the use of this drainage water has been complicated by the fact that several city lots having decrees from Garden Creek have not diverted from that source, but have, by mutual consent, used the slough waters instead of their decreed rights, to an approximate extent of some 15 miner's inches, and it is Mr. Hessen's contention that this is his water; but, on the other hand, comes the question, Have these City decree users then lost their Garden Creek rights by non-use, or have they established a "use right" in the waters of the slough, or both?

See sketch attached hereto.

Fred H. Tolman
F. H. TOLMAN



DETAIL SKETCH
(DIVERSIONS)
HESSEN VS BRADBURY
8-16-43 H.



C. A. BOTTOLFSEN, GOVERNOR

STATE OF IDAHO WATER CONSERVATION BOARD

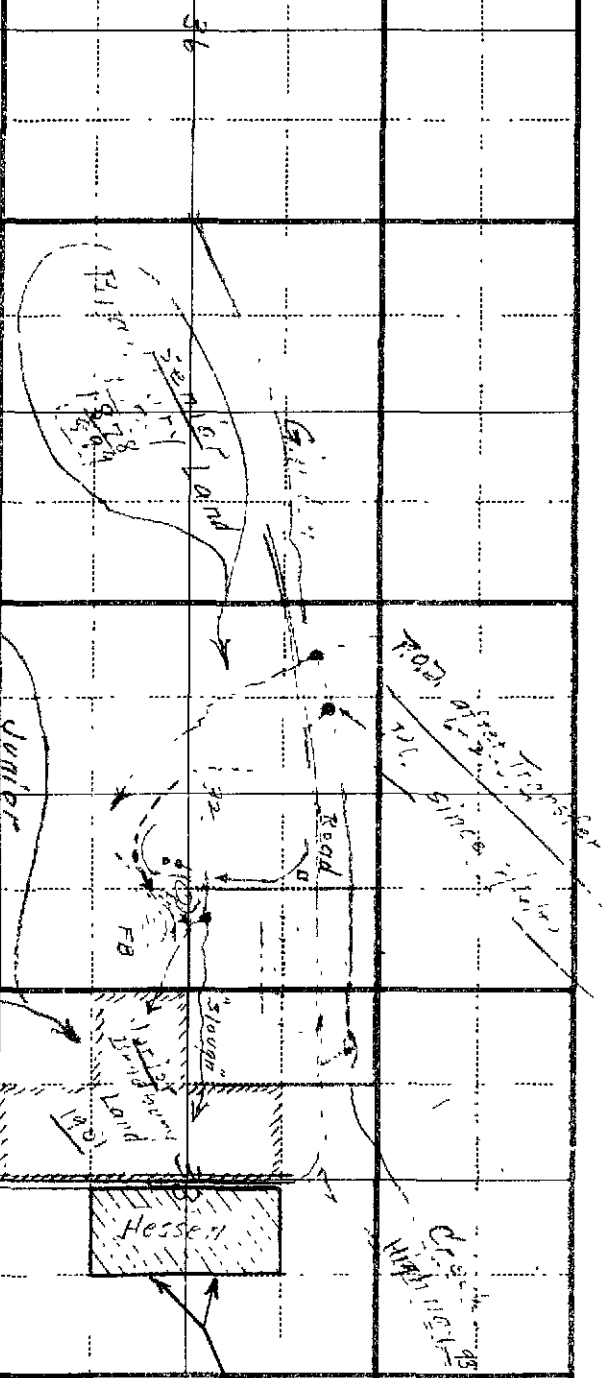
BOISE

MEMBERS

N. V. SHARP, FILER
J. A. KESGARD, EMMETT
D. L. EVANS, MALAD
A. POITEVIN, IDAHO FALLS
REED MOODY, NAMPA
R. H. SMITH, REXBURG

SAM HESSEN
vs
BRADBURY'S.
8-16-43 H.

Junior
B. and J. Land
(former - Avey)
located 5/2 mi. below
Challis on 4-17-11.
Said to be
diverted about 1/4
mile below the 7th St
Bridges in Challis.



H.S. Waters
11-27-22
M.G. Swenson & Water Master
Hessen acts as 60" stream Slicer

August 23, 1943

Mr. Fred Green, Watermaster
Water District No. 3-B
Challis, Idaho

Dear Mr. Green:

Referring to the recent complaint of Mr. Sam Hesson, water user in Water District No. 3-B, to the effect that certain waters belonging to him are being wrongfully diverted to lands not entitled to same, and the later field investigation of conditions by Mr. Tolman of this Department:

It is very evident that Mr. Hesson's complaint is well grounded, inasmuch as the waters involved are "The waters of an unnamed gulch flowing through the south side of the Village of Challis", which are embraced in a Court Decree bearing date of December 12, 1922, between Harry C. Waters vs. O. G. Swendsen, et al, decreeing as follows:

"Therefore, it is ordered, adjudged and decreed: That plaintiff has the right to 1.5 cubic feet or 80 minims inches of water from the flow of the waters of an unnamed gulch flowing through the south side of the Village of Challis, Custer County, Idaho, and north of the Challis Cemetery, and the storage and springwater existing therein, with date of priority from April 1st, 1912, appurtenant to the SW¹ NE¹, NW¹ SE¹ Sec. 33, Twp. 14 N., R. 19 W., S. 4., and all parties are restrained and enjoined from obstructing or in any way interfering with the flow of said water to or through the ditches of plaintiff, according to said date of priority."

In accordance with this decree, you are therefore instructed to stop any and all diversions from this water supply which may interfere with the decreed right of Mr. Sam Hesson, the present owner, to the use of 1.5 second feet of water for the irrigation of the SW¹ NE¹ and NW¹ SE¹ of Section 33, Township 14 North, Range 19 East, S. 4. M., as set forth by the terms of said Decree.

Very truly yours

JAMES SPOFFORD
State Reclamation Engineer

T:1A
CC to Mr. Sam Hesson
Mr. Bradbury

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) January 11th, 1943

(P. O.) Challis, Idaho.

STATE RECLAMATION ENGINEER
TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the
Challis Messenger of Challis, Idaho, published in
the county in which the works are situated.

Lawrence F. Bradbury

(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.

RECEIVED

Joseph L. Ebberts	0.06	5-15-83	Lots 5, 7, Bl. 16	Challis Townsite
Ralph Baxter	0.04	5-15-84	Lots 8, Block 17	" "
John & Lochhart Boyd	0.1	5-15-84	Lot 5, 6, 7, 8, Block 50	" "
William Buster	0.04	5-15-84	See decree, all in Block 2	" "
Barbara Watson	0.1	5-15-84	Lots 6, 8, Bl. 37, Lots 5, 7, Bl. 39	" "
L. Peck	0.18	5-15-84	Lots 2, 4, 8, Bl. 73, Lots 2, 4, 6, 8, Bl. 74 Lots 2, 4, 6, 8, Bl. 75	" "
Village of Challis	0.14	5-15-84	See Decree	" "
Jennie Dodge	0.06	5-15-84	Lots 1 and 3, Bl. 40	" "
Joseph L. Horton	0.06	5-15-84	Lots 1 and 3, Bl. 30	" "
Geo. E. & E. W. Keys	0.1	5-15-85	About 4 acres in Challis	" "
T. J. & Lee Kerr	0.02	5-15-85	Lot 4, Bl. 15	" "
Larentia McGowan	0.08	5-15-85	Lots 2, 4, 6, Bl. 39	" "
Eate Cameron	0.06	5-15-85	Lots 1, 3, Bl. 17	" "
Della McGowan	0.1	5-15-85	Lots 1, 3, 5, 7, Bl. 18	" "
Hannah Mohn	0.06	5-15-85	Lots 1, 3, Bl. 24	" "
James A. McFadden	0.16	5-15-85	Lots 1, 2, 3, 4, 5, 6, 7, 8, Bl. 21 Parts of Lots 1 and 2, Block 22	" "
Lillie S. McKendrick	0.06	5-15-85	Lots 1 and 3, Block 38	" "
J. C. Fox	0.06	5-15-85	Lots 6, 8, Block 15	" "
Earl J. Michael	0.06	5-15-85	Lots 1 and 3, Block 9	" "
Earl J. Michael	0.04	5-15-85	Lot 4, Block 19	" "
David B. Drake	0.18	5-15-85	Lots 5, 7, Bl. 9, Lots 1, 3, 5, 7, Bl. 10, Lots 1, 2, 3, 4, 5, 6, part of 7, 8, Bl. 20 Challis	
Idalene Michael	0.06	5-15-85	Lots 6, 8, Block 19	" "
Mattie Waters	0.06	5-15-85	See decree	" "
Ed O'Neil	0.06	5-15-86	Lots 2, 4, Block 27	" "
Peter McKinney	1.1	5-15-87	W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ Sec. 15, E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 16, E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 21, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 22, T. 14 N. R 19 E	
E. P. Wilson & Ida B. Wilson	0.16	5-15-88	2 lots in Challis	
Lynn Wilkinson	0.1	4-15-88	See decree (Challis townsite)	
Clyde Wilkinson	0.1	5-15-88	See decree " "	
William Klug	1.2	5-15-88	NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 2, T. 13 N. 18 E. SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, 14 N. 18 E.	
Esther Van Camp	0.1	5-15-89	Lots 5, 7, Bl. 40, Lots 6, 8, Bl. 52 Challis	
Julia Maetzgar	0.06	5-15-90	Lots 6, 8, Bl. 18 Challis townsite	

Mick Z. Kiser	1.4	5-15-90	SW $\frac{1}{4}$ NW $\frac{1}{4}$ Lot 4, Sec. 2, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 3, T. 13 N. R. 18 E.
Roger Brasseur	0.04	6-15-94	Lot 6, Challis,
Thomas Chivers	0.2	5-15-95	10.3 14 N. 19 E. Challis
W. T. Oster	0.06	5-15-95	Two lots Challis
Challis Ind. Schoo District No. 1	0.16	5-15-96	Block 30 Challis
Earl J. Michael (Adm. estate of L. H. Johnston)	0.08	5-15-98	Lots 6, 8, Bl. 71, Lots 2, 4, 6, 8, Bl. 72 Challis
Julius Blume, Sr.	0.06	5-15-99	Lots 1, 3, Bl. 39 "
John E. Bradbury	0.86	5-15-99	See decree, all in Sec. 32, 14N. 19 E. 240 A
John Q. Adams	3.2	5-15-01	SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 27 14N 19E Tr To SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ See 33
Custer County	0.16	5-15-01	Block 29 Challis
Louise S. Treiscar	0.12	5-15-01	See decree "
M. A. C. I. Stage Co.	0.06	5-15-02	Lots 3, 5, 7, Block 4 "
A. F. Blume, Sr.	0.06	5-15-04	Lots 5, 7, Block 28 "
Consuella Howell	0.06	5-15-07	Lots 6, 8, Block 38 "
William Chivers	0.06	5-15-07	See decree "
J. A. Harrington	1.2	6-21-08	E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 27, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 28 14 N. 19 E
E. P. & Ida. B. Wilson	0.04	11-1-09	Lots 1, 3, Bl. 27, Challis (Spring in cellar)
Mabel Adamson	0.1	5-15-09	N $\frac{1}{2}$ Bl. 3 Challis
George Keyser	1.88	2-2-10	E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 28, T. 14 N. R. 19 E.
Emmett Hosford	0.06	5-15-10	Lots 1, 3, Block 3 Challis
Guy Bradbury	0.8	6-20-10	SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 32, T. 14 N. R. 19 E.
J. L. Riley	0.06	5-15-10	Lots 6, 8, Bl. 54 "
A. L. & J. E. Moats	0.1	5-15-10	Lots 1, 3, 5, 7, Bl. 54 "
L. E. Glennon	0.06	5-15-10	Lots 2, 4, Bl. 54 "
Alex Klug	1.06	8-15-10	Lots 2, 3, Sec. 31, T. 14 N. R. 19 E.
Marganetha Klug	1.6	8-15-10	NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 31 14 N. R. 19 E.
Paul Gardial	0.16	5-15-12	Lots 1, 2, 3, 4, 5, 7, Bl. 47, Lots 6, 8, Bl. 48 Challis
Henry Horton	0.1	5-20-12	Lots 1, 2, 3, 4, Bl. 31 "
Joseph L. Ebberts	0.04	5-15-12	Lot 1, Bl. 4 "

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 *Sam H. Carson*

(Signature or name of addressee)

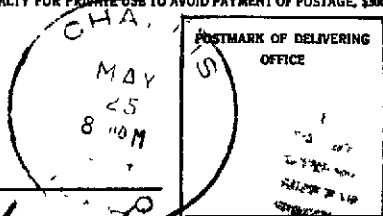
2 _____

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 5, 1944

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300



Return to Dept. of Reclamation

(NAME OF SENDER)

Street and Number,
or Post Office Box, }

State House

REGISTERED ARTICLE

No. 87230

INSURED PARCEL

No. _____

BOISE,
IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1

Laurence Bradbury
(Signature or name of addressee)

2

Violet Bradbury
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

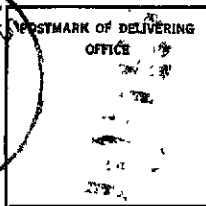
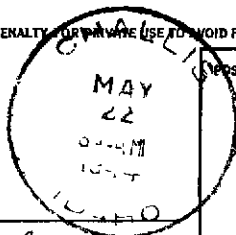
Date of delivery

5-22

, 194*4*

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300



Return to Dept. of Reclamation
(NAME OF SENDER)

Street and Number,
or Post Office Box,

State House

REGISTERED ARTICLE

No. 87231

INSURED PARCEL

No. _____

BOISE,
IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 Mr. Merle L. Dink
(Signature or name of addressee)

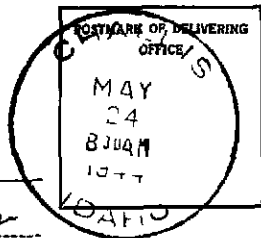
2 Madeline Dink
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 5-24-44

1944

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300



Turn to

Dept. of Reclamation

(NAME OF SENDER)

Street and Number,
or Post Office Box,

State House

REGISTERED ARTICLE

No.

87229

INSURED PARCEL

No.

BOISE,

IDAHO.

June 27th, 1917.

Re Certificate of Transfer.

Mr. John C. Adams,
Challis, Idaho.

Dear Sir:—

Replying to your letter of June 25th would say that the Certificate of Transfer must have been in our hands when sent, November 1914, but has probably been lost out since, as the same is not here. I am sending you herewith a certified copy of the Certificate, for which please to remit seventy-five cents.

Very truly yours,

J. H. SMITH,

State Engineer.

By _____

CC

MICROFILMED

J. H. SMITH
STATE ENGINEER
FRED AL. WILSON
DEPUTY STATE ENGINEER

State of Idaho
Engineering Department
Boise

RECEIVED
NOV 23 1916
NOV 23 1916
November 23, 1916.

Re Transfer of Water Right.

Mr. John Q. Adams,
Challis, Idaho.

Sir:--

Am enclosing herewith certificate of transfer
No.193, with receipt for fee.

Very truly yours,

J. H. SMITH,

State Engineer.

CT193-R8472

W. C. Brown

J. H. Smith,
Boise, Idaho.

Challis, Idaho June 25th, 1917.

Dear Sir: No certificate enclosed. Please enclose same and promptly
oblige,

Yours very truly,

John Q. Adams

November 24, 1916

Re Certificate of Transfer.

Mr. M. . Brown,
Challis, Idaho.

Dear Sir:--

Replying to your letter of the 21st
inst. would say that the Certificate of Transfer
issued to John O. Adams was mailed to the holder
yesterday.

Very truly yours,

J. H. LITTON,

State Engineer.

By _____

MICROFILMED

WALL STREET MINING ASSOCIATION
(NOT INCORPORATED)

MINES.-BONANZA, IDAHO.

OFFICE.-CHALLIS, IDAHO.

Challis, Idaho.

Nov.21st,1916.

State Engineer,

Boise, Idaho.

Dear Sir:

The land Office threatens to cancel the D.L.E .of John
Q.Adams,Jr. if he is not allowed to transfer his water right.
This was approved by your office in September,as I understood it.
Will you kindly advise me in this matter forthwith and greatly
oblige.

Yours truly.

L.S.T.



November 25, 1916.

Re Transfer of Water Right.

Mr. John C. Adams,
Challis, Idaho.

Sir:--

Am enclosing herewith certificate of transfer
No.193, with receipt for fee.

Very truly yours,

J. H. BURTON,

State Engineer.

CT193-RG472

Y_____

MICROFILMED

WALL STREET MINING ASSOCIATION
(NOT INCORPORATED)

MINES.—BONANZA, IDAHO.

OFFICE.—CHALLIS, IDAHO.

Challis, Idaho,

July 29th, 1916.

State Engineer,

Boise, Idaho.

In re transfer water right
of
John Q. Adams, Jr.

Dear Sir:

Have been in office all day and there has been no appearance
opposing the transfer of water right.

I enclose the papers herewith filled out as I understood your
instructions. The Land Office has only given us a few days in
which to get the authority to transfer and it would be a great favor
if you would notify me as soon as possible.

Yours very truly.

Walter A. Brown

FILED

Notice of Proposed Transfer of Water Right

Notice is hereby given that John W. Adams of Challis
Idaho, has applied to the State Engineer of the State of Idaho for a certificate
 authorizing him to transfer the use of 3.2 cubic feet per second of the water of
Garden Creek
 from the land upon which it is now used, i. e. SW 1/4 of NE 1/4, W 1/2 of SE 1/4, Sec. 22,
NW 1/4 of NE 1/4 Sec. 27, T. 14 N., R. 19 E.B.M.

to the following described tract: SE 1/4 of NW 1/4, N 1/2 of SW 1/4, SE 1/4 of
SW 1/4 Sec. 33, T. 14 N., R. 19 E.B.M.

And that, on the 29th day of July, A. D.
 1916, at Stanhope, Idaho, at the office of Milton Brown,
 before the ~~Water Commissioner of this Division, or his authorized agent,~~ the opportunity will be given
 to any and all persons to appear and present for his consideration any reason or reasons why a certifi-
 cate should not be issued authorizing such transfer.

~~XX~~
 Full details of the proposed transfer may be obtained from
~~XXXXXXXXXXXXXXXXXXXX~~
 Watermaster of said stream

J. H. Smith,
 State Engineer.

Application for Transfer of Water Right.

STATE OF IDAHO,
County of Custer } ss.

John L. Adams Jr., being first duly sworn, deposes and says:
That his name is John L. Adams Jr.; that he is of lawful age, a citizen
of the United States and of the State of Idaho, and that his postoffice address is
Challis Idaho

That he is the owner and using a certain water right of 3 1/5 cubic feet of the
waters of Garden Creek Challis Precinct

County of Custer, State of Idaho, decreed to
John L. Adams by decree of Judge James M. Herman, of the
Sixth Judicial District of the State of Idaho, in and for the County of

Custer, in the case of John L. Adams et al
vs. R. B. Vandewort et al, said decree bearing date of May 23^d 1914
~~(or obtained by virtue of License No. _____, issued by the State Engineer~~

~~of the State of Idaho, dated _____), for the purpose of irrigating the~~
following described lands situate, lying and being in the County of Custer and
State of Idaho, to wit: SW 1/4 NE 1/4, NW 1/4 SE 1/4 Sec 22, NW 1/4 NE 1/4,
Sec 27, Tp 14 N R. 19 E B. B. M.

And and am the person (or corporation) to whom such
right so issued, or have become the owner thereof in the following manner, i. e.

Purchase of said water right from John L. Adams

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

That said waters are now diverted from said stream at a point about 1/4 mile
below the Seventh Street bridge on Seventh St. in Challis
and conducted to the above described lands through a ditch 2 miles long running N.
as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of
of said water upon the above described land, and to convey and use same upon the following tract,
situate, lying and being in the County of Custer and State of Idaho, to
wit: SE 1/4 NW 1/4, NW 1/4 SW 1/4, SE 1/4 SW 1/4, Sec 33
Tp 14 N, R. 19 E B. B. M.

That his reasons for desiring to make such transfer are as follows:

John Adams is the owner of said above described
lands for to which the water was made and
affiant desires to use the water on his own property
John Adams now irrigating from Salmon River

RECORDED
CHALLIS

That he intends to divert and convey said 3 1/2 cubic feet of water to the tract of land last above described in the following manner, to wit: by a dam - 12 ft long four feet high & ditch 1 1/2 miles in length 3 feet wide at bottom & two feet deep. The new point of diversion is 3 mile west of corner of main & Lewis St in Challis and about one mile up stream from former point of diversion as set forth upon the map hereto attached; and

That no one will be injured by such transfer.

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

Subscribed and sworn to before me this

day of

A. D. 1916

John L. Adams, Jr.
H. E. Haworth
Notary Public, Challis, Idaho

STATE OF IDAHO,

County of

Butte

} ss.

Wilton A. Brown

and

Frank Nickerson

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at Challis; that he is a user of water from Gardner Creek, County of Butte, State of Idaho; that he has read or heard read the foregoing affidavit and petition of

John L. Adams, Jr.; and is familiar with its allegations, and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

Wilton A. Brown

Frank Nickerson

Subscribed and sworn to before me this

31st

day of

May

A. D. 1916

H. E. Haworth
Notary Public, Challis, Ida

STATE OF IDAHO.

County of

Butte

} ss.

I, Charles F. Hilkey,

Wastmaster of

Challis

County of

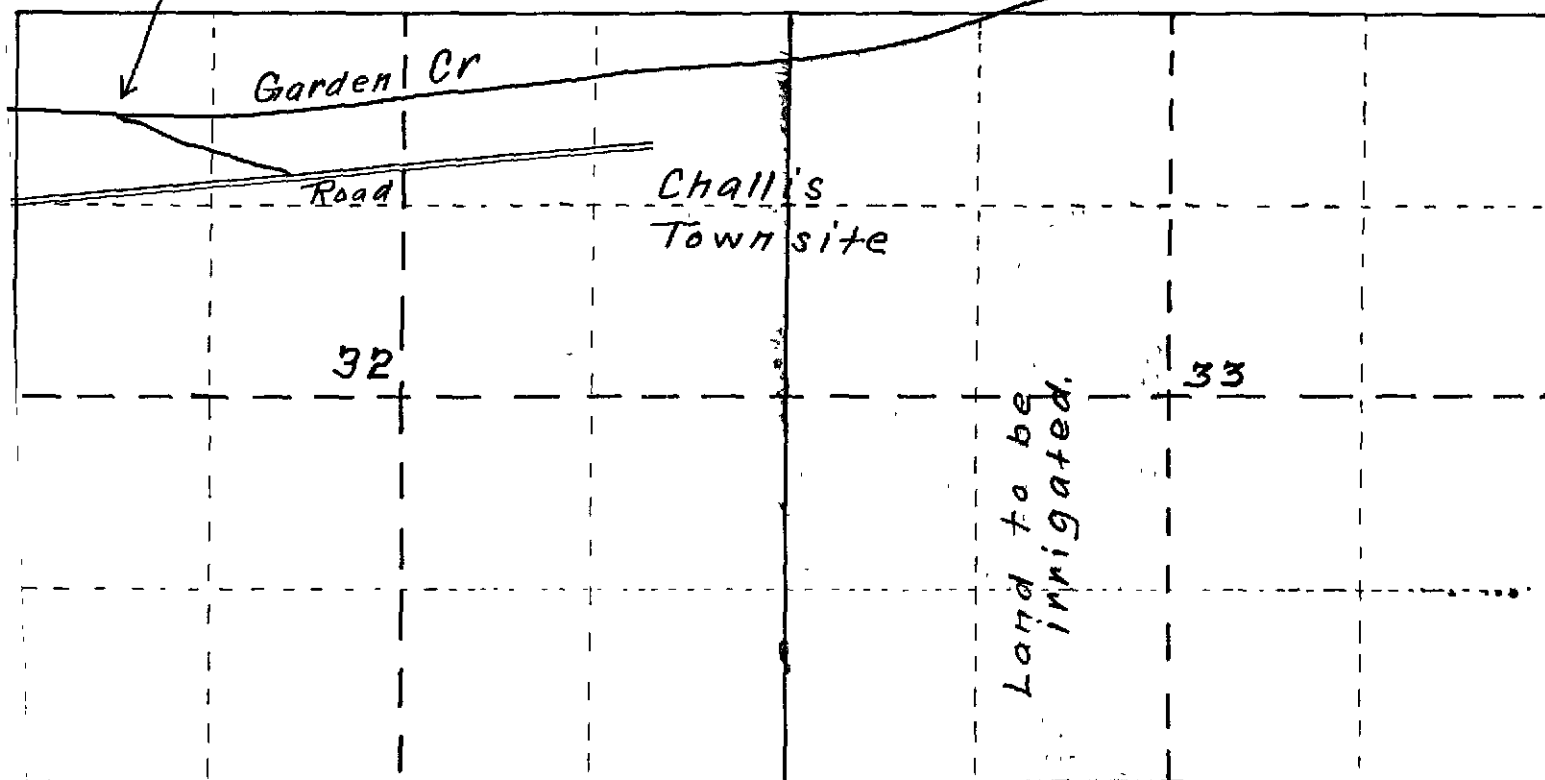
Butte

State of Idaho, whose postoffice address is

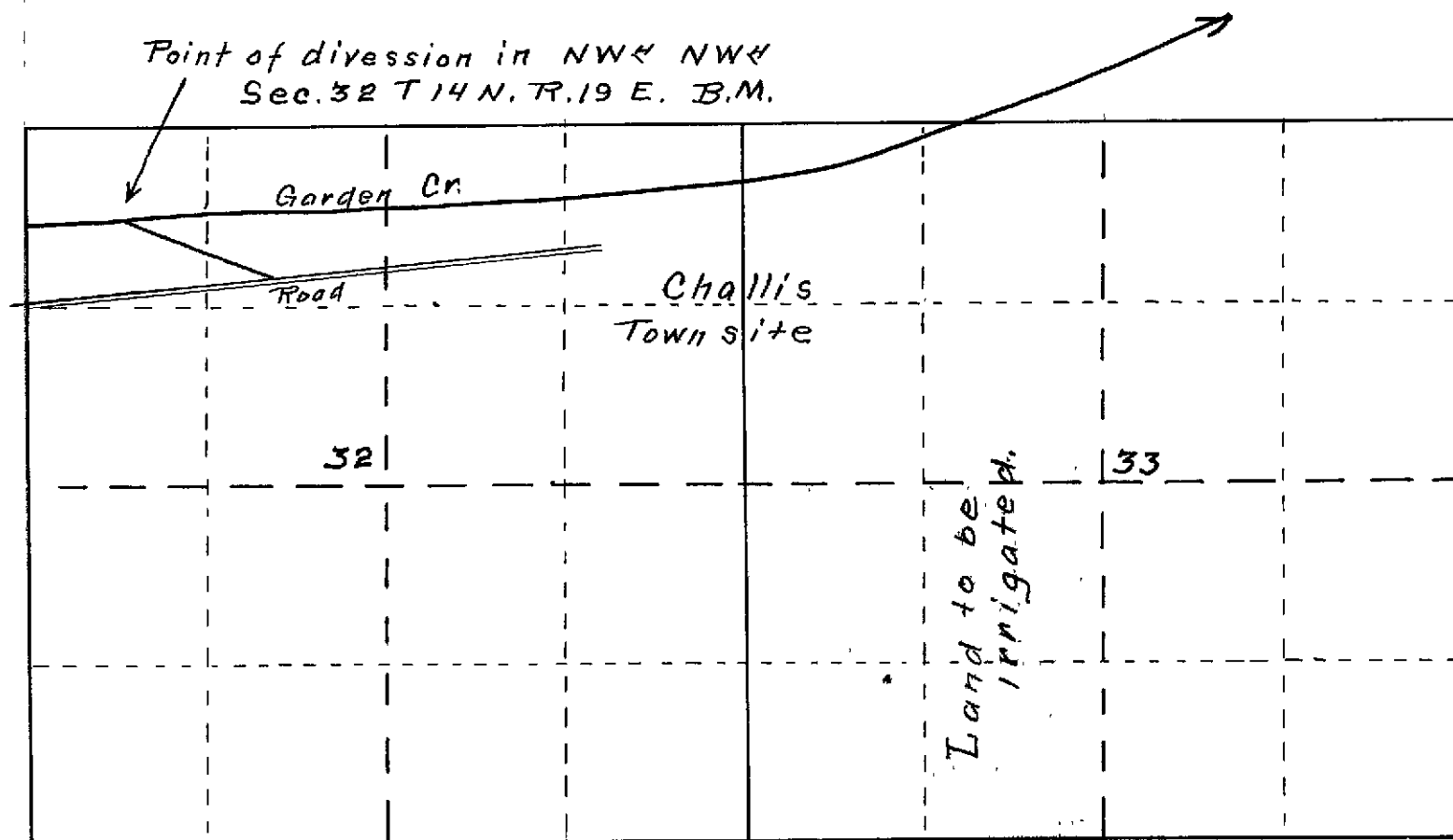
Challis, Idaho

, have read or heard read the foregoing affidavit and petition of

Point of diversion in N.W. 4 NW 4
Sec. 32. T. 14. N. R. 19. E. B.M.



Scale 4 inches = one mile



Scale 4 inches = one mile

John L. Adams

and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Engineer will issue the certificate of transfer as petitioned; or ~~(do not approve of the issuance of the certificate of transfer prayed for)~~ for the following reasons:

Chas F. Pilkey

Watermaster.

Notice having been duly published for thirty days of the intention of the above named

John L. Adams Jr to apply to the State Engineer of the State of Idaho for a certificate authorizing the transfer of water as set forth in his affidavit and petition herein, and an opportunity having been given to any and all persons opposing said transfer to present their objections in a public hearing before me at Challis Idaho, on July 29. 1916, according to the terms of said notice;

And it not appearing at said hearing that any one would be materially injured by such transfer: and no one appearing to oppose the said transfer

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

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

Commissioner of Water Division No.

Dated at Challis Idaho
July 29 - 1916

By Milton A. Brown

The above recommendations are approved

Nov. 23, 1916

By Fred Alveling
Deputy

No.

APPLICATION FOR TRANSFER
OF WATER RIGHT.

From

To

Stream

County

Applicant.

Received

Approved

Certificate No. issued

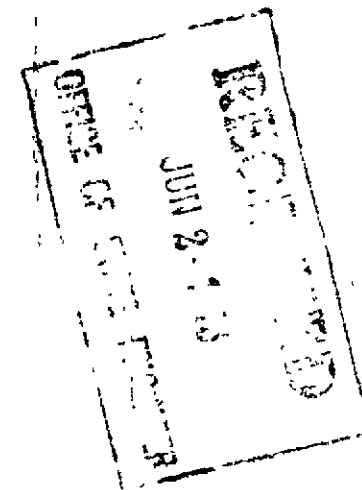
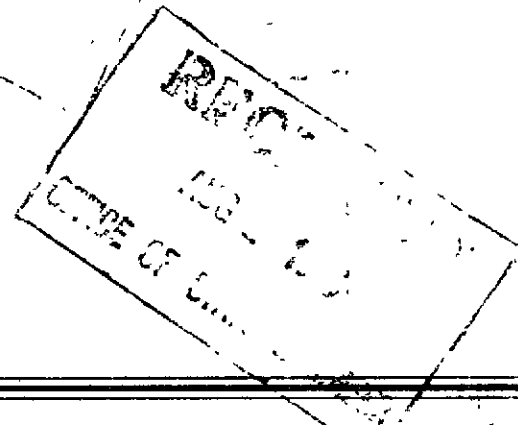
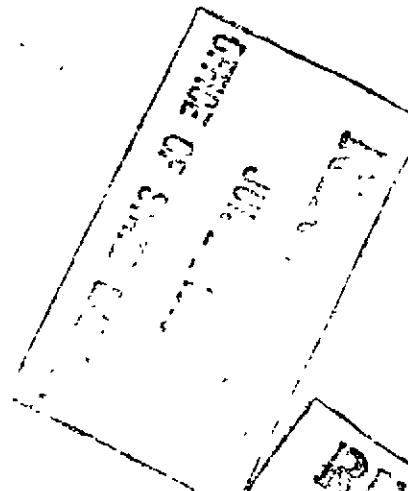
and recorded in

Book of Transfers, at page

Checklist file

July 29 - 1916

John E. Williams Jr.



July 24, 1916.

Re Transfer--John Adams.

Milton A. Brown, Attorney,
Challis, Idaho.

Sir:--

As it will be impossible for a representative from this office to be in Challis on July 29th, for the hearing in the above transfer of water right, I hereby authorize you to take any affidavits that may be filed, either for or against said transfer, and forward same to this office as soon as thereafter as possible.

The blank on the inside of the application should be filled in by you before application is returned to us.

Very truly yours,

J. H. SMITH,

State Engineer.

App.Tr.

By _____

RECEIVED

June 17, 1916.

Re Notice of Transfer.

The Messenger,
Challis, Idaho.

Sir:--

Enclosing herewith notice of transfer of water right which please publish once a week for four consecutive weeks. The expense of the publication will be paid by John J. Adams, of Challis, to whom you will furnish proof of publication on or prior to July 29th.

Please send a copy of the first publication to this office that we may compare same with our records.

Very truly yours,

J.H. SMITH,

State Engineer.

N

By _____

RECEIVED

Milton A. Brown,

Mining Attorney

Challis, - Idaho

June 9th, 1916.

State Engineer,

Boise, Idaho.

Dear Sir:

I enclose herewith duplicate maps and the Application of John Q. Adams, Jr. for transfer of water right approved by the Water Master as ordered by you.

Will you oblige me by a set of recent blanks for transfer of such rights? These maps were prepared by an Engineer as suggested.

Yours respty.

Milton A. Brown

June 5rd, 1916.

Re: Application for Transfer.

John W. Adams,
Challis, Idaho.

Dear Sir:-

I am returning you herewith application for transfer of water right for the reason that same is not complete. This has first to be presented to the watermaster of your district, which is District No. 3, for his approval or disapproval, on the blank contained in the application. Also, there must be maps accompanying this application clearly setting out the point of diversion and the ditch and lands where this water is now used, also the point of diversion of ditch and the lands proposed to be watered thereby.

Very truly yours,

State Engineer.

JHS:ELS

MICROFILMED

No.

ABSTRACT OF TITLE

TO

160 inches of water decreed to John Q. Adams,
from Garden Creek, with priority of right from
May 15th, 1901.

100-1000000

2.
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CUSTER.

John . Adams, et al)
VS.) DECREE.
R. B. Vandervort, et al.)

This cause having heretofore come on for hearing before Andrew J. Higgins, a referee who had been regularly appointed by the Court for that purpose and said hearing having been had without a jury.

The evidence and the proofs of the respective parties having been submitted to the said referee for his consideration, and he having filed herein his findings of fact and conclusion of law, and this Court having adopted said findings of fact and conclusions of law. Wherefore by reason of the law and the findings and conclusions aforesaid: Now it is therefore, ordered adjudged and decreed that the waters of Garden Creek, and its tributaries, situated in the County of Custer, State of Idaho, be and the same are hereby distributed awarded and decreed to the several parties to this suit, for beneficial purposes and uses, in amounts and of the dates, and for the lands, with priority of rights in accordance with said dates, as follows, to-wit:

o o o o o

To the plaintiff, John A. Adams, 160 inches, or 3.2 cubic feet, per second of time for the irrigation of SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 22, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 27, Tp 14, N. R. 19 East Boise Meridian, containing 160 acres. his right to date from May 15, 1901. o o o o o o

Dated this 19th, day of May, 1914.

J. L. Stevens, District Judge.

Filed May 23, 1914, E. J. Michael, Clerk.

Recorded Book 1 of 1, page 788-795

Continuation of Abstract of Title to the Lands Described in the Caption Hereto

J. Q. Adams, and Isabella R.
Adams, his wife,

No. c³

Character of Instrument

WARRANT DEED.

Date of Instrument

May 15th, 1916.

Date of Record

May 16th, 1916.

Book 14 of Deeds Page 245.

Consideration, \$ 500.00

Are Signatures Sealed? Yes.

To

GRANTORS.

John Q. Adams, Jr.

GRANTEES.

Names of Witnesses

Date of Acknowledgment May 16th, 1916.

Before Whom Acknowledged, and is it regular? W.W. Adamson, Notary Public, Yes, (Seal)

Granting Words by these presents grant, bargain, sell, convey and confirm, ---

Covenant, if any shall and will warrant and by these presents forever defend.

DESCRIPTION AND REMARKS:

Conveying:

The certain right to the use of one hundred and sixty inches (3 and 1/5 cubic feet) of the waters of Garden Creek in Challis Precinct Custer County, Idaho as set apart and secured to the grantors herein by a decree of the District Court of the Sixth Judicial District, of the State of Idaho in and for the County of Custer, bearing date the 19th day of May, 1914, with all ditch rights and irrigation ditches and dams & c.

Certificate

STATE OF IDAHO

County of Custer

} ss.

The Custer County Abstract Company, Limited, a corporation, duly organized and existing under and by virtue of the laws of the State of Idaho, and authorized to compile abstracts of title to property in said county, hereby certifies that the foregoing entries numbered consecutively from ... / ... to ... inclusive, contain a full, true and correct abstract of all conveyances, mortgages, bonds for deeds, mechanics' liens, attachments or other instruments filed or of record in the office of the County Recorder in and for said County, which in any way affect the title to the real estate described in the Caption hereto, that there are no delinquent taxes against said premises as shown by the records in the office of the Tax Collector of said County, except as herein shown, and there are no suits pending, or unsatisfied judgments against any of the parties herein named, affecting the title to said premises, except as herein shown, as shown by the Judgement Dockets in the office of the Clerk of the District Court, in and for said County

Dated at Challis Custer County, Idaho, this *1st* day of *June* 191 *6*
at, *12* o'clock ... M

By: .. *H. G. Lammell*
Secy.

Milton A. Brown,
Mining Attorney
Challis, Idaho

MD 40428
7-2-16

May 31st, 1916.

State Engineer,

Boise, Idaho.

Dear Sir:

Enclosed please find an application of John Q. Adams Jr. to
change point of diversion of water.

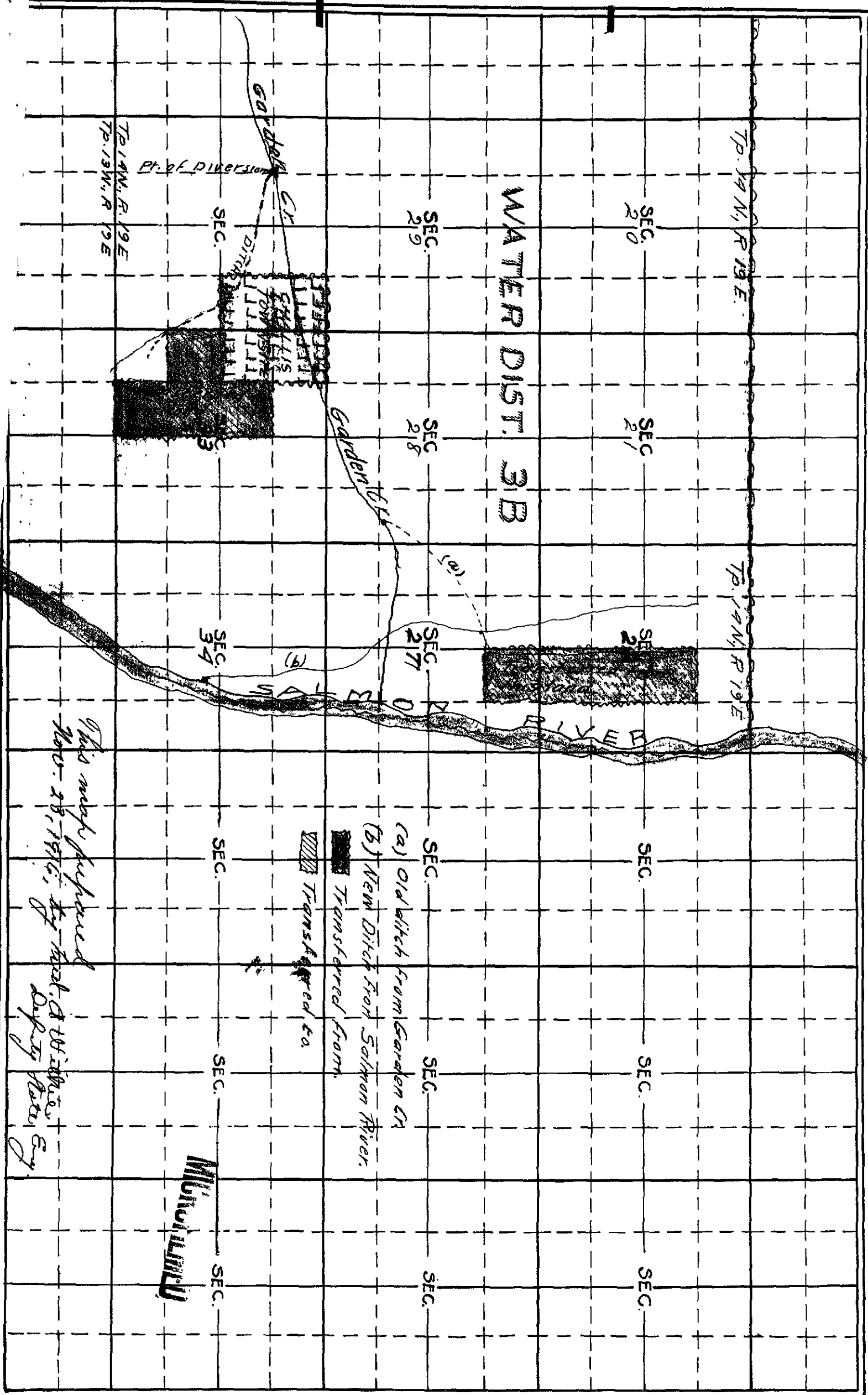
The Hailey Land Office want it changed so that it may be appurtenant
to the land. The blank we have to use an old one but the
hand.

Yours truly.

Milton A. Brown

MICROFILMED

JUN 2 1916
OFFICE OF THE STATE ENGINEER
BOISE, IDAHO



Name of Applicant

(a) Old ditch from Garden Cr.
(b) New Ditch from Salmon River.

Transferred from.
Transferred to.

This map prepared
Nov. 28, 1916, by Fred. A. W. Miller
Surveyor State Eng.