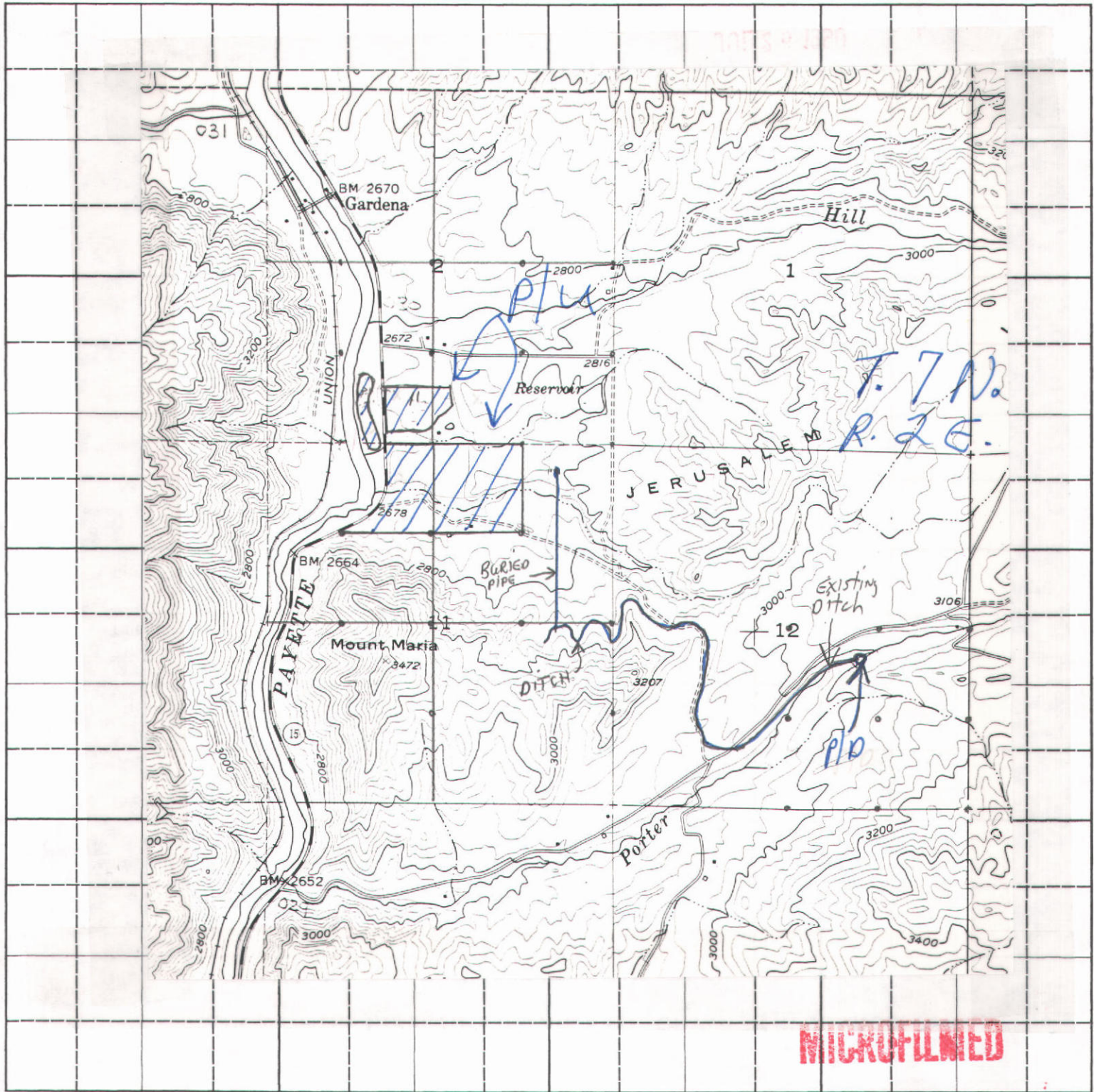


13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

[Signature]
(Applicant)

LEGAL NOTICES

NOTICE OF APPLICATION FOR WATER RIGHT

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

65-12842

DOBSON, STEVE
OLIVER, TOM
P.O. BOX 366
HORSESHOE BEND, ID 83629
Source: PORTER CREEK

Tributary: PAYETTE RIVER

Diversion Pt: NWSE Sec 12 T 07N R 02E
Use: IRRIGATION (.840 CFS)

Date Filed: 5/16/1988

In: T07N R02E S02 Lot 7 (SESW) SWSE

S11 NWNE Lot 1 (NENW)

42.0 ACRES TOTAL

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before JUNE 20, 1988.

R. KEITH HIGGINSON, Director

Published in the IDAHO WORLD, Idaho City, Idaho, June 1 & 8, 1988.

STATE OF IDAHO, }

County of Boise }

Marilyn Shadburn, being duly sworn, deposes and says: that he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for 2.....consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy-eight weeks past previous to the first publication of this notice. Such notice was published in the issue beginning with

June 1, 1988 and ending with the issue of June 8, 1988.

Marilyn Shadburn

Subscribed and sworn to before me this 9th day of June 1988.

Bonnie West

Resides in Idaho City, ID

Commission Expires 1/13/94

RECEIVED

JUN 14 1988

MICROFILMED

JUL 26 1990

Department of Water Resources
Western Regional Office

IN THE MATTER OF PERMIT NO. 65-12842) ORDER EXTENDING
)
IN THE NAME OF STEVE DOBSON &/OR TOM OLIVER) PROOF OF
) BENEFICIAL USE

WHEREAS, notice was not given to the permit holder sixty days prior to the date that proof of beneficial use of water was due as required by Section 42-204, Idaho Code, due to the extended litigation associated with the permit; and,

Dated this 28th day of January, 1993.

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IN THE SUPREME COURT OF THE STATE OF IDAHO

NO. 19007

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 65-12842 AND APPLICATION)
FOR TRANSFER OF WATER RIGHT)
NO. 65-03104.)

Boise, February 1992 Term

Filed: April 1, 1992

Frederick C. Lyon, Clerk

GEORGE DOVEL,

Petitioner-Appellant,

v.

STEVE DOBSON and/or TOM OLIVER;
IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondents.

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Robert G. Newhouse, District Judge.

Appeal from an order affirming the director of the Department of Water Resources' approval of a water right transfer and of a water right permit. Affirmed.

Richard B. Eismann, Nampa, Idaho, attorney for appellant, Dovel. Richard B. Eismann argued.

Jack C. Riddlemoser, Meridian, Idaho, attorney for respondents, Steve Dobson and Tom Oliver.

Hon. Larry J. EchoHawk, Attorney General; Phillip J. Rassier, Deputy Attorney General, attorneys for respondent, Idaho Department of Water Resources. Phillip J. Rassier argued.

JOHNSON, J.

This is a water rights case concerning the transfer of one water right and a permit for another water right. The primary issue presented is whether there is substantial and

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competent evidence to support the decision of the director (the director) of the Department of Water Resources (the department) approving the transfer and the permit.

We affirm the decision of the director. We also conclude that the director imposed sufficient conditions on the transfer and the permit to protect prior appropriators and the local public interest. We do not address the portion of the director's order allowing the diversion of the same amount of water upon the transfer, because this issue is not properly before us.

I.

THE BACKGROUND AND PRIOR PROCEEDINGS.

Steve Dobson and Tom Oliver (referred to jointly as Dobson), own farmland adjacent to Porter Creek, a tributary of the Payette River. The Dobson property consists of 504 acres, of which approximately 135 acres are irrigated. Dobson has a decreed right to divert Porter Creek water (the Porter Creek water right) to irrigate ninety-six of the acres farmed. There is also a decreed right to divert water from the Payette River for application to the ninety-six acres.

Porter Creek is primarily a snowmelt-fed stream. In the springtime, Porter Creek experiences an abundance of water that diminishes throughout the summer and into the fall. Dovel is a user of Porter Creek water, with a right junior to Dobson's right. Dovel's point of diversion lies upstream from Dobson's point of diversion.

In May, 1988, Dobson applied to the department for a new water permit (the permit) to divert .84 cubic feet per second (cfs) for irrigation purposes and a transfer (the transfer) of the Porter Creek water right appurtenant to eighteen acres in order to supply water for property not covered in the original water right.

The Porter Creek water right covers three different fields, totalling ninety-six acres — a seventy-eight acre field (the first field), a twelve acre field (the second field), and a six acre field (the third field).

Dovel objected to the transfer alleging that a portion of the Porter Creek water right had been forfeited and that the transfer would result in an enlargement of the existing right. Dovel also objected to the issuance of the permit, contending that there was an insufficient water supply to allow the permit and that the permit would reduce the water available to

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existing water rights. Dovel also urged that both the transfer and the permit were not in the local public interest.

After a hearing, the director approved both the permit and the transfer. In approving the permit, the director found that there are periods in most years when sufficient water is available to satisfy the requested diversion without injuring senior water rights. The director found that existing water rights would not be injured through proper delivery of water by the watermaster.

In approving the transfer, the director found that the consumptive use appurtenant to the third field had been forfeited by nonuse but approved the transfer of the water right appurtenant to the second field. The director did not reduce the 1.6 cfs diversion which had been historically diverted for the three fields. The director concluded that the transfer would not change the amount of use authorized by the water right and ordered that a measuring device be placed at the point of diversion to insure that there would be no injury to senior water rights.

Dovel sought review by the district court. The district judge concluded that the director's decision was neither clearly erroneous nor characterized by abuse of discretion. Dovel appealed to this Court.

II.

STANDARD OF REVIEW.

This appeal involves two separate issues — the approval of the transfer and the approval of the permit. Our standard of review is the same with regard to each of these issues.

I.C. § 42-1701A(4) directs that judicial review of a final decision of the director shall be governed by I.C. §§ 67-5215 and 67-5216. In an appeal from an agency decision, our review is limited to the record. *St. Alphonsus Med. Ctr. v. Canyon County*, 120 Idaho 420, 816 P.2d 977 (1991). We review the agency's decision independently of the district court's decision. *Ferguson v. Board of County Com'rs*, 110 Idaho 785, 718 P.2d 1223 (1986); *First Interstate Bank of Idaho, N.A. v. West*, 107 Idaho 851, 693 P.2d 1053 (1984).

I.C. § 67-5215(g) governs the scope of our review:

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court

may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or,
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

A reviewing court may reverse the agency decision only under these limited circumstances. *State Ex Rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

In essence, Dovel asserts that the director's decision is clearly erroneous in view of the evidence. In order for us to uphold an agency's decision under this clearly erroneous standard we must conclude that the record contains "some reliable, probative, and substantial evidence in support of its position." *Idaho County Nursing Home v. Department of Health & Welfare*, ___ Idaho ___, 821 P.2d 988 (1991).

A finding of fact without any basis in the record would be clearly erroneous. *Tappen v. Department of Health & Welfare*, 98 Idaho 576, 570 P.2d 28 (1977). Also, a finding of fact lacking substantial and competent evidence to support it is clearly erroneous. *Hubbard v. Canyon Cty. Com'rs*, 106 Idaho 436, 680 P.2d 537 (1984). In order to uphold an agency's finding, we must find more than a mere scintilla of evidence. *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1986).

If we cannot find any support for the agency's decision in the record, we can reverse the decision or remand the case for further proceedings. *Idaho County Nursing Home v. Department of Health & Welfare*, ___ Idaho ___, 821 P.2d 988 (1991); *Love v. Board of County Com'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

III.

THE TRANSFER.

The transfer of the Porter Creek water right is governed by I.C. § 42-222(1). The pertinent part of this statute states:

- (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the

provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, periods of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. . . .

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho. . . .

Dovel challenged the proposed transfer alleging that a portion of the water right had been forfeited through nonuse and that the transfer constituted an enlargement of the original right. Forfeiture of water rights are governed by I.C. § 42-222(2) which states in part:

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; . . .

Pursuant to this statute, an appropriator who fails to apply the water right beneficially for a period of five (5) consecutive years loses all rights to use such water, regardless of intent. *Sears v. Berryman*, 101 Idaho 843, 623 P.2d 455 (1981); *Gilbert v. Smith*, 97 Idaho 735, 552 P.2d 1220 (1976).

In *Jenkins v. Department of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982), the Court reiterated some of the basic principles relating to forfeitures:

Statutory forfeiture is based upon the legislative declaration in I.C. § 42-222(2) that water rights may be lost if they are not applied to a beneficial use for a period of five continuous years. . . . [I]f use of the water right is resumed after the five year period, but before any third parties make a claim in the water, then the courts will decline to declare a forfeiture. . . .

Forfeitures are not favored, and clear and convincing proof is required to find a forfeiture.

Id. at 389, 647 P.2d at ____ (citations omitted).

At the beginning of the hearing in this case, the hearing officer informed the parties:

Now the issues that have been determined in the prior conference include the following:

In connection with the transfer the validity of the right is an issue; more specifically whether the right has been lost through nonuse. . . .

The exact amount of the Porter Creek water right alleged to have been forfeited had not been disclosed prior to the hearing. It appears that Dovel's argument was that some or all of the water right had been lost due to forfeiture. At the hearing, there was uncontroverted evidence that the third field had not been irrigated for more than five years. Thus, the director correctly ruled that the water right for those six acres had been forfeited.

With regard to Dovel's claim that there had been a forfeiture of the water appurtenant to the twelve acres in the second field, the director found that this field had been periodically irrigated within the five years prior to the hearing. The director also found:

16. [The Porter Creek water right] was decreed on January 21, 1986 for the diversion of 1.6 cfs of water for the irrigation of 96 acres with a priority date of January 1, 1883.

* * *

20. Testimony from both [Steve Dobson] and [Dovel] indicated the full rate of 1.6 cfs of water has been diverted by [Dobson] when the water has been available.

In finding that only the water right to the third field had been forfeited, the director implicitly found that water had been beneficially applied to the remaining ninety acres in the first and second fields. The director's decision did not change the authorized diversion rate of 1.6 cfs.

In a letter protesting the application for the transfer, Dovel stated:

a. All or part of the 18 acres to be [transferred] in Sections 11 and 12 have actually not been irrigated for approximately the past 40 years. Back when they were irrigated, other acres included in the decreed right were not. The total of 96 acres in the decree include "either or" acres and it is not possible to irrigate all of those acres with the 1.6 cfs water right which is conveyed in a leaky marginal ditch approximately two miles in length. . . .

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Dovel reiterated these allegations at the hearing and asserted that "historically no more than eighty acres at a time has ever been irrigated" with the water right. Much of Dovel's testimony centered on the fact that while the full 1.6 cfs under the Porter Creek water right had been diverted, because of ditch losses and other factors, it was impossible to water the full ninety-six acres.

Steve Dobson testified that the twelve acres in the second field had been irrigated within the five years prior to the hearing. Alfred Wolfgram, who owned the three fields from 1976 until he sold them to Dobson in 1988, testified that he irrigated the ninety acres contained in the first and second fields each year except 1987. This testimony constituted substantial and competent evidence to support the director's decision that there had not been a forfeiture of the water appurtenant to the first and second fields.

Dovel also objected to the transfer as being against the local public interest in violation of I.C. § 42-205A(5)(e). This statute defines the "local public interest" as "the affairs of the people in the area directly affected by the proposed use." *See also Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985). Dovel's argument stems from the fact that a local road has been flooded on several occasions by the water appropriated under water right no. 65-3104. We fail to understand the logic of Dovel's argument. The director correctly found that the transfer did not conflict with the local public interest.

We do not address whether the director was correct in allowing the diversion of 1.6 cfs with the transfer. In his exceptions to the proposed decision of the director, Dovel argued that the appropriate rate of diversion was .02 cfs per acre. At that point Dovel contended that only 67.4 acres had water rights and that the water rights appurtenant to balance of the ninety-six acres had been forfeited. Dovel did not suggest that the rate of diversion should be less than .02 cfs, however.

Likewise, in his brief on appeal to this Court, Dovel calculated the rate of diversion at .02 cfs per acre. Therefore, we will not consider whether the director should have reduced the diversion of 1.6 cfs for ninety acres. Using .02 cfs for ninety acres exceeds the amount allowed by the director.

IV.

APPROVAL OF THE WATER PERMIT

Dovel objected to the issuance of a water permit asserting that there was an insufficient water supply. He urged that the permit would reduce the water available to existing water rights and that the issuance of the water permit was not in the local public interest.

In approving the application for the water permit, the director found:

Availability of Water

12. Porter Creek is primarily a snowmelt-fed stream which has high rates of flow early in the irrigation season but low rates of flow late in the irrigation season. During most years there are periods when flows in Porter Creek exceed the existing rights thereto and are available for diversion and use. On the other hand, there are periods during each irrigation season when the flow of the creek can fill only the senior irrigation water right on the stream.

Impact on Existing Water Rights

13. Flows diverted under the application will not impact the amount of water available to fill senior water rights on Porter Creek if the watermaster delivers water to the senior water rights in accordance with priority before junior rights are filled.

Local Public Interest

14. The protestant contends the approval of the application would be a detriment to the local public interest because flows in the conveyance ditch have historically flooded a county road crossed by the ditch. This alleged local public interest concern is applicable to both the application for permit and the application for transfer.

These findings are based upon substantial and competent evidence. Thus, we affirm the director's approval of the water permit. The evidence indicated that during a normal water year, there was sufficient water to fill all existing rights and also those rights granted by the permit. It would be the responsibility of the watermaster to insure that senior rights were not injured. Dovel's objections are well founded. Further, Dovel failed to make the requisite showing that the transfer was not in the local public interest.

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V.

**THE DIRECTOR IMPOSED SUFFICIENT CONDITIONS TO PROTECT
PRIOR APPROPRIATORS AND THE LOCAL PUBLIC INTEREST.**

Dovel asserts that the director did not impose sufficient conditions on the approval of the transfer and the permit to protect prior appropriators and the local public interest. We disagree.

In approving the permit, the director imposed the following conditions:

1. The new water right is subject to all prior water rights.
2. Dobson must assure the department that the system for diverting and conveying the water is adequate.
3. A measuring device and lockable controlling works must be installed to provide the watermaster suitable control.
4. Use of the water is subject to the control of the watermaster.
5. Proof of construction of the works and application of water to beneficial use had to be submitted by May 1, 1990.
6. The issuance of the permit did not grant any right-of-way or easement across the land of another.

In approving the transfer, the director imposed the following conditions:

1. The place of the use of the transferred water right shall not exceed ninety acres, as described on the map that was part of the application for transfer.
2. The maximum annual consumptive use volume authorized for diversion under the transfer shall not exceed 225 acre-feet, or two and one-half acre-feet per acre. This was a reduction from 240 acre-feet for ninety-six acres.
3. The maximum rate of diversion shall not exceed 1.6 cfs. (By this opinion, we have directed the director on remand to reduce this rate.)
4. Water shall be diverted under this right only during periods when diverted flows are applied to a beneficial use on the specified place of use.

*language
which should
have been
deleted*

5. An acceptable measuring device and lockable controlling works shall be installed on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
6. Use of water under this right is subject to the control of the watermaster.

These conditions protected the rights of prior appropriators. The permit was subject to all prior water rights. With the reduction of the duty of water we have directed the director to make, the transfer did not enlarge the right that was transferred.

} should have been deleted

In *Shokal v. Dunn*, the Court said that what public interest requires is committed to the department's sound discretion. 109 Idaho at 339, 707 P.2d at _____. We conclude that the director did not abuse this discretion in fashioning these conditions.

VI.

CONCLUSION.

We affirm the director's decision and award costs on appeal to respondents.

BAKES, C.J., and REINHARDT, J., Pro Tem. concur.

BOYLE, J., fully concurred prior to his resignation March 31, 1992.

McDEVITT, J., dissenting:

I must dissent from the Court's holding that there was "substantial competent evidence" to support the director's decision that there "had not been a forfeiture of the water right appurtenant to the first and second fields."

The Court relies on a bold assertion that Dobson, who had no knowledge of what had occurred prior to 1988 when he acquired the property that a portion of the land had been irrigated in the five years preceding 1988. The Court further relies on a similar assertion by Wolfgram (Dobson's immediate predecessor-in-interest), which Wolfgram subsequently recanted and acknowledged that the ASCS map (exhibit I) reflects what "was farmed" (far fewer acres).

The Court would reply that I am "weighing" the evidence. In truth and in fact, I have desperately reviewed this record to find "some" evidence to weigh. Our very existence depends on water, claims to our water should require greater scrutiny than the director afforded this transfer and the adverse claims entered.

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The Court does not address the "duty of water" issue in that the appellant does not argue, nor did he raise an issue of a greater duty of water than that approved by the director; this is proper. I am, however, greatly concerned that the director is not correctly applying the proper law to the duty of water. Finding of fact 21 of the director's memorandum decision and order states:

21. The duty of water in the Payette River Drainage is generally based on not more than 0.02 cfs per acre with consideration for reasonable losses incurred.

This is clearly not a sufficient finding as to the duty of water to support a water right. The historic Dobson Porter Creek water right was based on 1.6 cfs diversion for 96 acres, thus the duty of water under the decree is 0.0167 cfs per acre ($1.6 \text{ cfs} / 96 \text{ acres} = 0.0167$).

The department's finding of a forfeiture of 6 acres without a proportionate decrease in the 1.6 cfs diversion rate increased the duty of water to 0.0178 cfs per acre ($1.6 \text{ cfs} / 90 \text{ acres} = 0.0178$). This is an enlargement of the right in violation of I.C. § 42-222.

The department's error appears to have been caused by comparing the new duty of 0.0178 cfs ($1.6 \text{ cfs} / 90 \text{ acres}$) to the limit of 0.02 cfs contained in I.C. § 42-220. Finding that the new duty of water was less than the statutory maximum, the department authorized the transfer. This was erroneous as the water right established the duty of water at 0.0167 cfs. Any proposed change in use cannot exceed the duty of water as originally established. I.C. § 42-222(1); *Jenkins v. Department of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982).

IN THE MATTER OF APPLICATION FOR)
PERMIT NO 65-12842 AND APPLICATION FOR)
TRANSFER OF WATER RIGHT NO. 65-3104)

TRIB TO: Payette River

COUNTY: Boise

GEORGE DOVEL

Protestant.

Paragraph (d) of exception 2. The paragraph is an inaccurate conclusion by the petitioner, since the hearing officer has not adopted a position that where water is used is inconsequential.

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d. Exception 4. The exception is without merit, since it appears to discuss information which was not presented at the hearing. Evidence was not presented to show that the project is not feasible.

e. Exception 5. The exception is without merit, since the acreages to be irrigated are identified on the applications which are a part of the record.

f. Exception 6. Same response as e. above.

2. PROCEDURAL DEFICIENCIES

a. The alleged deficiency is without merit. The petitioner was allowed to cross-examine and recross-examine witnesses of the applicants. The hearing officer did direct the petitioner to confine his questions during cross examination and recross-examination to the direct testimony of a witness. This direction was given since the petitioner attempted to present his own direct testimony during cross-examination of the applicant's witnesses.

The hearing officer did not prevent the petitioner from calling witnesses of his choice. For whatever reason, the petitioner did not call any witnesses.

b. The alleged deficiency is without merit, since rebuttal testimony was not appropriate. It is true that the petitioner was not allowed to present rebuttal testimony, but the reason is that the applicant did not present any rebuttal testimony for the petitioner to properly rebut.

c. The alleged deficiency is without merit, since approval of the permit and the transfer does not make water distribution on Porter Creek impossible as asserted by the petitioner.

3. NEWLY DISCOVERED EVIDENCE

a. The alleged new evidence is a part of the record and has been considered in the decision which was issued. A condition of approval of the transfer limits the acres to be irrigated to not more than 90. The allegation that since the fields may total more than 90 acres in itself constitutes an enlargement in use is not correct and is without merit.

b. Same comment as a. above.

c. The alleged availability of witnesses for a rehearing does not justify why the witnesses were not available for the original hearing and does not justify granting a rehearing.

d. Information relative to irrigation practices for the 90 acres was part of the hearing record at the time of the issuance of the decision in this matter. Since a water right of 1.6 cfs (80 inches) does not provide a full miner's inch per acre for the entire 90 acres, it would not be unusual that all of the 90 acres has not been irrigated each year. Likewise, it does not follow that a portion of the right has been forfeited for this reason.

e. The petitioner had the opportunity to call the named parties as his witnesses at the hearing held on January 10, 1989.

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f. The petitioner had the opportunity at the hearing held on January 10, 1989 to introduce the evidence suggested.

4. The allegation is a description of the petitioner's position in this matter and does not justify the granting of a rehearing.

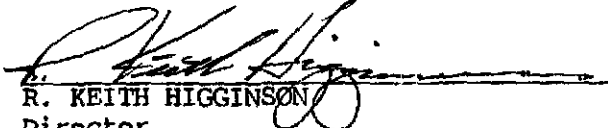
5. The alleged enlargement in use was discussed in detail at the hearing on January 10, 1989 and has been considered in the decision issued in this matter.

6. The petition for rehearing should be denied, since the petitioner has not shown sufficient grounds why the directors's order is unreasonable, unlawful, erroneous or not in conformity with the law. The alleged new evidence is a part of the hearing record on which the director's decision was based.

ORDER

The petition for rehearing before the director is DENIED.

Dated this 21ST day of JUNE, 1989.


R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 22nd day of June, 1989, a true and correct copy of the ORDER DENYING PETITION FOR REHEARING was mailed, postage prepaid to:

Richard B. Eismann
3016 Caldwell Boulevard
Nampa, ID 83651-6416

Tom Oliver
3357 Osprey Road
Eagle, ID 83616

Steve Dobson
P. O. Box 366
Horseshoe Bend, ID 83629

George Dovel
Rt. 1 Box 61
Horseshoe Bend, ID 83629

Jack Riddlemoser, Esq.
P. O. Box 373
Meridian, ID 83642


RITA I. FLECK
Secretary/Records Manager

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Steve Dobson &/or Tom Oliver ³³⁶⁻⁵⁵¹¹ Phone 793-2694
Post office address P.O. Box 366 Horseshoe Bend, Id 83629
2. Source of water supply Porter Creek which is a tributary of Payette River
3. Location of point of diversion is _____ $\frac{1}{4}$ of NW $\frac{1}{4}$ of SE $\frac{1}{4}$, Govt Lot _____
Sec. 12 Township 7N Range 2E B.M. Boise County; additional
points of diversion if any _____
4. Water will be used for the following purposes:
Amount .84 for Irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) .84 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works
- a. Description of ditches, flumes, pumps, headgates, etc Existing system consists of
ditch, buried mainline, and sprinklers for (gravity) irrigation.
- b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage
_____ to _____ inclusive
- c. Proposed well diameter is _____ inches, proposed depth of well is _____ feet
- d. Is ground water with a temperature of greater than 90°F being sought? _____
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
1 years (minimum 1 year).

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8 Description of proposed uses (if irrigation only, go to item 9)

- a Hydropower, show total feet of head and proposed capacity in KW _____
- b Stockwatering, list number and kind of livestock _____
- c Municipal; show name of municipality _____
- d Domestic, show number of households. _____
- e Other; describe fully _____

9 Description of place of use.

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below
- b. If water is used for other purposes, place a symbol of the use (example *D* for Domestic) in the corresponding place of use below See instructions for standard symbols

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7N	2E	2											2.7				3		14
													11						
7N	2E	11		10			2.1												28
							18												

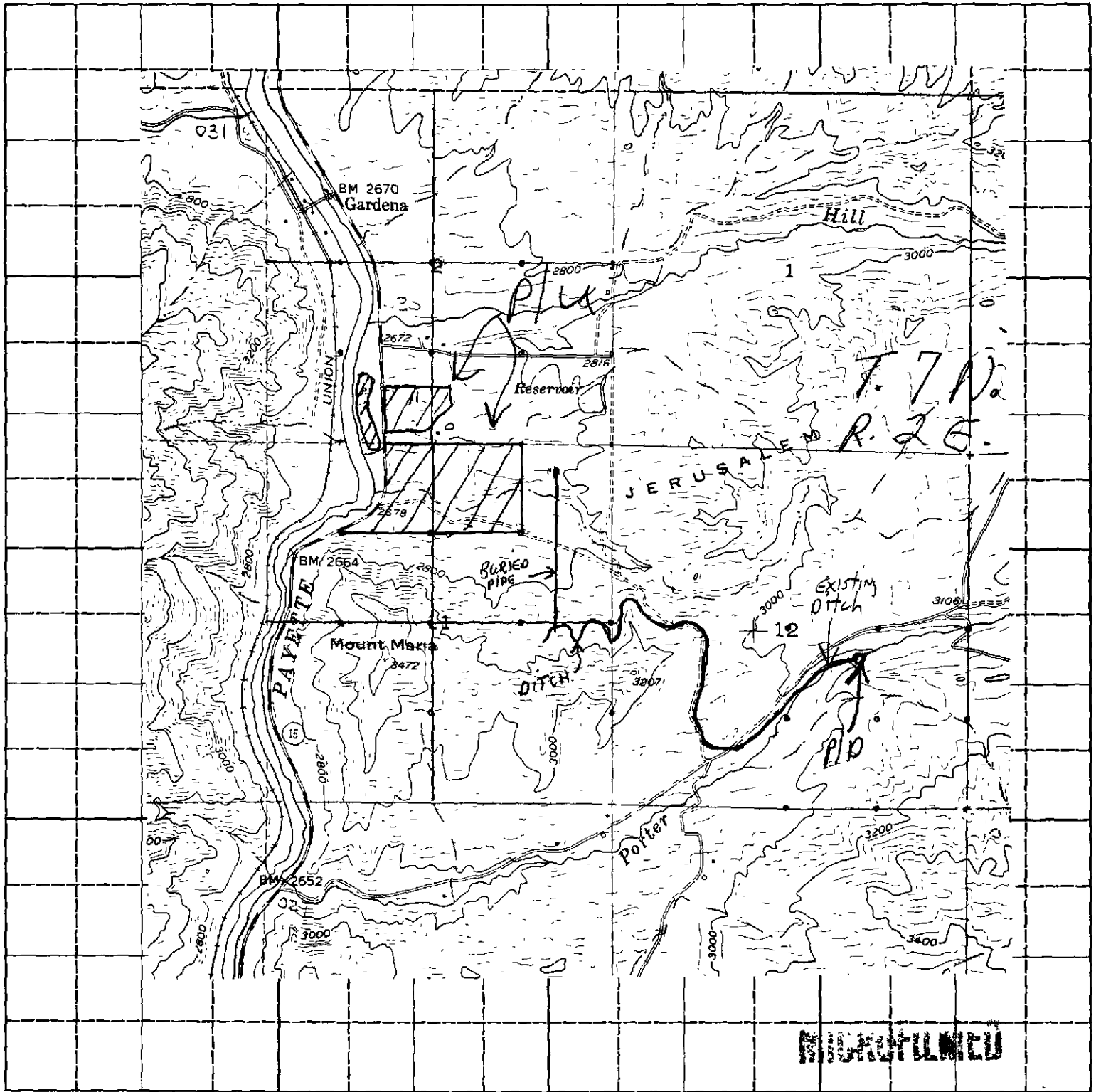
Total number of acres to be irrigated 42

10. Describe any other water rights used for the same purposes as described above 65-3104 (Porter Creek)
and 65-2858 (Payette River)

- 11 a Who owns the property at the point of diversion? Double Diamond Ranch
- b Who owns the land to be irrigated or place of use? Applicants
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing P/O access (old ditch) through previous arrangement dating back many years.

12. Remarks: The Application is to use unappropriated water for as long as its available. System now delivers water to section 11 but not to section 2. Existing Porter Creek right covers less than 1"/acre.

13 Map of proposed project. show clearly the proposed point of diversion, place of use, section number, township and range number.



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth

[Signature]
(Applicant)

Received by SL Date 5/16/88 Time 9:30 Preliminary check by SD
Fee \$ 45⁰⁰ Receipted by SL # 46101 Date 5/16/88
Publication prepared by GG Date 5-25-88 Published in Idaho World
6/1 & 6/8/1988
Publication approved AS Date 4/22/1988

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No 65-12842, and said application is hereby APPROVED.

1 Approval of said application is subject to the following limitations and conditions

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 19 90

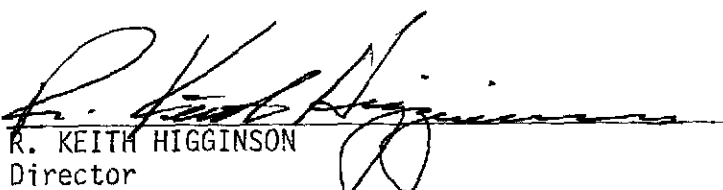
c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

See Memorandum Decision and Order.

Dated this the 28th day of April, 1989.


R. KEITH HIGGINSON
Director

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JUL 26 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 65-12842 AND APPLICATION	)	SOURCE: Porter Creek
FOR TRANSFER OF WATER RIGHT NO.	)	
65-3104	)	TRIBUTARY TO: Payette River
STEVE DOBSON AND/OR TOM OLIVER,	)	
	)	
Applicants,	)	COUNTY: Boise
	)	
GEORGE DOVEL,	)	
	)	
Protestant.	)	

ORDER ADDRESSING EXCEPTIONS
TO PROPOSED MEMORANDUM DECISION AND ORDER

On February 24, 1989, the Department of Water Resources (department) issued a Proposed Memorandum Decision and Order in this matter. On March 13, 1989, the protestant filed exceptions to the Proposed Memorandum Decision and Order (proposed decision). The Applicant did not file an answer to the exceptions.

The protestant raised several specific exceptions to the proposed decision, alleged procedural deficiencies and newly discovered evidence. The exceptions will be addressed in the following discussion and order.

EXCEPTION 1.

Comment a) and b). There apparently is some misunderstanding relative to the significance of the "cut-off" date (October 18, 1977) which was the last date that adjudication claims were accepted in the Payette River Adjudication. The right as decreed by the court in 1986 is the right to be considered by the department. The department does not have the authority on its own motion to change water rights which have been decreed by the court. To remedy this misunderstanding, the last sentence of Finding 16 as shown in the proposed decision will be eliminated in the final decision.

EXCEPTION 2.

Comment a). The comment is not correct and is without merit. The two (2) conclusions cited have no relevance to the date adjudication claims would no

ORDER

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longer be accepted in the Payette River Adjudication. The significance of the October 18, 1977 date is again being misinterpreted and apparently is being related in some manner to the principles of forfeiture. To remedy this misinterpretation, Finding of Fact No. 15 as shown in the proposed decision has been changed to state that the 6 acres have not been irrigated for more than 5 years rather than reference the October 18, 1977 date.

EXCEPTION 3.

Comment d). The watermaster can be called to duty earlier than past practice if there is a need. Conclusion of Law No. 13 as shown in the proposed decision, however, has been clarified to read as follows "Existing water rights on Porter Creek can be protected ... Creek" to clarify that the water rights referred to in the conclusion are from Porter Creek.

The other exceptions and parts thereof are without merit and do not justify a change in the decision.

PROCEDURAL DEFICIENCIES.

a) The alleged deficiency is without merit since the statement is not credible. The protestant was not denied the opportunity to call witnesses of his choice. The hearing officer did not disqualify any witnesses of the protestant. The protestant had the opportunity to call witnesses of his choice, similar to the applicant, but for whatever reason did not do so.

The hearing officer did limit the cross-examination by the protestant of the applicant's witnesses to information previously presented in direct testimony by the applicants. This limitation was for the purpose of preventing the protestant from introducing his own direct testimony into the record before he was under oath. The protestant was allowed to provide his direct testimony for the record later in the proceeding.

b) The alleged deficiency is without merit. The protestant was allowed to present his direct testimony. The protestant was not allowed rebuttal cross-examination of the applicant's witnesses, however, since the applicants witnesses did not present any rebuttal direct testimony.

c) The alleged deficiency is without merit since the applicability of the comment can not be determined.

NEWLY DISCOVERED EVIDENCE

a) The alleged new evidence is without merit, since the existence or non-existence of a pipeline is irrelevant to the consideration of the applications. Construction of project facilities generally occurs after applications before the department have been approved.

b) The alleged new evidence is without merit since approvals by the department in most cases do not specify the method of application of water used for irrigation purposes.

c) The alleged new evidence is without merit. The Payette River and the rights to divert from it are not directly relevant to the applications pending

JUL 23 1990

before the Department in this matter.

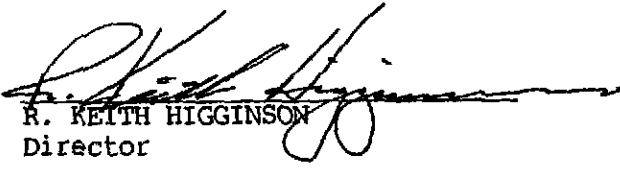
The applicant did not file exceptions to the Proposed Memorandum Decision and Order, but did request a slightly different distribution of the 90 acres in the place of use in connection with Application for Transfer of Right No. 65-3104. The requested place of use is within the same tracts shown on the application for transfer. The protestant has not filed exceptions to the request of the applicant.

ORDER

The request for argument before the director in this matter is denied.

The Proposed Memorandum Decision and Order issued on February 24, 1989 is adopted as the final decision and order with changes to Finding of Fact Nos. 15 and 16, Conclusion of Law No. 13, approval condition 5. in connection with Application for Permit 65-12842 and to approval condition 1. in connection with Transfer of Right No. 65-3104 as shown in the Memorandum Decision and Order of the director issued this date.

Dated this 28th day of April, 1989.


R. KEITH HIGGINSON
Director

ORDER

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 1st day of May, 1989, true and correct copies of the foregoing MEMORANDUM DECISION AND ORDER, ORDER ADDRESSING EXCEPTIONS TO PROPOSED MEMORANDUM DECISION and were mailed postage prepaid to:

Steve Dobson
P. O. Box 366
Horseshoe Bend, ID 83629

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

George Dovel
Rt. 1, Box 61
Horseshoe Bend, ID 83629

Jack Riddlemoser, Esq.
P. O. Box 373
Meridian, ID 83642


RITA I. FLECK
Secretary/Records Manager

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JUL 26 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 65-12842 AND APPLICATION
FOR TRANSFER OF WATER RIGHT NO.
65-03104

STEVE DOBSON AND/OR TOM OLIVER,

Applicants,

GEORGE DOVEL,

Protestant.

SOURCE: Porter Creek

TRIBUTARY TO: Payette River

COUNTY: Boise

MEMORANDUM DECISION AND ORDER
APPROVING APPLICATION FOR PERMIT NO. 65-12842
AND APPROVING IN PART APPLICATION FOR TRANSFER
OF WATER RIGHT NO. 65-03104

Steve Dobson and/or Tom Oliver having filed with the Department of Water Resources (Department) Application for Permit No. 65-12842 to appropriate unappropriated water and Application for Transfer of Water Right No. 65-03104; a protest to each application having been received; and a hearing having been held, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

The Application

1. On May 16, 1988, Steve Dobson and/or Tom Oliver (hereinafter applicants) applied to the Department for a permit to appropriate 0.84 cubic feet per second (cfs) of water from Porter Creek tributary to the Payette River to be used for irrigation from April 1 through November 1 annually. The proposed point of diversion is located within the NW1/4SE1/4, Sec. 12, Twp. 7N, Rge. 2E, B.M., and the proposed place of use is 12 acres located within Secs. 2 and 11 of the same township and range. On the same day, the applicants applied

to the Department to change the place of use of decreed water right No. 65-03104 which provides 1.6 cfs (80 miner's inches) for the irrigation of 96 acres. The transfer proposed the removal of irrigation from 6 acres in the NW1/4SW1/4, Sec. 12; 11 acres in Lot 1 (NE1/4NW1/4) and 1 acre in the SE1/4NW1/4, Sec. 11; to be used on 7 additional acres in the NE1/4NE1/4, Sec. 11; 2 acres in the SW1/4SE1/4 and 9 acres in the SE1/4SE1/4, Sec. 2, all in Twp. 7N, Rge. 2E, B.M., Boise County.

2. Notices of the application for permit and the application for transfer were published in the Idaho World on June 1 and 8, 1988.

Protest and Hearing

3. Protests against approval of each of the applications were received by the Department on June 20, 1988 from George Dovel.

4. Attempts to reach a pre-conference settlement were unsuccessful, and on August 23, 1988, a conference was held regarding the protested applications. The applicants and the protestant were present and represented themselves. At the conference all parties agreed to pursue the formulation of a settlement agreement.

5. The parties were unsuccessful in finalizing a settlement agreement regarding the protests, and on January 10, 1989 a hearing was held by the Department in this matter. At the hearing the applicants were present and were represented by Jack Riddlemoser, Esq. The protestant was present and represented himself.

6. The protestant raised objections to the application for permit by alleging that the proposed use is such that:

- (a) it will reduce the quantity of water under existing water rights,
- (b) the water supply is insufficient for the proposed use, and
- (c) the proposed diversion is not in the local public interest.

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7. The protestant raised objections to the application for transfer by alleging that the proposed use is such that:

- (a) the water right has been forfeited,
- (b) approval would result in enlargement of the existing water right,
- (c) approval would result in injury to other water rights, and
- (d) the proposed transfer is not in the local public interest.

Information Considered

8. The Hearing Officer took official notice of the records of the Department, the files of the two protested applications, and the files of Water District 65-B, Porter Creek. In addition, the testimony provided at the hearing is part of the record, including the following admitted exhibits:

Applicants' Exhibit No. 1.	Photo copy of map of area.
Protestant's Exhibits Nos. 1-14.	Photographs of alleged ditch leakage and alleged crop damage.
Protestant's Exhibit No. 15.	Copy of letter dated May 4, 1988.
Protestant's Exhibit No. 16.	Copy of letter dated June 4, 1988.
Protestant's Exhibit No. 18.	Copies of diary notes.

9. Protestant's Exhibit No. 17, a copy of an unsigned draft agreement with an accompanying copy of a letter, was not admitted by the Hearing Officer.

Findings of Fact Relative to Application for Permit

Existing Water Rights

10. Water District No. 65-B, Porter Creek, was created in 1986 for the purpose of distributing the flows in Porter Creek. Each year there are periods when flows in the creek are insufficient to satisfy water demands. There are senior water rights on Porter Creek with points of diversion both upstream and downstream from the point of diversion proposed in the application. **RECEIVED**

11. A total of 42 of the 44 acres identified in the application for **JUL 6 1990**

permit may also be irrigated from the Payette River under decreed water right No. 65-02858. This additional source of water supply normally provides water for diversion after the flow in Porter Creek diminishes.

Availability of Water

12. Porter Creek is primarily a snowmelt-fed stream which has high rates of flow early in the irrigation season but low rates of flow late in the irrigation season. During most years there are periods when flows in Porter Creek exceed the existing rights thereto and are available for diversion and use. On the other hand, there are periods during each irrigation season when the flow of the creek can fill only the senior irrigation water right on the stream.

Impact on Existing Water Rights

13. Flows diverted under the application will not impact the amount of water available to fill senior water rights on Porter Creek if the watermaster delivers water to the senior water rights in accordance with priority before junior water rights are filled.

Local Public Interest

14. The protestant contends that approval of the application would be a detriment to the local public interest because flows in the conveyance ditch have historically flooded a county road crossed by the ditch. This alleged local public interest concern is applicable to both the application for permit and the application for transfer.

Findings of Fact Relative to Application for Transfer

Validity of the Water Right

15. The protestant alleged that forfeiture of the decreed water right has occurred on the following acres: 6 acres in the NW1/4SW1/4, Sec. 12, 11 acres in Lot 1(NE1/4NW1/4) and 2 acres in the SE1/4NW1/4, Sec. 11, T. 7N, Rge.

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2E, B.M. Witnesses testified at the hearing that the 6 acres within the NW1/4SW1/4 of Sec. 12 have not been irrigated for more than 5 consecutive years. Testimony by the present and previous two landowners, however, indicated that the specified lands within Sec. 11 have been periodically irrigated within the last 5 years.

16. Water right No. 65-03104 was decreed on January 21, 1986 for the diversion of 1.6 cfs of water for the irrigation of 96 acres with a priority date of January 1, 1883.

17. During the period from October 18, 1977 through January 10, 1989, water was available for diversion from Porter Creek under this water right during at least part of every year.

18. Pursuant to the decree of water rights in the Payette River Drainage Basin, the consumptive irrigation requirement in the Porter Creek vicinity is 2.5 acre-feet per acre per year.

19. The season for irrigation diversions on Porter Creek typically begins in May and lasts through September.

20. Testimony from both the applicant and protestant indicated the full rate of 1.6 cfs of water has been diverted by the applicants when the water has been available.

21. The duty of water in the Payette River Drainage is generally based on not more than 0.02 cfs per acre with consideration for reasonable losses incurred.

Enlargement of the Water Right

22. The applicant desires to use the transferred portion of the decreed right for irrigation of different lands than shown on the original right. There was no testimony to indicate that the irrigation of different lands would require any less or any more water than the acres originally

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irrigated.

23. The protestant testified that if the watermaster does not require senior water rights to be used only on appurtenant lands, enlargement of a water right can occur with resulting injury to other water rights.

CONCLUSIONS OF LAW

Applicable Legal Principles

1. Idaho Code, Sec.42-203A(5) (Supp. 1988) states in part as follows:

The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Article XV, Sec. 3 of the Constitution of the State of Idaho states in part as follows:

The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except the state may regulate and limit the use thereof for power purposes.

3. Evaluation of the local public interest criterion of Idaho Code, Sec. 42-203A(5) (Supp. 1988) is defined by Water Appropriation Rule 5,1,5. to include:

... [T]he effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both long and short term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;

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the effect the project will have on recreation, fish and wildlife resources in the local public area affected by the proposed use; and compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

4. Section 42-222, Idaho Code, (Supp. 1988) states in part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in Section 42-203, Idaho Code.

5. The Director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such a determination is required as a preliminary step to performance of the Director's statutory duty in determining whether or not the proposed transfer would injure other water rights. Jenkins v. State of Idaho, 103 Idaho 384 (1982).

6. Forfeitures are not favored, and clear and convincing proof is required to support a forfeiture. Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976).

7. The decree in the Payette River Drainage Basin serves to establish the validity of each water right identified in the decree, as of October 18, 1977.

8. To insure that an enlargement of water right No. 65-03104 does not occur, neither the rate of diversion, nor the total consumptive use may be increased by a transfer.

Application of Legal Principles - Relative to Application for Permit
Availability of Water

9. Pursuant to Article XV, Sec. 3 of the Constitution of the State of Idaho, to the extent that there is water available for appropriation, the application for permit should be approved even if the approval will result in

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the need for additional care in the delivery of water in order to protect senior water rights.

10. There are periods of time in most years when water is available for appropriation and diversion.

11. The proposed project has been shown by the applicant to be viable.

Impact on Existing Water Rights

12. All existing water rights on Porter Creek are senior to this application, except that any water rights for power purposes on Porter Creek are subordinated to this water right for delivery purposes.

13. Existing water rights on Porter Creek can be protected from injury by proper delivery by the watermaster of Water District 65-B, Porter Creek.

Local Public Interest

14. With respect to local public interest, the proposed project has the potential benefit of reducing operating costs by requiring less power than if the water were to be pumped from the alternate source, the Payette River. The protestant did not demonstrate any harm to the local public interest from the proposed project.

15. The alleged flooding of the county road by the existing ditch is a technical problem that can be solved by the installation of an adequate culvert system designed to carry a given rate of flow or by other physical means.

These local public interest assessments (Conclusions of Law Nos. 14 and 15) also apply to the application for transfer.

Application of Legal Principles - Relative to Application for Transfer

Validity of the Water Right

16. The consumptive use portion of right 65-03104 appurtenant to 6 acres in the NW1/4SW1/4, Sec. 12, Twp. 7N, Rge. 2E, B.M. has been forfeited through non-use, since the land has not been irrigated since October 18, 1977.

The magnitude of the rate of diversion of 1.6 cfs for the right, however, has not been diminished, since it has been routinely diverted and does not exceed the general duty of water standard of 0.02 cfs per acre.

Enlargement of the Water Right

17. The water right will not be enlarged if delivery and use of water are not in connection with more acres than formerly irrigated by the right.

Potential Injury to Other Water Rights

18. If the proposed transfer is approved, additional care will be required from the watermaster to insure that diversion of water under terms of the transfer does not injure senior water rights on Porter Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 65-12842 is APPROVED subject to the following conditions:

1. This water right is subject to all prior water rights.
2. The permit holder shall submit to the Department evidence or plans and specifications of proposed changes to the diverting works, conveyance system and culvert crossing to show that the system is capable of conveying the additional water authorized by this permit. Until the Department has either approved the evidence submitted or the Department has inspected and approved the work accomplished under the pre-approved construction plans, diversion of water under this permit is not authorized.
3. Prior to diversion of water under this right, a measuring device and lockable controlling works of a type acceptable to the Department shall be installed on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
4. Use of water under this permit is subject to the control of the watermaster of State Water District No. 65-B, Porter Creek.

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5. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 1990.

6. The issuance of this permit in no way grants any right-of-way or easement across the land of another.

IT IS FURTHER ORDERED that Application for Transfer of Water Right No. 65-03104 is APPROVED IN PART subject to the following conditions:

1. The place of use of this water right shall not exceed 90 acres, defined as: 2 acres in the SW1/4SE1/4 and 9 acres in the SE1/4SE1/4, Sec. 2; 20 acres in the NE1/4NE1/4; 14 acres in the NW1/4NE1/4; 18 acres in the SW1/4NE1/4 and 27 acres in the SE1/4NE1/4, Sec. 11, all in Twp. 7N, Rge. 2E, B.M. The map showing the place of use is a part of the Application for transfer.

2. The maximum annual consumptive use volume authorized for diversion under this transfer shall not exceed 225 acre-feet, i.e. 90 acres x 2.5 AF/acre = 225 acre feet.

3. The maximum rate of diversion shall not exceed 1.6 cfs.

4. Water shall be diverted under this right only during periods when diverted flows are applied to a beneficial use on the specified place of use.

5. A measuring device and lockable controlling works of a type acceptable to the Department shall be installed on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

6. Use of water under this right is subject to the control of the watermaster of State Water District No. 65-B, Porter Creek.

Dated this 28th day of April, 1989.


R. KEITH HIGGINSON
Director

JUL 26 1990

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 65-12842 AND APPLICATION)
FOR TRANSFER OF WATER RIGHT NO.)
65-03104 - STEVE DOBSON & TOM OLIVER)

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, L. Glen Saxton, who conducted the hearing or who has read the record in the 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. 421701A 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.

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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

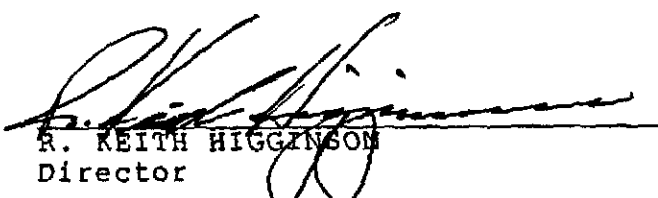
All exceptions, briefs, requests oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

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 24th day of February, 19 89.


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
PERMIT NO. 65-12842 AND APPLICATION
FOR TRANSFER OF WATER RIGHT NO.
65-03104

STEVE DOBSON AND/OR TOM OLIVER,

Applicants,

GEORGE DOVEL,

Protestant.

SOURCE: Porter Creek

TRIBUTARY TO: Payette River

COUNTY: Boise

PROPOSED MEMORANDUM DECISION AND ORDER
APPROVING APPLICATION FOR PERMIT NO. 65-12842
AND APPROVING IN PART APPLICATION FOR TRANSFER
OF WATER RIGHT NO. 65-03104

BY HEARING OFFICER L. GLEN SAXTON.

Steve Dobson and/or Tom Oliver having filed with the Department of Water Resources (Department) Application for Permit No. 65-12842 to appropriate unappropriated water and Application for Transfer of Water Right No. 65-03104; a protest to each application having been received; and a hearing having been held, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

The Application

1. On May 16, 1988, Steve Dobson and/or Tom Oliver (hereinafter applicants) applied to the Department for a permit to appropriate 0.84 cubic feet per second (cfs) of water from Porter Creek tributary to the Payette River to be used for irrigation from April 1 through November 1 annually. The proposed point of diversion is located within the NW 1/4, Sec. 12, Twp. 7N,

Rge. 2E, B.M., and the proposed place of use is 42 acres located within Secs. 2 and 11 of the same township and range. On the same day, the applicants applied to the Department to change the place of use of decreed water right No. 65-03104 which provides 1.6 cfs (80 miner's inches) for the irrigation of 96 acres. The transfer proposed the removal of irrigation from 6 acres in the NW1/4SW1/4, Sec. 12; 11 acres in Lot 1 (NE1/4NW1/4) and 1 acre in the SE1/4NW1/4, Sec. 11; to be used on 7 additional acres in the NE1/4NE1/4, Sec. 11; 2 acres in the SW1/4SE1/4 and 9 acres in the SE1/4SE1/4, Sec. 2, all in Twp. 7N, Rge. 2E, B.M., Boise County.

2. Notices of the application for permit and the application for transfer were published in the Idaho World on June 1 and 8, 1988.

Protest and Hearing

3. Protests against approval of each of the applications were received by the Department on June 20, 1988 from George Dovel.

4. Attempts to reach a pre-conference settlement were unsuccessful, and on August 23, 1988, a conference was held regarding the protested applications. The applicants and the protestant were present and represented themselves. At the conference all parties agreed to pursue the formulation of a settlement agreement.

5. The parties were unsuccessful in finalizing a settlement agreement regarding the protests, and on January 10, 1989 a hearing was held by the Department in this matter. At the hearing the applicants were present and were represented by Jack Riddlemoser, Esq. The protestant was present and represented himself.

6. The protestant raised objections to the application for permit by alleging that the proposed use is such that:

- (a) it will reduce the quantity of water under existing water rights,

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- (b) the water supply is insufficient for the proposed use, and
- (c) the proposed diversion is not in the local public interest.

7. The protestant raised objections to the application for transfer by alleging that the proposed use is such that:

- (a) the water right has been forfeited,
- (b) approval would result in enlargement of the existing water right,
- (c) approval would result in injury to other water rights, and
- (d) the proposed transfer is not in the local public interest.

Information Considered

8. The Hearing Officer took official notice of the records of the Department, the files of the two protested applications, and the files of Water District 65-B, Porter Creek. In addition, the testimony provided at the hearing is part of the record, including the following admitted exhibits:

Applicants' Exhibit No. 1.	Photo copy of map of area.
Protestant's Exhibits Nos. 1-14.	Photographs of alleged ditch leakage and alleged crop damage.
Protestant's Exhibit No. 15.	Copy of letter dated May 4, 1988.
Protestant's Exhibit No. 16.	Copy of letter dated June 4, 1988.
Protestant's Exhibit No. 18.	Copies of diary notes.

9. Protestant's Exhibit No. 17, a copy of an unsigned draft agreement with an accompanying copy of a letter, was not admitted by the Hearing Officer.

Findings of Fact Relative to Application for Permit

Existing Water Rights

10. Water District No. 65-B, Porter Creek, was created in 1986 for the purpose of distributing the flows in Porter Creek. Each year there are periods when flows in the creek are insufficient to satisfy water demands. There are senior water rights on Porter Creek with points of diversion both upstream and

JUL 25 1990

downstream from the point of diversion proposed in the application.

11. A total of 42 of the 44 acres identified in the application for permit may also be irrigated from the Payette River under decreed water right No. 65-02858. This additional source of water supply normally provides water for diversion after the flow in Porter Creek diminishes.

Availability of Water

12. Porter Creek is primarily a snowmelt-fed stream which has high rates of flow early in the irrigation season but low rates of flow late in the irrigation season. During most years there are periods when flows in Porter Creek exceed the existing rights thereto and are available for diversion and use. On the other hand, there are periods during each irrigation season when the flow of the creek can fill only the senior irrigation water right on the stream.

Impact on Existing Water Rights

13. Flows diverted under the application will not impact the amount of water available to fill senior water rights on Porter Creek if the watermaster delivers water to the senior water rights in accordance with priority before junior water rights are filled.

Local Public Interest

14. The protestant contends that approval of the application would be a detriment to the local public interest because flows in the conveyance ditch have historically flooded a county road crossed by the ditch. This alleged local public interest concern is applicable to both the application for permit and the application for transfer.

Findings of Fact Relative to Application for Transfer

Validity of the Water Right

15. The protestant alleged that forfeiture of the decreed water right

JUL 26 1990

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has occurred on the following acres: 6 acres in the NW1/4SW1/4, Sec. 12, 11 acres in Lot 1 (NE1/4NW1/4) and 2 acres in the SE1/4NW1/4, Sec. 11, Twp. 7N, Rge. 2E, B.M. Witnesses testified at the hearing that the 6 acres within the NW1/4SW1/4 of Sec. 12 have not been irrigated since prior to October 18, 1977. Testimony by the present and previous two landowners, however, indicated that the specified lands within Sec. 11 have been periodically irrigated since that date.

16. Water right No. 65-03104 was decreed on January 21, 1986 for the diversion of 1.6 cfs of water for the irrigation of 96 acres with a priority date of January 1, 1883. The decree identifies October 18, 1977 as the official cutoff for claims-taking.

17. During the period from October 18, 1977 through January 10, 1989, water was available for diversion from Porter Creek under this water right during at least part of every year.

18. Pursuant to the decree of water rights in the Payette River Drainage Basin, the consumptive irrigation requirement in the Porter Creek vicinity is 2.5 acre-feet per acre per year.

19. The season for irrigation diversions on Porter Creek typically begins in May and lasts through September.

20. Testimony from both the applicant and protestant indicated the full rate of 1.6 cfs of water has been diverted by the applicants when the water has been available.

21. The duty of water in the Payette River Drainage is generally based on not more than 0.02 cfs per acre with consideration for reasonable losses incurred.

Enlargement of the Water Right

22. The applicant desires to use the transferred portion of the

decreed right for irrigation of different lands than shown on the original right. There was no testimony to indicate that the irrigation of different lands would require any less or any more water than the acres originally irrigated.

23. The protestant testified that if the watermaster does not require senior water rights to be used only on appurtenant lands, enlargement of a water right can occur with resulting injury to other water rights.

CONCLUSIONS OF LAW

Applicable Legal Principles

1. Idaho Code, Sec.42-203A(5) (Supp. 1988) states in part as follows:

The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Article XV, Sec. 3 of the Constitution of the State of Idaho states in part as follows:

The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except the state may regulate and limit the use thereof for power purposes.

3. Evaluation of the local public interest criterion of Idaho Code, Sec. 42-203A(5) (Supp. 1988) is defined by Water Appropriation Rule 5, 1, 3, to

include:

... [T]he effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both long and short term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains; the effect the project will have on recreation, fish and wildlife resources in the local public area affected by the proposed use; and compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

4. Section 42-222, Idaho Code, (Supp. 1988) states in part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in Section 42-203, Idaho Code.

5. The Director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such a determination is required as a preliminary step to performance of the Director's statutory duty in determining whether or not the proposed transfer would injure other water rights. Jenkins v. State of Idaho, 103 Idaho 384 (1982).

6. Forfeitures are not favored, and clear and convincing proof is required to support a forfeiture. Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976).

7. The decree in the Payette River Drainage Basin serves to establish the validity of each water right identified in the decree, as of October 18, 1977.

8. To insure that an enlargement of water right No. 65-03104 does not occur, neither the rate of diversion, nor the total consumptive use may be increased by a transfer.

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JUL 26 1990

Application of Legal Principles - Relative to Application for Permit

Availability of Water

9. Pursuant to Article XV, Sec. 3 of the Constitution of the State of Idaho, to the extent that there is water available for appropriation, and the need for application for permit should be approved, even if such approval will result in the need for additional care in the delivery of water in order to protect senior water rights.

10. There are periods of time in most years when water is available for appropriation and diversion.

11. The proposed project has been shown by the applicant to be viable.

Impact on Existing Water Rights

12. All existing water rights on Porter Creek are senior to this application, except that any water rights for power purposes on Porter Creek are subordinated to this water right for delivery purposes.

13. Existing water rights can be protected from injury by proper delivery by the watermaster of Water District 65-B, Porter Creek.

Local Public Interest

14. With respect to local public interest, the proposed project has the potential benefit of reducing operating costs by requiring less power than if the water were to be pumped from the alternate source, the Payette River. The protestant did not demonstrate any harm to the local public interest from the proposed project.

15. The alleged flooding of the county road by the existing ditch is a technical problem that can be solved by the installation of an adequate culvert system designed to carry a given rate of flow or by other physical means.

These local public interest assessments (Conclusions of Law Nos. 14 and 15) also apply to the application for transfer.

JUL 16 1990

Application of Legal Principles - Relative to Application for Transfer

Validity of the Water Right

16. The consumptive use portion of right 65-03104 appurtenant to 6 acres in the NW1/4SW1/4, Sec. 12, Twp. 7N, Rge. 2E, B.M. has been forfeited through non-use, since the land has not been irrigated since October 18, 1977. The magnitude of the rate of diversion of 1.6 cfs for the right, however, has not been diminished, since it has been routinely diverted and does not exceed the general duty of water standard of 0.02 cfs per acre.

Enlargement of the Water Right

17. The water right will not be enlarged if delivery and use of water are not in connection with more acres than formerly irrigated by the right.

Potential Injury to Other Water Rights

18. If the proposed transfer is approved, additional care will be required from the watermaster to insure that diversion of water under terms of the transfer does not injure senior water rights on Porter Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 65-12842 is APPROVED subject to the following conditions:

1. This water right is subject to all prior water rights.
2. The permit holder shall submit to the Department evidence or plans and specifications of proposed changes to the diverting works, conveyance system and culvert crossing to show that the system is capable of conveying the additional water authorized by this permit. Until the Department has either approved the evidence submitted or the Department has inspected and approved the work accomplished under the pre-approved construction plans, diversion of water under this permit is not authorized.
3. Prior to diversion of water under this right, the permit holder shall

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JUL 26 1990

and lockable controlling works of a type acceptable to the Department shall be installed on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

4. Use of water under this permit is subject to the control of the watermaster of State Water District No. 65-B, Porter Creek.

5. Proof of construction of works and application of water to beneficial use shall be submitted on or before the date indicated on the final order.

6. The issuance of this permit in no way grants any right-of-way or easement across the land of another.

IT IS FURTHER ORDERED that Application for Transfer of Water Right No. 65-03104 is APPROVED IN PART subject to the following conditions:

1. The place of use of this water right shall not exceed 90 acres, defined as: 2 acres in the SW1/4SE1/4 and 3 acres in the SE1/4SE1/4, Sec. 2; 22 acres in the NE1/4NE1/4; 16 acres in the NW1/4NE1/4; 19 acres in the SW1/4NE1/4 and 28 acres in the SE1/4NE1/4, Sec. 11, all in Twp. 7N, Rge. 2E, B.M.

2. The maximum annual consumptive use volume authorized for diversion under this transfer shall not exceed 225 acre-feet, i.e. 90 acres x 2.5 AF/acre = 225 acre feet.

3. The maximum rate of diversion shall not exceed 1.6 cfs.

4. Water shall be diverted under this right only during periods when diverted flows are applied to a beneficial use on the specified place of use.

5. A measuring device and lockable controlling works of a type acceptable to the Department shall be installed on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

6. Use of water under this right is subject to the control of the watermaster of State Water District No. 65-B, Porter Creek.

APR 13 1990

Dated this 24th day of February, 1989.


L. GLEN SAXTON, HEARING OFFICER

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 24th day of February, 1989, true and correct copies of the foregoing PROPOSED MEMORANDUM DECISION AND ORDER and ORDER ISSUING PROPOSED MEMORANDUM DECISION, were mailed postage prepaid to:

Steve Dobson
P. O. Box 366
Horseshoe Bend, ID 83629

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

George Dovel
Rt. 1, Box 61
Horseshoe Bend, ID 83629

Jack Riddlemoser, Esq.
P. O. Box 373
Meridian, ID 83642


RITA L. FLECK
Secretary/Records Manager

MICROFILMED

JUL 26 1990

Route 1, Box 61
Horseshoe Bend, Idaho 83629
June 17, 1988

R. Keith Higginson, Director
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

RECEIVED

JUN 21 1988
Hand delivered
Department of Water Resources
Boise, Idaho

Re: Application 65-12842.

Dear Sir:

Concerning the above referenced application I hereby protest to the issuance of a permit for the following reasons:

1. No ditch or other conveyance exists which is capable of carrying that quantity of water over the two miles of unstable ground.
2. It is presently impossible to either measure or separate the water that has been applied illegally to those lands in the proposed application from Porter Creek water that is applied to lands with a valid right. This has already created a substantial problem for the watermaster.
3. For the abovementioned reasons permitting diversion of that additional Porter Creek water would result in substantial crop losses from both excessive seepage and by depriving my crops of irrigation during periods of critical water shortage just as it already has when the water was diverted and used there illegally.
4. The lands covered in the application are already efficiently irrigated with the number one priority Hill Creek right as well as overlapping Payette River rights. Although issuance of the permit might save some pumping costs at the expense of efficient application, granting approval merely to legalize an illegal practice is neither beneficial nor valid in my opinion.
5. Diversion of that quantity of water from Porter Creek under the existing circumstances would not be in the local public interest.

Thank you for your consideration of my comments. I herewith respectfully request the opportunity for a hearing in order to present additional testimony, evidence and witnesses.

Sincerely,

George Dovel

George Dovel

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JUL 26 1990

LEGAL NOTICES

NOTICE OF APPLICATION FOR WATER RIGHT

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

65-12842

DORSON, STEVE
OLIVER, TOM

P.O. BOX 366

HORSESHOE BEND, ID 83629

Source: PORTER CREEK

Tributary: PAYETTE RIVER

Diversion Pt: NWSE Sec 12 T 07N R 02E

Use: IRRIGATION (.840 CFS)

Date Filed: 5/16/1988

Ln: T07N R02E S02 Lot 7 (SESW) SWSE

S11 NWNE Lot 1 (NENW)

42.0 ACRES TOTAL

The permit(s) will be subject to all prior water rights. Permits must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before JUNE 20, 1988.

R. KIMM HOGGINSOM, Director

Published in the **IDAHO WORLD**, Idaho City, Idaho, June 1 & 8, 1988.

STATE OF IDAHO, }

County of Boise }

Maury Sholtz, being duly sworn, deposes and says: That he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy-eight weeks past previous to the first publication of this notice. Such notice was published in the issue beginning with

June 1, 1988 and ending with the issue of *June 8, 1988*.

Maury Sholtz

Subscribed and sworn to before me this *9th* day of *June* 1988.

Dominic West

Resides in *Idaho City, ID*

Commission Expires *1/13/94*

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JUL 16 1989

Department of Water Resources
Western Regional Office

February 26, 1993

STEVE DOBSON
TOM OLIVER
P.O. BOX 366
HORSESHOE BEND ID 83629

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 65-12842

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the WESTERN Regional Office in Boise at (208)334-2190.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

APR 26 1993

RECEIVED
FEB 18 1993

OFFICE USE ONLY

Amt. of Fee \$

Date

Receipt No

Receipt by

Department of Water Resources
Western Regional Office

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 65-12842 Telephone No. 208-793-2694
2. Name(s) of Permit Holder(s) Steve Dobson & Leo T. Oliver, dba O&D, a partnership
3. Mailing Address: P.O. Box 366, Horseshoe Bend, Id. 83629
4. Source of Water: Porter Creek

If GROUNDWATER, Well Driller's Name: _____ Date Drilled: _____

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

Irrigation 42 (No. of acres) Other _____

6. Total rate and/or volume for which proof is submitted .84 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? _____ Yes _____ No Installed? X Yes _____ No

OR

Flow Measurement Port: Required? _____ Yes _____ No Installed? _____ Yes _____ No

8. Fee Enclosed: \$ 100.00 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

As above
Name _____ Telephone No. _____

Address _____

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

2-18-93
Date

Steve Dobson - Partner
Signature (and title, if on behalf of a company or organization)

APR 9 1993

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 65-12842

Reviewed by Klg

Date 2/25/93

GENERAL CONSIDERATIONS

TYPES OF USE

Yes Name same as permit?
Yes Address same as permit?
Yes Proof timely received?
If not, complete calculation below.

irrigate - 42
Correct Uses? Yes

SOURCE OF WATER

✓ Surface water source
Ground water source

NA Drilling permit required?
Copy in the file? Drilling Permit No. _____
Amount paid for permit _____ Correct?
Well log in the file?

LICENSE EXAMINATION FEE

Yes Required?
100 Amount Submitted
Yes Correct?

MEASURING DEVICE

Yes Required?
Yes Installed?
NA Waiver requested?

PRIORITY CALCULATION

Date proof received NA
Date proof due _____ - _____
No. of days late _____ = _____
Priority Date _____ + _____
New Priority Date _____

DEFICIENCIES OR ACTION ITEMS

proof acceptable

DATA ENTRY

New Address _____

Proof Made 2/18/93
2/26/93 Klg



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

January 31, 1993

Steve Dobson
Tom Oliver
PO Box 266
Horseshoe Bend, ID 83629

PROOF DUE NOTICE

RE: Permit No. 65-12842

Dear Permit Holder:

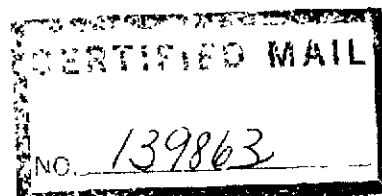
One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before April 1, 1993. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager
Enclosures



APR 26 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

January 28, 1993

Steve Dobson
Tom Oliver
PO Box 366
Horseshoe Bend, ID 83629

Re: 65-12842

Dear Permit Holder:

Your file has been referred to me because of the protest filed and the litigation that has taken place with this permit. On April 1, 1992, the Idaho Supreme Court upheld the Department's decision issued in connection with the permit. Therefore, the permit is approved and valid.

However, because of the litigation, the original proof due date of May 1, 1990 has passed. Therefore, the Department has issued an order extending your proof due date to April 1, 1993. A copy of that order is enclosed.

You will receive notification from the Department 60 days in advance of the proof due date of the proper steps that need to be taken.

If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

Enclosure

C: IDWR - Regional Office

RECEIVED

JAN 26 1993

June 8, 1992

STEVE DOBSON
TOM OLIVER
P.O. BOX 366
HORSESHOE BEND ID 83629

RE: Water Right No. 65-12842

Dear Water Right Holder(s):

On May 19, 1992, the department sent you a letter advising that you might be required to temporarily cease diverting water from the Snake River or its tributaries if the established minimum stream flow of the Snake River in the amount of 4,750 cubic feet per second measured near Weiser is not satisfied or likely will not be satisfied.

The flow of the Snake River at Weiser is now less than 4,750 cfs. You are, therefore, directed to immediately cease diverting water under the above referenced water right and to not resume use until authorized by the department.

Past flow records show that the duration of seasonal low flow periods typically last several days to a week. Since your use of water is extremely important to you and since mail notification includes a delay associated with mail delivery time, feel free to call the toll-free telephone number 1-800-451-4129 to determine when you are again authorized to divert and use water under your water right. Please use this phone number only in connection with resumption of use.

You need to be aware that Section 42-351, Idaho Code, provides for penalties of up to \$100 per day for unauthorized diversion.

Thank you for your cooperation in this matter. Please feel free to contact L. Glen Saxton (phone: 208-327-7955) or Gary Spackman (phone: 208-327-7946) of my staff if you have questions.

Sincerely,

R. KEITH HIGGINSON
Director

100 393

June 12, 1992

STEVE DOBSON
TOM OLIVER
P.O. BOX 366
HORSESHOE BEND ID 83629

RE: Water Right No. 65-12842

Dear Water Right Holder(s):

On June 8, 1992, the department sent you a letter which directed you to immediately cease diverting water under the above referenced water right, since the minimum stream flow of the Snake River in the amount of 4,750 cubic feet per second (cfs) measured near Weiser was not being satisfied.

The flow of the Snake River at Weiser is now above 4,750 cfs. You are, therefore, authorized to again divert water under your water right. If the minimum stream flow is not met later this year, however, the department will again notify you to temporarily cease diversion.

Thank you for your cooperation in this matter. Please feel free to contact L. Glen Saxton (phone: 208-327-7955) or Gary Spackman (phone: 208-327-7946) of my staff if you have questions.

Sincerely,

R. KEITH HIGGINSON
Director

APR 26 1993

May 19, 1992

STEVE DOBSON
P.O. BOX 366
HORSESHOE BEND ID 83629

RE: Water Right No. 65-12842

Dear Water Right Holder(s):

Department water right records show that you divert water from the Snake River or its tributaries under a water right that has a priority date later than December 29, 1976. This is the priority of the established minimum stream flow of the Snake River at the Weiser Gage (Weiser) in the amount of 4,750 cubic feet per second.

Because of the continuing drought conditions in the Snake River Basin, department hydrologists project that during 1992, there could be periods when the required minimum flow will not be satisfied due to low flows of the Snake River. The department urges you to not divert at a higher rate than authorized by your water right and to not use your right in any manner different than authorized. In addition, when the minimum flow will not be satisfied or is not being satisfied, you are required to cease diverting water under your water right, because your right is of later priority than the minimum stream flow at Weiser.

If the department determines the minimum flow will not be satisfied, the department will advise you and will provide as much lead time as possible in requiring that you temporarily cease your diversion of water. The greatest likelihood for this to occur is during a period from mid-June to late June.

While the department expects good cooperation from junior water right holders, water users should be aware that Section 42-352, Idaho Code, provides for penalties of up to \$100 per day for unauthorized diversions of water.

The department has contacted both the Idaho Power Company and the U.S. Bureau of Reclamation with respect to the timing of storage releases from upstream reservoirs for flow enhancement purposes. This type of coordination could minimize the impact on

APR 26 1993

existing water users and reduce the need to curtail diversions.

The department has scheduled public information meetings relative to this potential regulation as follows:

Mountain Home - June 4, 1992 - 10:00 a.m. - gymnasium at
North Elementary School, 290 E. 12th N.

Caldwell - June 4, 1992 - 7:00 p.m. - Ballroom in the
Student Union Building, Albertson College of Idaho,
2112 Cleveland

If you have questions concerning this letter or wish to provide the name of a different contact person or address to receive department correspondence, please contact the department.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

LGS:klg

JUL 2 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 2, 1989

Richard B. Eismann
Attorney at Law
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416

Re: Dobson v. Dovel, Ada County Case No. 92691 (appeal of
order granting Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-3104)

Dear Mr. Eismann:

Northwest Transcripts Inc. has completed the transcription of the hearing before the Department in the above-referenced matter now on appeal before the Ada County district court.

The transcript is 166 pages long rather than the 100 pages estimated. The error in the estimate was apparently due to the recorder having been operated at a slow setting which increased tape capacity. The total cost to the appellant for preparation of the transcript at the rate of \$2.00 per page is thus \$332.00.

Please remit a check in the amount of \$332.00 payable to the Idaho Department of Water Resources for preparation of the transcript. Please send the check to the attention of Jodi Schultz.

After the Department receives payment for the transcript, a notice of lodging of the transcript will be sent notifying the parties that they may pick up or be sent a copy of the transcript. The parties will have 21 days from the date of the notice of lodging to file any objections to the transcript pursuant to I.R.C.P. 83(o).

Please give me a call if you wish to discuss any of these matters.

Sincerely,

PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

RECEIVED

JUL 26 1989

cc: Jack Riddlemoser, Esq.



65-12812 65-13115
Glen WJ

State Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 18, 1989

JUL 20 1989

Mr. George Dovel
Route 1, Box 61
Horseshoe Bend, Id. 83629

Department of Water Resources

Re: Porter Creek Water Distribution

Dear Mr. Dovel:

In response to your July 4, 1989 letter, Mr. Steve Lester of the Western Regional Office made field investigation trips to Porter Creek on July 6, 12, and 14, 1989. His visit of June 28, 1989 was also useful to respond to various issues. The Water Master, Zippy Pattee, is aware that delivery of Porter Creek water must proceed according to priority dates, decreed flows, and proper places of use as well as lockable headgates and suitable measuring devices. The Water Master was appointed by Certificate of Appointment on June 29, 1989.

The main points of your letter included accurate delivery to proper fields, lockable and controllable valves to prevent intermingling of Porter Creek and other waters, identifying senior and junior right fields, an aerial photo to assist the Water Master in delivery of water, wasting of water through ditch problems, and wasting of water at or near the Oliver-Dobson dam. The items are addressed below.

1) Accurate delivery to proper fields can be achieved by adequate and controllable diversions, suitable measuring devices, and a map outlining the various water rights to be delivered by the Water Master. The diversion dams, lockable headgates, and measuring devices for the Double Diamond and Oliver-Dobson rights are properly in place and functional. For example, on July 14 only a few inches were flowing past the Oliver-Dobson dam while their diversion measured 0.99 cfs or 49.5 inches. This dam and diversion, and the Double Diamond dam and diversion by inference as an upstream diversion, were functioning properly. An orthophotoquad map delineating the places of use for the water rights is being prepared by the Western Region staff.

2) Lockable valves to prevent co-mingling of Porter Creek and other waters were in place and under the Water Master's control as of July 14 for the Double Diamond and Oliver-Dobson fields. The valve in the NW1/4 SE1/4 Sec. 26 is locked to prevent Porter Creek and other waters from co-mingling on Double Diamond fields. Similar control was established by the same day for the Oliver-Dobson lands in Sec. 2 and 11. Three controllable valves are located in Sec. 11 in the NE1/4 NE1/4, NW1/4 NE1/4, and SE1/4 NE1/4. The condition concerning such valves, discussed in my July 14, 1988 letter, has been met.

JUL 18 1990

page 2
Letter to G. Dovel

3) Areas where junior and senior rights meet are of concern and must be identifiable by the Water Master. The Double Diamond and Oliver-Dobson lands fall within this category. The Double Diamond fields in the S1/2 NE1/4, S. 12 were marked with yellow flagging by Sr. Agent Lester on July 14. The senior right lays west of the flagged line, and the junior right is to be used east of the line. In S. 23, the senior water is for the SW1/4 SE1/4 (Lot 5), while the junior right applies to the NE1/4 SE1/4 (Lot 4). Again, yellow flagging on both sides of the county road mark the area close to the point where the tracts meet. Additional Double Diamond fields are in S. 26. The junior right irrigates acres east of the county road in the NE1/4 NE1/4, while the senior right is applied to land west of the road. The road serves as an adequate boundary and flagging is not required. Yellow flagging was used to delineate the junior water right used in the NE 1/4 SW1/4 (Lot 3) just west of the in-line lockable valve in the NW1/4 SE1/4. The flags were installed on July 14.

For the Oliver-Dobson acres in Sec. 2 and 11, a natural feature serves to separate the senior and junior rights. A bluff runs north and south through the west one-half of the SW1/4 SE1/4, S. 2 and the NW1/4 NE1/4, S. 11. Senior rights are to be used for the higher ground east of the bluff. The lower land west of the bluff will receive junior water (Permit 65-12842). No flagging is necessary at this time because the water supply prevents delivery of the 1988 Permit. However, at least the southern border of the junior field should be flagged prior to 1990 irrigation. The field delineation condition of my July 14, 1988 letter is satisfied for the remainder of this irrigation season.

4) The wasting of water through ditch problems such as animal damage and other miscellaneous causes does not fall within this department's jurisdiction and is therefore not addressed. These concerns are civil matters between the involved parties. However, please note that condition number two of Permit 65-12842 as outlined in the April 28, 1989 Order of Approval discusses the Oliver-Dobson ditch capacity. On June 28, 1989 Sr. Agent Lester and the Water Master released between 2.68 and 2.74 cfs (up to 137") into the ditch. The flow was slightly more than the sum of the senior right 65-03104 (80"), the junior right 65-12842 (42"), and Roger Miller's recent Application for Permit 65-13075 (12") in which he proposes using the ditch as the vehicle for Porter Creek water.

The ditch was walked and examined for overflow and problem sites. The flow, which was 12" more than the combined Oliver-Dobson rights, was handled by the ditch and culverts with no problems except for a minor overflow of several inches of water near the sharp turn and drop in the ditch in the SE1/4 NW1/4 - NE1/4 SW1/4 boundary in S. 12. The Miller water right, if approved, would be removed from the ditch before this minor problem site. For added insurance, the permit owners were required to correct the ditch corner drop area with specific instructions. The corrections were made and inspected on July 14 and found to be adequate. Permit 65-12842 Conditions of Approval are now satisfied.

page 3
Letter to G. Dovel

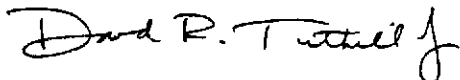
Some additional items are of interest and concern. First, as you are now aware, no private locks are permitted on diversions under the Water Master's control. The Water Master has sole and complete control of deliverable rights.

Second, the minor amounts of water provided to several parties for yard and/or fire fighting uses are delivered by the Water Master at the approval of the senior right owners. This courtesy use is provided in the interests of the community. It would be inequitable for one party to receive the courtesy while another was denied the favor.

Third, your concerns about the diversion of senior right 65-03104 but the possible wasting of some of the water were investigated on July 14. The investigation revealed that an additional control is required at the diversion box in the SE1/4 NE1/4, S. 11. The owner was informed in the field that a temporary control was to be immediately installed and a permanent control will be required as soon as the water conditions allow construction to proceed. The Water Master was advised of the situation on the same day. She was instructed to deliver water as long as the temporary control was in place and working. The Water Master has been instructed to cut off any diversion where water is obviously wasted. In such situations, the water will then be available for junior appropriators.

I hope this letter addresses your points and contributes to better water use in the Water District. This department has committed considerable resources to the district and hopes that all of the water users will benefit.

Sincerely,



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

DRT:s1
CC: Water Master

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

Receipt No: C008394

Date: 07/19/89
Time: 15:22:15

Received

From: EISMANN, RICHARD B.

	Type of Payment	Program Acct Class	Amount
COPIES	6-21-89	0610199 1238 6517	\$20.00
Total			\$20.00

CHECK 28378

Idaho Department of Water Resources

Region: STATE

Signature: C. Hong

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JUL 26 1990

PAYEE: DETACH THIS STATEMENT BEFORE DEPOSITING.

RICHARD B. EISMANN - Attorney at Law - Nampa, Idaho 83651

Dovel Re: Water Litigation

Copies of tapes from protest hearing----- \$ 20.00

0561 2 27 70p



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 14, 1989

Richard B. Eismann
Attorney at Law
3016 Caldwell Blvd.
Nampa, ID 83651-6416

Dear Mr. Eismann:

RE: Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-03104 in
the name of Steve Dobson and Tom Oliver protested by George Dovel

As you requested, enclosed is a copy of each of the hearing tapes for
the above-referenced matter. Please remit \$20 to cover copying costs.

Also, I have made arrangements to have a transcript prepared at a cost
of \$2.25 a page. We estimate the total number of pages to be 100. The
turn-around time should be about two weeks.

If I can be of further assistance, please feel free to contact me.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

c: Acct. Section

MICROFILMED

JUL 26 1990



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

COPY 78

July 14, 1989

Richard B. Eismann
Attorney at Law
3016 Caldwell Blvd.
Nampa, ID 83651-6416

Dear Mr. Eismann:

RE: Application for Permit No. 65-12842 and
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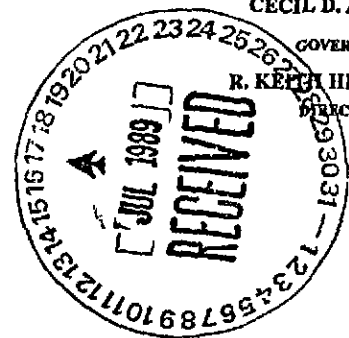
If I can be of further assistance, please feel free to contact me.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

c: Acct. Section



JUL 26 1990

July 14, 1989

Northwest Transcripts
P. O. Box 890
Nampa, ID 83653-0890

Dear Ladies:

RE: Transcript of Hearing for Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-03104 in the name of
Steve Dobson and Tom Oliver protested by George Dovel

Enclosed are three tapes the department wishes to have transcribed. It
is my understanding that these can be transcribed in two weeks time for
a cost of \$2.25 a page with one original and one copy supplied.

Also enclosed is a list of speakers' names.

If you have any questions concerning this matter, please feel free to
contact me. Thank you in advance.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

LIST OF SPEAKERS

RE: Transcript of Hearing for Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-03104 in the name of
Steve Dobson and Tom Oliver protested by George Dovel

L. Glen Saxton, Hearing Officer
Jack Riddlemoser
Steve Dobson
George Dovel
Alfred Wolfgram
David Tuthill
Everett K. (Pat) Allen
William Harold

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JUL 26 1990

July 14, 1989

Richard B. Eismann
Attorney at Law
3016 Caldwell Blvd.
Nampa, ID 83651-6416

Dear Mr. Eismann:

RE: Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-03104 in
the name of Steve Dobson and Tom Oliver protested by George Dovel

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turn-around time should be about two weeks.

If I can be of further assistance, please feel free to contact me.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

c: Acct. Section

RECEIVED
JUL 18 1989

Telephone
(208 467-3100)

RICHARD B. EISMANN
ATTORNEY AT LAW
3016 CALDWELL BLVD
NAMPA, IDAHO 83651-6416

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JUL 03 1989

June 30, 1989

Department of Water Resources

GARY SPACKMAN, MANAGER
WATER RIGHT PERMITS SECTION
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD, STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-03104
In the name of Steve Dobson and Tom Oliver protested
by George Dovel

Dear Mr. Spackman:

I am in receipt of your letter of June 22, 1989, which enclosed an Order Denying Petition for Rehearing in the above matters.

Please be advised that my client, George Dovel, plans to appeal the Order Denying Petition for Rehearing to district court.

We request that a transcript be completed as soon as possible of the protest hearing held on January 10, 1989, in this matter. My secretary, Viki, has also requested of your secretary, Rita, that your office copy the tapes from this hearing so that we may have our own copies thereof. We would like to have copies of the tapes just as soon as your office might get copies made of them. We will be glad to pay the necessary fees for copying the tapes and of course will pay the fee for the transcript.

- If you should have any questions, please contact me or my secretary, Viki.

Very truly yours,

DICTATED BY MR. EISMANN AND

MAILED WITHOUT SIGNATURE IN

RECEIVED TO AVOID DELAY.

RBE/vn/8

CLT: George Dovel

June 21, 1989

REC-1000000
JUN 26 1989

Department of Water Resources

State of Idaho
Water Allocation Bureau
1301 N. Orchard Street
State House Mall
Boise, ID 83720

Attn: Mr. L. Glen Saxton, Chief

Dear Mr. Saxton:

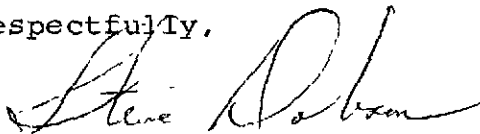
In your letter to Mr. Dovel of June 2, 1989, you advised that Mr. Oliver and myself are required to submit plans and specifications of proposed changes to our ditch in order for the Dept. of Water Resources to authorize diversion of the water approved in Permit #65-12842.

In our opinion, existing diversion facilities and ditch are suitable for the delivery of this additional water at this time.

We respectfully request the Department examine our diversion and delivery facilities to see if they meet your requirements.

My home phone is 208-793-2694. Please advise me of your decision in this matter, as soon as possible.

Respectfully,



Steve Dobson
Oliver and Dobson

cc: Western Region Office, Dept. of Water Resources
Mr. David Tuthill

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JUL 26 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KETH HIGGINSON

DIRECTOR

June 22, 1989

Richard B. Eismann
3016 Caldwell Boulevard
Nampa, ID 83651-6416

Dear Mr. Eismann:

Re: Application for Permit No. 65-12842 and
Application for Transfer of Water Right No. 65-03104
In the name of Steve Dobson & Tom Oliver protested by George Dovel

Enclosed is an Order Denying Petition for Rehearing. The order addresses a request for rehearing filed by the protestant on May 18, 1989.

Please be advised that if your client wishes to further contest the decision of the Department, he must petition the district court of the State of Idaho for judicial review within thirty (30) days of the date this order is served.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:rf

Enclosure

c: George Dovel
Steve Dobson
Tom Oliver
Jack Riddlemoser, Esq.

RECEIVED

JUL 1 1989



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - [REDACTED]

(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

June 2, 1989

George Dovel
Rt. 1, Box 61
Horseshoe Bend, ID 83629

RE: LETTER DATED MAY 24, 1989

Dear Mr. Dovel:

On June 1, 1989, Steve Lester of the department's Western Regional office met with Zippy Pattee, the Porter Creek watermaster. The field review was in response to your letter dated May 24, 1989 and was for the purpose of determining compliance or non-compliance with department permits and to look for obvious waste of water. Since alleged damage associated with failure to maintain a ditch is a civil matter outside the jurisdiction of the department and the watermaster, the alleged damage was not assessed.

The diversion into the Tom Oliver-Steve Dobson (Oliver-Dobson) ditch was inspected and was found to have a suitable measuring device and a lockable headgate. Flow into the Oliver-Dobson ditch was measured to be approximately 1.6 cfs which is the rate of diversion for decreed right 65-3104. There did not appear to be a problem where the ditch crossed the county road or a waste of the water.

The department's approval of Permit 65-12842, required the submittal of plans and specifications of proposed changes to the Oliver-Dobson ditch before the 0.84 cfs authorized by the permit may be diverted. The department has not yet received those plans and specifications, so the diversion of the 0.84 cfs in addition to the 1.6 cfs under right 65-3104 is not yet authorized. By copy of this letter, the watermaster, Oliver and Dobson will be advised of this matter.

Also by copy of this letter, Oliver and Dobson are reminded to use their water rights only on the land to which it is appurtenant. Failure to comply with this basic principle of a water right will result in appropriate action by the department.

The department does not plan to utilize cease and desist orders which you requested, since the department has authority to instruct the watermaster in the proper delivery of the water rights. Water management through a watermaster is more expedient and efficient than utilizing cease and desist orders.

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JUL 26 1990



George Dovel

-2-

June 2, 1989

The department is proceeding with the appointment of the water-master in order to be responsive when the need for water distribution occurs on Porter Creek.

Sincerely,

L. Glen Saxton
L. GLEN SAXTON, Chief
Water Allocation Bureau

c: W. Region
Zippy Pattee
Tom Oliver
Steve Dobson
W.D. 65-B File

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JUL 2 5 1990

ORIGINAL

Richard B. Eismann*
Jack D. Swafford
Attorneys at Law
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
vn/8/REE

RECEIVED
- MAY 18 1989

Department of Water Resources

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

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 65-12842 AND
APPLICATION FOR TRANSFER OF
WATER RIGHT NO. 65-03104 -
STEVE DOBSON & TOM OLIVER.

PETITION FOR REHEARING
BY PROTESTANT, GEORGE DOVEL

DEFINITIONS: When used in this petition the terms following
shall have the meanings following:

--- "applicants" mean Steve Dobson and/ (Leo) Tom Oliver.

--- "protestant" means George Dovel.

--- "water application" means application for permit no.
65-12842.

--- "transfer application" means application for transfer of

water right no. 65-03104.

- "subject water right" means the water right no. 65-03104.
- "Department" means the Department of Water Resources of the State of Idaho.
- "order" means the Order Addressing Exceptions to Proposed Memorandum Decision and Order dated April 28, 1989.
- "memorandum decision" means the Memorandum Decision and Order Approving Application for Permit No. 65-12842 and Approving in Part Application for Transfer of Water Right No. 65-03104 dated April 28, 1989.

PETITION FOR REHEARING: Request for a rehearing before the Department is made by the protestant on the grounds and for the reasons following:

1. The order contains deficiencies in addressing the EXCEPTIONS:

a. The order erroneously fails to address paragraphs (c), (d), (e) and (f) of EXCEPTION 1.

b. The order erroneously fails to address paragraphs (b), (c) and (d) of EXCEPTION 2.

c. The order erroneously states that "the other exceptions and parts thereof (paragraphs (a), (b) and (c) of EXCEPTION 3) are without merit. . . ." which is incorrect.

d. The order erroneously fails to address EXCEPTION 4.

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JUL 26 1990

e. The order erroneously fails to address EXCEPTION 5.

f. The order erroneously fails to address EXCEPTION 6.

2. Procedural deficiencies which occurred at the hearing include the following:

a. The protestant asked the hearing officer if the protestant would be permitted to question the applicants' witnesses. The hearing officer advised the protestant that the protestant would only be allowed to cross-examine applicants' witnesses based on the direct testimony of the applicants' witnesses.

b. The protestant was not allowed to present additional evidence by rebuttal as the hearing officer explained the protestant would be able to so do.

c. Evidence as to the watermaster's ability to distribute the water is a critical issue with regard to approval of either the water application or the transfer application as approval of these applications would make distribution of the water impossible.

3. Newly discovered evidence does exist with regard to the water application and the transfer application:

a. The fields proposed to be irrigated by Porter Creek in the transfer application which are alleged by the applicants to total ninety (90) acres actually total more acres, and this constitutes an enlargement in use of the original subject water right which evidence consists of the SCS survey and the testimony of witnesses.

JUL 22 1990

b. The fields proposed to be irrigated by Porter Creek water in the water application far exceed the forty-two (42) acres alleged in the water application.

c. Protestant will introduce witnesses who will impeach the testimony of the applicants' witnesses that eleven (11) acres on Lot 1 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and two (2) acres on the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, Township 7 North, Range 2 East of the Boise Meridian have been irrigated with Porter Creek water within the past five (5) years.

d. Protestant will introduce evidence and testimony proving that the applicants and their predecessor have not irrigated the entire ninety (90) acres with Porter Creek water within the past five (5) years as claimed in their testimony.

e. Potential witnesses include: Herb Klug and/or Russell Manwaring of the SCS; George Dovel; Jim Dovel; Dan Dovel; Forrest Luthy of the Idaho Department of Water Resources; the watermaster for District 65B; David Tuthill, Western Region Office Manager for the Idaho Department of Water Resources; Steve Dobson; and Alfred Wolfram.

f. Other evidence would include but would not be limited to ASCS aerial photographs, records and watermaster records.

4. Paragraphs 11 and 14 on page 8 of the memorandum decision conflict with paragraphs a and b under the topic of "Newly Discovered Evidence" on page 2 of the order:

a. This proposed project is not viable and will not reduce operating costs.

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JUL 26 1990

b. The cost of distributing water will raise dramatically; therefore, the transfer application and the water application would not be in the local public interest. Idaho Code § 42-203A(5) states in part:

"In all applications whether protested or not protested, where the proposed use is such . . . (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. . . ."

The criterion for evaluation of the local public interest found in Idaho Code § 42-203A(5) is defined by Water Appropriation Rule 5,1,5. to include:

[T]he effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both long and short term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains; the effect the project will have on recreation, fish and wildlife resources in the local public area affected by the proposed use; and compliance with the application air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

The cost to protestant in producing a crop will substantially increase, and the cost to all water users for delivery of water will increase should the water application and the transfer application be granted permanently. These increases will definitely "conflict with the local public interest" which is contrary to Idaho Code § 42-203A, and the

1990

department failed to fully evaluate the local public interest as set forth in Water Appropriation Rule 5,1,5.

5. Idaho Code § 42-222 provides in part:

"The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right" (emphasis added).

Testimony and evidence will show that approval of the transfer application will change the original subject water right which is contrary to Idaho Code § 42-222.

6. The protestant respectfully requests that the department grant a rehearing in this matter.

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this day mailed, United States Mail, postage prepaid, to each of the following: STEVE DOBSON, Post Office Box 366, Horseshoe Bend, Idaho 83629; (LEO) TOM OLIVER, 3357 North Osprey Drive, Eagle, Idaho 83616; and JOHN C. (JACK) RIDDLEMOSE, ATTORNEY AT LAW, Post Office Box 373, Meridian, Idaho 83642.

DATED: MAY 17 1989

SIGNED: 
Richard B. Eismann
Counsel for the protestant

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JUL 26 1990

RICHARD B. EISMANN -- ATTORNEY AT LAW

SIGNED:

George Dovel

George Dovel, the protestant

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1990

● Review of Tape
65-3104 and 65-12842

3-1-87

Tape 1.

387

- Riddlemose motion to strike, objection of Protestant.

397

- Steve Dobson direct testimony

1970

- End of Dobson direct

1978

- X of Dobson by Dovel

2512

- Ref to dir test, by hearing officer

3889

- Riddlemose objection - out in left field.

4 4026

- Hearing officer advises Dovel that certain info (quacks) can be brought out in direct testimony.

4042

- Hearing officer asks that X-examination be related directly to Dobson testimony.

4051

- ? by Dovel. "Will I be given the opportunity for direct type of direct the significance of the --- is brought my testimony?"

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JUL 23 1990

★ 4062

confusing 2

4319

*

4334

4630

4700

5026

5089

*

5237

5246

- Further direct of procedure by hearing officer.
- We allow direct testimony cross-examination.
- We will not recall witnesses.
- Hearing officer suggests that we put certain info into the record within the parameters of his own direct testimony.
- Hearing officer again asks David to limit questions to the set of issues related to his direct testimony.
- objection by Adkins.
- off record for moment
- Hearing officer - Antiqua + slope David from Schuyler (i.e. how w.m. distribution).
- Hearing officer advises David that question of whether can be described in David direct presentation.
- David has no more 2 of witnesses.
- Add cross of Doherty by David.

Microfilm

5340

- Riddemose objection & statement on forfeiture.

5550

- Hearing officer tells Dovel "It is possible that some other witness may know something that could be called"

*

5755

- Riddemose objection - collateral issue - Hill Co

- Hearing officer concurs with Hill Co is not a point of testimony at this point.

5849

- Riddemose objection to Dovel cross

5889

- "Mr. Dovel, will you rebut your x-examination of Mr. Dobson's direct testimony."

5903

- Redirect of Dobson.

* 5930

- Recross ^{of Dobson} provided to Dovel by hearing officer.

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JUL 25 1990

- 6030 Direct of Alfred Wolfgarm.
- 6215 Dovel cross-examination of Wolfgarm
- 6550 - Redirect of Wolfgarm
- 668.0 - Recross^{of Wolfgarm} allowed by Hearing Officer
- 686.0 - ? of Wolfgarm by Hearing Officer.
- 723. - ? of Wolfgarm by Tuthill
- 740.7 - Direct of Pat Allen
- 770 - X of Allen by Dovel
- 810. - Direct of Mr. Harold.
- 889 - X of Harold by Dovel.
- 892 - Change Tape

Tape 2.

- 23.3 Redirect - Harold
- 27.0 Recross of Harold by Dovel.
- 52.6 Recess request by Riddlemoss
- 53.4 applicants rest their case.
- 54.5 Swear in Dovel.
- * 624 End of Dovel direct testimony
advises he will present ^{comments} in summation
- 625 Cross of Dovel by Riddlemoss.

- 72.4 End X of Doval by Riddlemoser
- * 724.7 Opportunity for Doval redirect
- 730.7 Opportunity for Rebuttal ^{testimony} discussion
- 742.7 actual redirect by Doval
- 760.8 no add'l redirect or re-cross
- * 770.5 Rebuttal testimony discussion
Riddlemoser - offered rebuttal testimony
- 775.0 ~~Rebuttal~~ off record.
- 777.7 Rebuttal testimony offered to Doval
- 779.7
- ~~797.5~~
810. - Summation by Riddlemoser

May 1, 1989

Steve Dobson
P. O. Box 366
Horseshoe Bend, ID 83629

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

Gentlemen:

Re: Application for Permit No. 65-12842
Application for Transfer of Water Right No. 65-3104

Enclosed is a copy of the approved Application for Permit No. 65-12842 and Application for Transfer of Water Right No. 65-3104 along with a copy of the Memorandum Decision and Order and Order Addressing Exceptions. Please note the conditions of approval as set forth in the Memorandum Decision and Order.

Enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit. Also enclosed is a Proof of Beneficial Use form, which should be submitted when the project is complete.

Be sure to note the special conditions requiring you to install and maintain a measuring device and lockable controlling works. Enclosed is a list of measuring device options.

Any person who does not agree with the decision of the department may request a rehearing before the Director within 20 days, or may appeal directly to the district court within 30 days of the date the decision is mailed.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

LGS:rf

Enclosures

c: George Dovel
Jack Riddlemoser, Esq.

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JUL 26 1990

MEMORANDUM

To: Files 65-3104 and 65-12842

From: L. Glen Saxton *LS*

RE: COMMENT ON EXCEPTIONS FILED BY PROTESTANT ON MARCH 13, 1989

Date: March 16, 1989

- The exceptions filed on behalf of the protestant by Richard B. Eisman were timely filed. Time should be allowed for the applicant to file an answer.

- EXCEPTION 1 - There apparently is some confusion relative to the significance of the "cut-off" date (October 18, 1977) which is the last date that adjudication claims would be accepted in the Payette River adjudication.

- Comment a) and b) appears to apply significance to the cut-off date inappropriately.

** Suggested change: Delete the last sentence of Finding 16 relative to the cut off date for filing claims, since it adds nothing to the decision and apparently is confusing the protestant and his attorney.

- Comment c) - The right as decreed by the court in 1986 is the right to be considered by the department. Even if the court has decreed a right not in agreement with actual use, the department must still look to the decree.

- Comment d) and e) - Dept must look to the right as decreed in 1986.

- Comment f) - Is a statement of applicant's position.

- EXCEPTION 2 -

- Comment a) - Is not correct and basically describes what the protestant would like the hearing officer's position to be. The two (2) conclusions cited have no relevance to the date adjudication claims would no longer be accepted in the Payette River adjudication. (Again, there is misunderstanding or misuse of the significance of the October 18, 1977 date).

** Suggested change: Change Finding 15 to state that the 6 acres have not been irrigated for more than 5 years rather

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than reference the October 18, 1977 date.

- Comment b) - Protestant apparently would like the department to change the court's 1986 decree. This is not appropriate.
- Comment c) - Is a statement of protestant's position.
- Comment d) - Inaccurate conclusion by protestant - no comment is appropriate.

Exception 3 -

Comment a), b) - ? on applicability.

Comment c) - Brings up information not presented at the hearing. Apparently objects to the place of use being described only to the nearest 40 acre tract.

Comment d) - The watermaster could be called to duty earlier.

** Suggested change - Change concl. 13 to read "Existing water rights on Porter Creek can be protected ..."

EXCEPTION 4 -

Comment a), b) and c) - brings up information not presented in the hearing.

The protestant did not show that the project was infeasible.

EXCEPTION 5 - The applications which are a part of the record identify the acreages to be irrigated within each 40 acre tract.

PROCEDURAL DEFICIENCIES

- a) The statement is not true. The protestant had the opportunity to call the witnesses of his choice. The hearing officer DID restrict cross-examination to information previously presented by the applicants. The problem was that the protestant repeatedly attempted to provide his own direct testimony during cross-examination of the applicant's witnesses and to question the witnesses on matters not brought out in the witnesses' direct testimony.

The hearing officer did not disqualify any witnesses of the protestant. The protestant had the opportunity to call witnesses of his choosing but did not for reasons unknown to the hearing officer.

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- b) The protestant was not allowed rebuttal cross-examination since the applicants did not present any rebuttal direct testimony.
- c) ? on this comment. The protestant may be referring to some heresay testimony (i.e. direct testimony of the protestant relative to water distribution in 1903), which was not allowed into the record by the hearing officer. The submittal of exhibits in connection with related happenings in 1903 (copies of letters, etc.) was not precluded by the hearing officer.

NEWLY DISCOVERED EVIDENCE

- a) The existance or non-existance of a pipeline is irrelevant to the consideration of the applications. Most construction actually takes place after applications are considered and approved.
- b) Comment not significant. The approval by the department in most cases, including this one, does not restrict or limit the method of application of irrigation water.
- c) The comment has no significance with respect to this matter. The Payette River and rights from it are not directly relevant to the applications considered in the hearing.

NOTE: While the exceptions are captioned with language including "Request For Oral Argument", such a request was not made in the text of the exceptions.

RECOMMENDATION:

1. Wait for the applicant's answer to the exceptions.
2. Reject the exceptions, since they are not persuasive of the protestant's position.
3. Make minor changes to Finding 15 and 16 and Conclusion 13 as described above.
4. Show a revised place of use for the application for transfer in the final decision as determined from review of the applicant's letter of March 9, 1989 any any response to it by the protestant. The department randomly described the place of use in reducing the 96 acres to 90 acres.

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MAR 13 1989

Department of Water Resources

Richard B. Eismann*
Jack D. Swafford
Attorneys at Law
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 65-12842 AND)
APPLICATION FOR TRANSFER OF)
WATER RIGHT NO. 65-03104 -)
STEVE DOBSON & TOM OLIVER.)

EXCEPTIONS BY GEORGE DOVEL
TO
ORDER ISSUING PROPOSED MEMORANDUM DECISION
AND
REQUEST FOR ORAL ARGUMENT

DEFINITIONS: When used in these exceptions the terms
following shall have the meanings following:

--- "applicants" means Steve Dobson and/or Tom Oliver.

--- "protestant" means George Dovel.

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EXCEPTIONS TO ORDER ISSUING PROPOSED
MEMORANDUM DECISION - REQUEST FOR
ORAL ARGUMENT - PAGE 1

RICHARD B. EISMANN - ATTORNEY AT LAW

- "water application" means application for permit no. 65-12842.
- "transfer application" means application for transfer of water right no. 65-03104.
- "subject water right" means the water right no. 65-03104.
- "Department" means the Department of Water Resources of the State of Idaho.

EXCEPTIONS: The protestant hereby makes each exception to the order issuing proposed memorandum decision following:

1. The water right is appurtenant to the specific acres irrigated on the cutoff date of October 18, 1977. The hearing officer states:

(Finding of Fact)

18. Pursuant to the decree of water rights in the Payette River Drainage Basin, the consumptive irrigation requirement in the Porter Creek vicinity is 2.5 acre-feet per acre per year.

(Finding of Fact)

20. Testimony from both the applicant and protestant indicated the full rate of 1.6 cfs of water has been diverted by the applicants when the water has been available.

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(Finding of Fact)

21. The duty of water in the Payette River Drainage is generally based on not more than 0.02 cfs per acre with consideration for reasonable losses incurred.

(Conclusion of Law)

8. To insure that an enlargement of water right No. 65-03104 does not occur, neither the rate of diversion, nor the total consumptive use may be increased by a transfer.

(Conclusion of Law)

16. The consumptive use portion of right 65-03104 appurtenant to 6 acres in the NW1/4SW1/4, Sec. 12, Twp. 7N, Rge. 2E, B.M. has been forfeited through non-use, since the land has not been irrigated since October 18, 1977. The magnitude of the rate of diversion of 1.6 cfs for the right, however, has not been diminished, since it has been routinely diverted and does not exceed the general duty of water standard of 0.02 cfs per acre.

(Conclusion of Law)

17. The water right will not be enlarged if delivery and use of water are not in connection with more acres than formerly irrigated by the right.

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The protestant excepts thereto because such findings and conclusions are incomplete for the reasons following:

(a) Water rights are appurtenant to and can only be used on the specific acres irrigated on the cut off date of October 18, 1987. ^{77?}

(b) The diversion of the full 1.6 cfs of water since October 18, 1977, does not establish a legal right to use water on acres on which the water right was not used at the cut off date of October 18, 1977.

(c) The 96 acre decreed water right 65-03104 resulted from an erroneous affidavit submitted by the former owners, the Wolfgrams, and is in direct conflict with (a) the field notes included on the Department's 1986 aerial photograph; (b) the original acreage notes contained on the Payette adjudication work sheet; and (c) the Applicants' Exhibit No. 1, all of which are among the information to be considered by the Department in arriving at the decision in this matter.

(d) All of the relevant records reflect that the subject water right was appurtenant to lands lying south of Cook Gulch.

(e) There were only 67.4 acres of farm lands lying south of the Cook Gulch which were identified as being irrigated since the cut off date of October 18, 1977.

(f) As to the subject water right, the appropriate rate of diversion is therefore limited to 67.4 acres at the rate of 2/100 cfs per acre which equals 1.348 (rounded to 1.35) cfs of flow and not 1.6 cfs of flow.

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2. 28.6 acres of the subject water right have been abandoned. The hearing officer states:

(Finding of Fact)

15. The protestant alleged that forfeiture of the decreed water right has occurred on the following acres: 6 acres in the NW1/4SW1/4, Sec. 12, 11 acres in Lot 1 (NE1/4NW1/4) and 2 acres in the SE1/4NW1/4, Sec. 11, Twp. 7N, Rge. 2E, B.M. Witnesses testified at the hearing that the 6 acres within the NW1/4SW1/4 of Sec. 12 have not been irrigated since prior to October 18, 1977. Testimony by the present and previous two landowners, however, indicated that the specified lands within Sec. 11 have been periodically irrigated since that date.

(Finding of Fact)

16. Water right No. 65-03104 was decreed on January 21, 1986, for the diversion of 1.6 cfs of water for the irrigation of 96 acres with a priority date of January 1, 1883. The decree identifies October 18, 1977, as the official cutoff for claims-taking.

(Conclusion of Law)

7. The decree in the Payette River Drainage Basin serves to establish the validity of each water right identified in the decree, as of October 18, 1977.

The protestant excepts thereto because 28.6 acres of the subject water right have been abandoned for the reasons following:

(a) The hearing officer acknowledges the legal principle that the subject water right can only be used to irrigate lands to which the water was applied when the permit was issued as of the official cutoff date of October 18, 1977, when the hearing officer states:

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(Conclusion of Law)

8. To insure that an enlargement of water right No. 65-03104 does not occur, neither the rate of diversion, nor the total consumptive use may be increased by a transfer.

(Conclusion of Law)

17. The water right will not be enlarged if delivery and use of water are not in connection with more acres than formerly irrigated by the right.

(b) The 96 acre decreed water right 65-03104 resulted from an erroneous affidavit submitted by the former owners, the Wolfgrams, and is in direct conflict with (a) the field notes included on the Department's 1986 aerial photograph; (b) the original acreage notes contained on the Payette adjudication work sheet; and (c) the Applicants' Exhibit No. 1, all of which are among the information to be considered by the Department in arriving at the decision in this matter.

(c) 28.6 acres of water right 65-03104 have been abandoned. Only 67.4 acres of the original 96 acre decreed water right have been legally irrigated. Such 67.4 farm acres lie south of the Cook Gulch. The water right is only appurtenant to lands lying south of the Cook Gulch. If there is any other use of Porter Creek water under the 96 acre decreed water right, such waters were used on lands to which the water right was not appurtenant.

(d) The applicants testified that where the water is used is inconsequential and the hearing officer apparently erroneously adopts that position.

3. Impact on existing water rights. The hearing officer

4. 3. 1990

states:

(Finding of Fact)

13. Flows diverted under the application will not impact the amount of water available to fill senior water rights on Porter Creek if the watermaster delivers water to the senior water rights in accordance with priority before junior water rights are filled.

(Conclusion of Law)

13. Existing water rights can be protected from injury by proper delivery by the watermaster of Water District 65-B, Porter Creek.

The protestant excepts thereto because existing water rights cannot be protected from injury by the watermaster for the reasons following:

(a) Under the proposed decision, individual fields include parts of as many as four different quarter quarters with as many as four separate water rights containing varying priorities from three different water sources, making them impossible to identify.

(b) The irregular sizes and shapes of these fields make them impossible to valve for priority control since laterals from a mainline riser located on ground with senior Porter Creek right 65-03104 could easily be used to irrigate other portions of the field with either the most junior Porter Creek right or with no Porter Creek right at all.

(c) There are fifteen separate fields proposed to be irrigated with Porter Creek water as identified in Applicants' Exhibit No. 1, yet the fields are not ~~separated~~ from each

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other or otherwise identifiable, and two of those fields include land which is not even part of the applicants' 504 acre ranch but which was irrigated illegally with Porter Creek water by them during 1988. As it now exists, the land which can be legally irrigated under water right 65-03104 is very quickly and easily identified since it is all of the fields (30, 32, 33, 34, and 35 in Applicants' Exhibit No. 1) which are south of the Cook Gulch stream bed which intersects the ranch and divides the land historically irrigated with Porter Creek water from the land which was historically irrigated with Hill Creek water. Since the proposed decision does not identify which portion of each 40 acre quarter quarter the specific acres in each proposed water right are located in as did the Department's work sheet when the rights were adjudicated, it would permit the applicants to divert Porter Creek water under right 65-03104 and apply it anyplace within the 240 acres designated as the six quarter quarters included in the place of use without interference from the watermaster. In fact, the proposed decision does not take into account the fact that there are a total of 150.1 acres in the 504 acre ranch plus 46.6 adjacent acres contained in two of the fields plus 12.0 acres west of Highway 55, all of which have been irrigated for a total of 208.7 acres. By approving 90 acres for transfer plus 42 acres for the new right (132.0 acres total), there is no designation of which 76.7 acres shall not be irrigated with Porter Creek water or which of the 118.7 acres shall not be irrigated with the subject water right (except for fields in the NW quarter of Section 11).

(d) The Department records reflect that the watermaster does not begin to function until about July 1st of each year. The limitation of 2.5 acre feet per acre per year therefore

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becomes virtually meaningless and is further compounded by the commingled use of the subject water right and the water from the water right application on the same 40 acre tract.

The conclusion that the watermaster could somehow accomplish proper delivery of water is not valid regardless of how many valves or boundary designations were installed.

4. The proposed project is not viable. The hearing officer states:

(Conclusion of Law)

11. The proposed project has been shown by the applicant to be viable.

The protestant excepts thereto because such conclusion is erroneous for the reasons following:

(a) There is no evidence as to the size of the identified pipeline which is apparently one half mile in length, running north and south, nor as to the evaluation of either end of the pipeline, nor as to the head which will be produced at any point on such pipeline.

(b) An examination of the maps submitted on page 5 of the transfer application and on page 3 of the permit application reveals that there is not sufficient change in elevation between the point where the proposed pipeline intersects the ditch and approximately one half of the land proposed to be irrigated, to provide anywhere near the 40 p.s.i. minimum pressure that is required for efficient sprinkler irrigation with just one nozzle. The Department engineer, including the Department representative at the hearing, must recognize that

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an effort to irrigate the 132 acres contained in the Proposed Memorandum Decision would result in pressure well below 10 p.s.i. regardless of how large a pipe were installed to reduce friction losses. The green "doughnuts" resulting from Alfred Wolfgram's attempts to irrigate these same fields with the existing gravity pipeline were a common sight each summer, but the hearing officer halted the protestant's attempts to bring out this information by cross-examination of Mr. Wolfgram.

(c) Such pipeline as described by the applicants in fact does not exist.

5. The proposed order on the transfer application fails to identify the specific acres to be irrigated. The hearing officer states:

IT IS FURTHER ORDERED that Application for Transfer of Water Right No. 65-03104 is APPROVED IN PART to the following conditions:

1. The place of use of this water right shall not exceed 90 acres, defined as: 2 acres in the SW1/4SE1/4 and 3 acres in the SE1/4SE1/4, Sec. 2; 22 acres in the NE1/4NE1/4; 16 acres in the NW1/4NE1/4; 19 acres in the SW1/4NE1/4 and 28 acres in the SE1/4NE1/4, Sec. 11, all in Twp. 7N, Rge. 2E, B.M.

2. The maximum annual consumptive use volume authorized for diversion under this transfer shall not exceed 225 acre-feet, i.e. 90 acres x 2.5 AF/acre = 225 acre feet.

3. The maximum rate of diversion shall not exceed 1.6 cfs.

4. Water shall be diverted under this right only during periods when diverted flows are applied to a beneficial use on the specified place of use.

The protestant excepts thereto because the water permit fails

JUL 26 1990

to identify the specific acres to be irrigated thereby permitting the use of the water from the water application and the water from the subject water right on the same acres or on any acres in the same 40 acre tract.

6. The proposed order on the water application fails to identify the specific acres to be irrigated. The hearing officer states:

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 65-12842 is APPROVED subject to the following conditions:

1. This water right is subject to all prior water rights.

The protestant excepts thereto because the transfer application fails to identify the specific acres to be irrigated thereby permitting use of the subject water right and the water from the water application on the same acres or on any acres in the same 40 acre tract.

PROCEDURAL DEFICIENCIES: The protestant was severely prejudiced by the rulings of the hearing officer following:

(a) The protestant was denied the opportunity to call the applicants and witnesses called by the applicants. The hearing officer excluded relevant evidence by ruling in the first instance that cross-examination would be restricted to the specific subjects covered on direct examination and then by ruling in the second instance that the recalling of the witness would not be permitted after direct examination, cross-examination, redirect examination and recross-examination. The effect of this ruling on the protestant's

presentation of evidence is that the protestant was limited in his cross-examination of witnesses called by the applicants to the specific matter testified to by those witnesses on direct examination and then was prohibited from recalling such witnesses in the protestant's case.

(b) The protestant was denied the opportunity to put in evidence by the hearing officer's confusing rulings on rebuttal. The hearing officer explained to the protestant that the protestant could put in additional evidence by way of rebuttal without explaining that the protestant would not be permitted rebuttal unless the applicants put in rebuttal evidence. The effect of these explanations is that the protestant expected to add facts by rebuttal evidence and then was denied the right to add such evidence by the hearing officer when counsel for the applicants waived their right to put in rebuttal evidence.

(c) The hearing officer excluded evidence on how the watermaster could distribute the water as a collateral issue when that evidence has direct bearing on issues determined.

NEWLY DISCOVERED EVIDENCE: The protestant has newly discovered evidence on the issues following:

(a) The applicants' statements and testimony claiming that the north-south pipeline existed from the Porter Creek ditch to a point approximately one half mile north in the northeast quarter of Section 11 and the testimony of the applicants that the water from Porter Creek proceeds over to a point that would be just south of parcel no. 34 at the point it goes into the pipeline and from that point the pipeline runs to the

north nearly half a mile and then runs in both an east and west direction is not true. No such pipeline exists nor has such a pipeline ever existed.

(b) Mr. Klug of the soil conservation service advised the applicants that the fall in the proposed north-south pipeline was not sufficient to permit gravity sprinkler irrigation for some of the lands included in both applications.

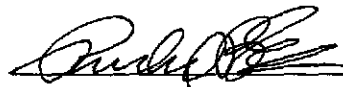
(c) Alfred Wolfgram testified that he turned on the pump located in the Payette River in every year from 1976 through 1986 when in fact the pump was not turned on in 1985 and 1986.

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this day mailed, United States Mail, postage prepaid, to each of the following: STEVE DOBSON, Post Office Box 366, Horseshoe Bend, Idaho 83629; TOM OLIVER, 3357 Osprey Road, Eagle, Idaho 83616; and JOHN C. (JACK) RIDDLEMOSER, ATTORNEY AT LAW, Post Office Box 373, Meridian, Idaho 83642.

DATED:

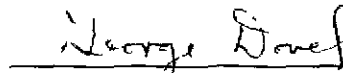
MAR 13 1990

SIGNED:



Richard B. Eismann
Counsel for the protestant

SIGNED:



George Dovel, the protestant

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January 19, 1989

George Dovel
Rt. 1, Box 61
Horseshoe Bend, ID 83629

RE: APPLICATION FOR PERMIT NO. 65-12842 AND APPLICATION FOR
TRANSFER NO. 65-3104

Dear Mr. Dovel:

Returned is the letter which you apparently hand delivered to the department on January 16, 1989 for inclusion into the hearing record developed on January 10, 1989 in connection with the above referenced applications.

There were no requests at the hearing for the submittal of additional information or exhibits and for that reason the record was closed at the end of the hearing on January 10, 1989.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: W. Region

Depart. of Water Resources
Water Allocation Bureau

FILED

Dove

NOTES, 1-10-89 1/5

Riddemoser - atty - applicants

Harold - witness for applicants

Allen - Witness

Mr. Wolfgram - Witness

Mrs. Wolfgram - witness

Transfer

- Forfeiture ✓
- Injury to other rights
- Enlargement
- Local public interest

Application.

- Reduce water supply under existing rights
- water supply insuff for pump. intended
- Fin. Resources
- Public interest

- motion to strike protestant's objection noted for the record.

Direct - Mr. Riddemoser

Dobson

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JUL 22 1990

- admitted
- Applicant's exhibit #1 - marked on the back.
 - Headgate & weir - installed/lockable.
 - P.D. 1/s from protestant.

- Riddler set - atty for applicants

2/5

Direct
by
Dobson
(cont.)

- Porter Co.

June - July - water runs out

- 30" to transfer.

~~app for~~
app for permit

- No water avail after June 1.

X - of Dobson. by Dovel

- Wolfgram Direct

- Prior owner

- 12 yrs (from 1976)

- Land not irrig in 1987

X by Dovel

- 135 ac irrig.

- all 96 ac irrig.

Allen Direct

- 1967 → 1976 Pat Allen

- Pump from Payette R.

X of Allen

- 6 ac not irrig

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→ Riddlemoser - atty ←
Doval - Protestant

3/5

Direct present - Mr. Harold

- been in area 40 yrs.
- Fred Fall - prev. owner,
leased 1958 → 1968
- Flood irrig.
- ~~used~~ Hill Cr.
- Works for Boise Co. Road dept.
- X - of Mr Harold
- Redirect
 - 6 ac - 1967 or 1968 last irrig.

- Doval Direct

- app. for trans.
- 6 ac - Coop or Co - Lusk?
- ? - on not asking to have portion
of 80" forfeited. concerned about
consumptive use.

app. for permit

- **MICROFILMED** -

JUL 25 1990

protest Exh 1-14

Exhibits
- mark

- Doval

Riddlemoser -

4/5

- Prot Exh 1. = pictures of mud holes
- 2. " "
- 3, 4, 7, 8. - ditch pictures
- 9 → ~~A~~ -
- 546 - Swather trucks

admitted - Exhib 15 -
not allowed 16 -
17 -

- much testimony - irrelevant
- Calendar -
- admitted Exhibit 18 -

- ~~Misunderstanding~~
- Testimony

- X-of Doval by Riddlemoser

- Ditch can carry 80 inches
- Damaged by
- Enlargement of water at

Doval redirect

- Rebuttal testimony

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Doval

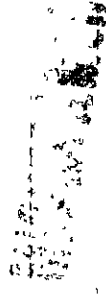
5/5

- Riddlemose Summit
Trans.

- Water Pt won't be changed.
- Review of hearing

- Doval Summit

- Forfeiture
- Changed position on
- Road damage



JUL 26 1990

MAR 02, 1979

PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

PAGE 304

INDICATES TOTAL

SOURCE: PORTER CREEK

TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-3103	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2540 & 65-10747 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	1/ 1/1872	IRRIGATION	4/ 1 11/ 1	--- AFA 3.82 CFS	NWSE S12 T 7N R 2E	NENE(13) NWNE(40) SWNE(39) SENE(3) NWSE(14) LOT 1(23) LOT 2(22) S26 T 7N R 2E LOT 5(39) S23 T 7N R 2E *193*	DECREE
65-3104	WOLFGAM, ALFRED C. & WOLFGAM, MARGARET I. BOX 100, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2858, 65-3803 & 65-10963 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	1/ 1/1883	IRRIGATION	4/ 1 11/ 1	--- AFA 1.60 CFS	NWSE S12 T 7N R 2E	NENE(15) NWNE(16) SWNE(19) SENE(20) SENE(1) LOT 1(11) S11 T 7N R 2E NWSE(6) S12 T 7N R 2E *56*	DECREE
65-3839	CRANDALL, PATRICIA L. ADAMS 1800 TAGGART, BOISE, IDAHO 83705	4/ 1/1885	IRRIGATION	4/ 1 11/ 1	--- AFA .54 CFS	SWNE S 7 T 7N R 3E	SWNW(10) SEAW(14) NESW(16) NWSW(12) S 7 T 7N R 3E *52*	BENEFICIAL USE
			STOCKWATER	1/ 1 12/31	1.40 AFA .03 CFS *---*AFA *.54*CFS		SAME AS OTHER USE	
65-10773	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1900	IRRIGATION	4/ 1 11/ 1	--- AFA .90 CFS	SWNW S 7 T 7N R 3E	SWNE(33) NWSE(12) S12 T 7N R 2E *45*	BENEFICIAL USE
			STOCKWATER	1/ 1 12/31	.70 AFA .02 CFS *---*AFA *.92*CFS		SAME AS OTHER USE	
65-2000	ALLEN, EVERETT K. CASCADE, IDAHO 83611 REMARKS: RECOMMENDED AS RIGHT 65-3104.	3/25/1903	IRRIGATION	4/ 1 11/ 1	--- AFA .12 CFS	NWSE S12 T 7N R 2E LOT 1 S22 T 7N R 1h	NWSW(6) S12 T 7N R 2E *6*	LICENSE
65-10771	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629 REMARKS: POINT OF DIVERSION HAS TWO POINTS IN NWSE.	6/ 1/1905	IRRIGATION	4/ 1 11/ 1	--- AFA .32 CFS	NWSE S12 T 7N R 2E	SESE(8) S11 T 7N R 2E *8*	BENEFICIAL USE
			STOCKWATER	1/ 1 12/31	.70 AFA .02 CFS *---*AFA *.32*CFS		SAME AS OTHER USE	

*Disson
&
Chute*

MAR 02, 1979

PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

PAGE 305

INDICATES TOTAL

SOURCE: PORTER CREEK

TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-10950	MADARIETA, ANGEL & MADARIETA, ROSE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1908	IRRIGATION	4/ 1 11/ 1	--- AFA 1.61 CFS	SWNW S 7 T 7N R 3E NWSE S12 T 7N R 2E	NESW(31) SWSW(19) SESW(6) S12 T 7N R 2E NWNW(1) S13 T 7N R 2E +57+	BENEFICIAL USE
65-10951	MADARIETA, ANGEL & MADARIETA, ROSE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1912	IRRIGATION	4/ 1 11/ 1	--- AFA .84 CFS	NWSE S12 T 7N R 2E	SESW(15) SWSW(1) S12 T 7N R 2E NWNW(11) NWNW(15) S13 T 7N R 2E +42+	BENEFICIAL USE
65-10946	IRRIG, MARY C. HORSESHOE BEND, IDAHO 83629	7/26/1917	DOMESTIC	1/ 1 12/31	1.20 AFA .02 CFS	NESE S 7 T 7N R 3E	NESE S 7 T 7N R 3E	BENEFICIAL USE
65-10770	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1932	IRRIGATION	4/ 1 11/ 1	--- AFA .07 CFS	NWSE S12 T 7N R 2E	NWNW(3) S13 T 7N R 2E +3*	BENEFICIAL USE
65-11369	FRY, JACK HORSESHOE BEND, IDAHO 83629	6/ 1/1940	IRRIGATION	4/ 1 11/ 1	--- AFA .38 CFS	NWNW S13 T 7N R 2E NWNW S14 T 7N R 2E	NENE(7) NWNW(3) SWNE(7) SENW(2) S14 T 7N R 2E +19+	BENEFICIAL USE
65-10953	MADARIETA, ANGEL & MADARIETA, ROSE L. HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10952 SHALL PROVIDE NO MORE THAN .04 CFS NOR 1.2 AFA.	6/ 1/1946	DOMESTIC	1/ 1 12/31	1.20 AFA .04 CFS	SWSW S12 T 7N R 2E	SWSW S12 T 7N R 2E	BENEFICIAL USE
65-10746	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2540, 65-10747 & 65-10749 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1960	IRRIGATION	4/ 1 11/ 1	--- AFA .44 CFS	NWSE S12 T 7N R 2E	NENE(11) LCT 3(9) S26 T 7N R 2E LCT 4(2) S23 T 7N R 2E +22+	BENEFICIAL USE

Hearing on Dobson - Oliver Matter
 Tuesday 10 Feb 10:00 am 1988
 Small Conference Room IDWR State Office

Notes by D. Tuttle
 Hearing Officer: Glen Sexton

App for Permit 65-12842
 App for Transfer 65-03104

Applicants Steve Dobson & Tom Oliver present &
 represented by Jack Riddlemoser

Protestant George Dovel present & representing himself

Witnesses for applicants William Harold
 Everett Allen
 Alfred Wolfram
 Margaret Wolfram

Issues on part of protestant
 Transfer Forfeiture
 Injury of other rts
 Enlargement
 Local Public interest

App for Permit Reduce water under existing rts
 Water Supply Insufficient
~~Delay or Speculation~~
~~Financial Resources~~
 Local Public Interest

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Hearing Record started at 10:20 am

Riddlemeyer

- For the record makes a motion to strike the protests of Mr. Dovel as being insufficient

Steve Dobson

504 acres being purchased from Tom Oliver
135-140 acres irrigated

Applicants Exhibit No. 1

T (App for Transfer)

Transfer from parcels 33 & 28 to 25, 23, 24 & 26 & 27

Purpose: reduce pumping costs

Dobson P/d is downstream from Dovel P/d

Ditch was used last year to a maximum of 150 inches / this was later cut back to 80 inches

P (App for Permit)

Source: Flood water from Porter Creek

Water is likely not available after June 1

This water was available for a time, even in 1988

Length of existing ditch from P/d to pipeline irrigated land is about 1/2 mile, then 3/8 to pipeline

X examined by Dovel

Q - does the ditch only pass through the Dovel property for 1/2 mile?

A - The ditch length from P/d to pipeline is 1/2 mile

Q - Do adjudicated rights lie to the north of "Coat Creek"?

A - Yes - per legal descriptions

x Exam by Dovel (cont)

Q. How will the watermaster distribute the new rt vs. the old rt?

A. The watermaster will reduce delivery.

Lunch Break

→ Primary question: ^{Can} Forfeiture on some lands occur?

If "80" are used to irrigate 80 acres, when the water right specifies 96 acres, is some of the water right forfeited?

Alfred Wolfgang Prior owner (12 years) 1976-88

Irrigated every year except 1987 (Sickness during 87)

(Not acquainted with transfer)

Pipeline was installed in 1969

Irrigated all of the ground from Porter Creek 135-140 acres

x exam - hearing off : Did you irrigate the 12 acre spot near the highway?

A. Yes

Q: Did you irrigate 6 acre spot?

A: No (that is called the "flat")

Everett Allen (1967-1976)

Supervised irrigation of property

Irrigated farm ground during ownership (supervised)

Didn't irrigate "the flat"

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Bill Harold Acquainted with the property for 40 years
Leased property from Mr. Faull for 10 years 1958-68
Flood irrigated from Porter Creek
Wolfgrains irrigated the fields of 11 acres
Irrigated the 6 acre tract during his tenure

Protestant

Mr. Dovel

Transfer

6 acres have not been irrigated
Consider forfeiture on 6 acres
Ditch damages ^{county} road - this is not in the public interest
Ditch length is about 1-2 miles

Protestants exhibits 1-14 - Photos - objection from Mr. Riddlemoser
Admitted but SI

Hearing officer - Takes official notice of all relevant Dept files & records
in this matter.

Mr. Dovel

Use of water first on junior lands and later on senior
lands is poor husbandry.

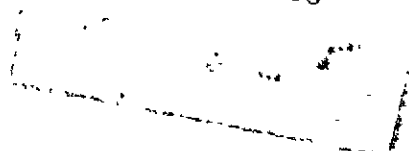
Language/Comments regarding the ditch will be struck.

Summary Comments

Riddlemoser
Dovel ✓

RECORDED
INDEXED

JUL 26 1990



List of Exhibits

Applicants

Admitted?

1

Photocopy of photo of area

✓

Protestants

1-14

Photographs

✓

1, 2.

Damage to road from excessive flow in ditches

✓

3, 4, 7, 8

What happens to ditch & ground when excessive flow is conveyed

✓

9 - 13, 14

Leakages in ditch, damage to county road, damage to property

✓

5, 6

Wetness in alfalfa field caused by leakage from ditch

✓

15

Letter

✓

16

Letter

✓

17

Letter - Draft Agreement (not signed by both parties)

No

18

Copies of Personal Calendar (diary)

✓

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PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

TES TOTAL*

SOURCE: PAYETTE RIVER

USE	WAST RIG	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
11 11	BENE USE	GOSLIN, BEN R. & GOSLIN, AVIS V. HORSESHOE BEND, IDAHO 83629	6/22/1966	IRRIGATION	4/ 1 11/ 1	--- AFA .94 CFS	LOT 1 S25 T 7N R 1E	LOT 1(14) LOT 2(7) S24 T 7N R 1E LOT 1(17) LOT 2(5) S25 T 7N R 1E SWSW(1) S19 T 7N R 2E NNNW(2) SWNW(1) S30 T 7N R 2E *47*	BENEFICIAL USE
1 6)	LICEN (6)	GATFIELD, LOLA M. & GATFIELD, ALLEN EUGENE BOX 37, MONTICLO, IDAHO 83646 REMARKS: THIS PERMIT RIGHT IS NOT DECREED BY THE PRESENT ADJUDICATION PROCEDURE, AND IS INCLUDED FOR INFORMATION PURPOSES ONLY. NORMAL STATUTORY PROCEDURES MUST BE COMPLETED FOR LICENSING.	7/12/1966	IRRIGATION	4/ 1 11/ 1	--- AFA 7.90 CFS	SESW S24 T 7N R 1E	NESE(40) NWSE(40) SWSE(40) SESE(40) S23 T 7N R 1E SWNW(40) SENW(10) NCSW(30) NWSW(40) SWSW(40) SESW(35) S24 T 7N R 1E NENE(40) S26 T 7N R 1E *395*	PERMIT
	PERM	ALLEN, EVERETT K. CASCADE, IDAHO 81611 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-31C4 & 65-3003 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	7/29/1966	IRRIGATION	4/ 1 11/ 1	--- AFA 2.72 CFS	LOT 1 S11 T 7N R 2E	SWSE(1) SESE(13) LOT 7(11) S 2 T 7N R 2E NENE(32) NWNE(24) SWNE(18) SENE(26) LOT 1(24) S11 T 7N R 2E *149*	LICENSE
		MONIE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-1317 & 65-11393 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE. THIS PERMIT RIGHT IS NOT DECREED BY THE PRESENT ADJUDICATION PROCEDURE, AND IS INCLUDED FOR INFORMATION PURPOSES ONLY. NORMAL STATUTORY PROCEDURES MUST BE COMPLETED FOR LICENSING.	8/31/1966	IRRIGATION	4/ 1 11/ 1	--- AFA 1.80 CFS	LOT 2 S35 T 7N R 2E	NWSW(15) LOT 2(10) S35 T 7N R 2E NESE(35) SESE(25) LOT 1(7) S34 T 7N R 2E *92*	PERMIT
		BOISE CASCADE CORPORATION 100 JEFFERSON STREET, BOISE IDAHO 83702 REMARKS: USE IS FOR LOG POND STORAGE.	1/ 1/1967	COMMERCIAL STORAGE	1/ 1 12/31	300.00 AFA --- CFS	LOT 3 S 7 T 6N R 1W	LOT 6 S12 T 6N R 2W	LICENSE

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JUL 20 1967

65-2858

COMBINATION HEARING

Re: Application No. 65-12842 & Transfer No. 65-03104, Steve Dobson & Tom Oliver

Place: Second Floor Conference Room, Dept. of Water Resources, Boise, ID

Date: 10:00 a.m., ~~Wednesday, November 30, 1988~~ Tuesday January 10, 1989

Hearing conducted by: L. Glen Saxton

ROSTER OF ATTENDANCE

[illegible]

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT	)	
	)	
NO. 65-12842 AND APPLICATION FOR TRANSFER	)	NOTICE OF RESCHEDULING
	)	
NO. 65-03104 IN THE NAMES OF STEVE DOBSON	)	HEARING
	)	
<u>AND TOM OLIVER</u>	)	

On June 20, 1988, the Department of Water Resources received a protest against the approval of Application for Permit No. 65-12842 and Application for Transfer No. 65-0304. A combined hearing and/or conference was set for Wednesday, November 30, 1988, 10:00 a.m. in the Second Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho, 83706. The hearing date has been changed to January 10, 1989. The hearing will be held at the originally stated time and place.

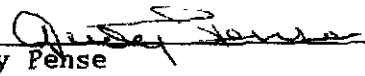
The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 2nd day of December, 1988.

David R. Tuthill
DAVID R. TUTHILL, JR., R. E.
Manager, Western Regional Office

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JUL 26 1990

I hereby certify that on the 2nd day of December, 1988, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:


Judy Pense
Secretary

Certified Mail

Steve Dobson
P.O. Box 366
Horseshoe Bend, ID 83629

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

George Dovel
Rt. 1 Box 61
Horseshoe Bend, ID 83629

Non-Certified Mail

Jack Riddlemoser, Esq.
P.O. Box 373
Meridian, ID 83642

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JUL 26 1990

CONVERSATION MEMORANDUM

DATE 11/23/1988

FILE 65-12842

NAME OF PARTY Steve Dobson

EMPLOYEE Dave Turnill

RE: Hearing

Hearing delay

I asked Steve Dobson if he would object to a delay in the hearing due to the recent nature of the protestant's health concerns. He stated that he would accept a delay, provided the matter is resolved, if possible, prior to 1989 irrigation. We rescheduled for Tues 10 Jan @ 10:00 am.

I notified Mr. Riddlemoser (Mr. Dobson had already called), and Mr. Dovel. I could not reach Mr. Oliver.

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JUL 26 1990

P 397 135 240

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to

Tom Oliver

Street and No.

3357 Ogden Rd.

P.O., State and ZIP Code

Essex IL 62616

Postage

\$

Certified Fee

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing
to whom and Date Delivered

Return Receipt Showing to whom,
Date, and Address of Delivery

TOTAL Postage and Fees

\$

Postmark or Date

STANDARDIZATION

TO CONVERT FIRST CLASS POSTAGE,

CERTIFIED MAIL LEFT TO THE

POST OFFICE OPTIONAL SERVICES (see form)

If you want the certificate of the address of the article to be left to the post office service window, or

to be left to the post office service window, or

If you do not want the certificate of the address of the article to be left to the post office service window, or

If you do not want the certificate of the address of the article to be left to the post office service window, or

If you want a return receipt, you must return the receipt to the post office service window, or

If you want a return receipt, you must return the receipt to the post office service window, or

REQUESTED

RETURN RECEIPT

If you want a return receipt, you must return the receipt to the post office service window, or

If you want a return receipt, you must return the receipt to the post office service window, or

ENDORSE

RETURN RECEIPT

Enter the name and address of the addressee, and the name and address of the sender, in the space provided on the return receipt.

Enter the name and address of the addressee, and the name and address of the sender, in the space provided on the return receipt.

RETURN

RECEIPT

Save this receipt as a record of the return receipt.

Save this receipt as a record of the return receipt.

P 397 135 241

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Steve Bobson	
Street and No.	
P.O. Box 366	
P.O., State and ZIP Code	
Horseshoe Bend ID 83629	
Postage	
Certified Fee	
Special Delivery Fee	0.00
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date

STICK POSTAGE HERE TO PREPARE TO COVER FIRST CLASS POSTAGE.

CERTIFIED MAIL, REGISTERED MAIL, and USE FACILE OPTIONAL SERVICES (see front)

If you want to send a letter or card, place the article leaving the return address in the upper left portion of the address department and place it in the post office service window or

If you do not want to send a letter or card, place the gummed stub on the left portion of the address side of the article.

If you want a return receipt, place the article in the upper left portion of the address side of the article and place the return receipt in the upper right portion of the article. The return receipt will be sent to you by mail. The return receipt will be sent to you by mail. The return receipt will be sent to you by mail.

4 If you want to send a letter or card, place the article in the upper left portion of the address side of the article and place the return receipt in the upper right portion of the article. The return receipt will be sent to you by mail. The return receipt will be sent to you by mail. The return receipt will be sent to you by mail.

Endorse RECEIVED on the return receipt.

5 Enter fees and postage on the return receipt. The return receipt will be sent to you by mail. The return receipt will be sent to you by mail. The return receipt will be sent to you by mail.

6 Save the return receipt for your records.

P 397 135 242

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
George Daniel	
Street and No.	
Rt 1 Box 61	
P.O. State and ZIP Code	
Horseshoe Bend 3620	
Postage	RECEIVED JUL 26 1990
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

STICKER POSTAGE

CERTIFIED MAIL PERMIT NO. 494

**ADD COVER FIRST CLASS POSTAGE,
SELECTION OF OPTIONAL SERVICES (see front)**

If you wish to send this article by registered mail, you must place the article in a rigid container and affix the appropriate postage and insurance labels in the designated area of the cover.

You do not need to affix a return address label on the left portion of the address side of the article cover.

If you want a return receipt, you must affix a return receipt label on the left portion of the address side of the article cover. The return receipt label must be affixed by means of the gummed return receipt label on the article cover. The return receipt label must be affixed to the article cover by means of the gummed return receipt label on the article cover.

If you wish to send this article by registered mail, you must place the article in a rigid container and affix the appropriate postage and insurance labels in the designated area of the cover.

ENDORSE RETURNED DELIVERED

5 Enter fees

Return receipt is required

6 Save this receipt

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT	)	
	)	
NO. 65-12842 AND APPLICATION FOR TRANSFER	)	NOTICE OF HEARING
	)	
NO. 65-03104 IN THE NAMES OF STEVE DOBSON	)	AND/OR CONFERENCE
	)	
<u>AND TOM OLIVER</u>	)	

On May 16, 1988, Steve Dobson and/or Tom Oliver filed with the Department of Water Resources application for permit No. 65-12842 to appropriate the public waters of the State of Idaho, and application for transfer No. 65-3104 to change the place of use of the public waters of the State of Idaho. On June 20, 1988, the Department received a protest against approval of the application and the transfer from George Dovel.

The Department has set the matter of protest for a combined hearing and/or conference on Wednesday, November 30, 1988, at 10:00 a.m. in the Second Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho, 83706. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall

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JUL 26 1988

be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 18th day of November, 1988.

David R. Tuthill
DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

I hereby certify that on the 18th day of November, 1988, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Judy Pense
Judy Pense
Secretary

Certified Mail

Steve Dobson
P.O. Box 366
Horseshoe Bend, ID 83629

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

George Dovel
Rt. 1 Box 61
Horseshoe Bend, ID 83629

Non-Certified Mail

Jack Riddlemoser, Esq.
P.O. Box 373
Meridian, ID 83642

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JUL 20 1990

CONFERENCE AND HEARING INFORMATION
IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

1. Will the proposed use reduce the quantity of water under existing water 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 project?
5. Will the proposed use conflict with the local public interest?

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 tape 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 submitted to the parties and the parties may be afforded an 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.

Failure to appear at the time and place set for 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.

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JUL 26 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 6, 1988

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

Re: Application for Permit No. 65-12842, and Transfer No. 65-03104

Dear Applicant(s):

As you have previously been notified, the above-referenced application for permit has been protested. A hearing for this matter has been tentatively scheduled for: Wednesday, November 30, 1988, in Boise. (10:00 a.m.)

The purpose of this letter is to advise you of this schedule and to provide you with an opportunity to notify this office if the scheduled time is not acceptable or if there is another reason the hearing should not be held at this time. Similar letters are being sent to other parties interested in this water right.

Please telephone this office no later than Friday, October 21, 1988, at (208) 334-2190 if you desire to make a change to the schedule. If the hearing is to proceed as scheduled, we will prepare final arrangements the following week, and you will be notified accordingly.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:jap

RECEIVED

OCT 23 1990



State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 6, 1988

Steve Dobson
P.O. Box 366
Horseshoe Bend, ID 83629

Re: Application for Permit No. 65-12842, and Transfer No. 65-03104

Dear Applicant(s):

As you have previously been notified, the above-referenced application for permit has been protested. A hearing for this matter has been tentatively scheduled for: Wednesday, November 30, 1988, in Boise. (10:00 a.m.)

The purpose of this letter is to advise you of this schedule and to provide you with an opportunity to notify this office if the scheduled time is not acceptable or if there is another reason the hearing should not be held at this time. Similar letters are being sent to other parties interested in this water right.

Please telephone this office no later than Friday, October 21, 1988, at (208) 334-2190 if you desire to make a change to the schedule. If the hearing is to proceed as scheduled, we will prepare final arrangements the following week, and you will be notified accordingly.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:jp



CECIL D. ANDRUS
Governor

State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

R. KEITH HIGGINSON
Director

October 6, 1988

George Dovel
Rt. 1, Box 61
Horseshoe Bend, ID 83629

Re: Application for Permit No. 65-12842 and Transfer No. 65-03104,
in the name of Steve Dobson and/or Tom Oliver

Dear Mr. Dovel:

Because the protest you filed on the above-referenced water right application has been not yet been resolved, a hearing for this matter has tentatively been scheduled for: Wednesday, November 30, 1988, in Boise. (10:00 a.m.)

The purpose of this letter is to advise you of this schedule and to provide you with an opportunity to notify this office if the scheduled time is not acceptable or if there is another reason the hearing should not be held at this time. Similar letters are being sent to other parties interested in this water right.

Please telephone this office no later than Friday, October 21, 1988, at (208) 334-2190 if you desire to make a change to the schedule. If the hearing is to proceed as scheduled, we will prepare final arrangements the following week, and you will be notified accordingly.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:jp

Mr. Dovel:

*I was sorry to hear that you had been injured & hospitalized.
Please advise if you will not be able to attend the hearing - in*

CONVERSATION MEMORANDUM

DATE 9/22/88

FILE 65-12842

NAME OF PARTY Jack Riddlemoser

EMPLOYEE Dave Tutthill

RE: Dobson / Oliver Apps

No solution in sight. Set for hearing

Jack Riddlemoser

P.O. Box 373

Meridian, Id 83642

Set hearing for Nov 30?

George Dovel 793-2768

Left message 10/3/88

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JUL 26 1990

8-23-88

65-12842

65-3104 Transfer

Applicant
Steve Dobson &

Tom Oliver

Protestant
George Doual -

9:10 am - Conference

Issues - Transfer

The land that the water is taken from has not been irrigated for several years - 6 acres not irrigated (12 acres maybe)

Application

If transfer is denied this application needs to be changed -

This water right is below Doual's P.D.

Land would be sprinkled from Porter Creek

Mr. Doual's concern is that this Jr right would injure him since when the Jr right goes off all the pipe would be moved to the senior land -

The capacity of the ditch is in dispute -

The additional water will cause damage to the ditch by seepage - seepage damages county road most years

Public interest -

Applicant would be willing ~~make seepage~~ to the ditch to reduce or stop ~~the seepage~~ the ditches

JUL 25 1990

The applicants and protestant agreed that a solution to both the applications could be negotiated ^{and resolved} if the applicants would agree to allow the protestant to use their water during shortage in exchange for the protestant paying the power cost for the applicant to pump from Payette River - 60 days allowed for negotiation

Conf/Departmental Hearing

8/23/1988

Notes by D. Tuthill

on Application for Permit No. 65-12842 & Application for
Transfer No. 65-03104 ^{#3445} in the names of
Steve Dobson & Tom Oliver

All parties are present and represent themselves.

Hearing Officer: Bob Fleenor

Dobson: Primary movement of water rights will be to move water from near the highway to an upstream location. The lands irrigated along the highway could be irrigated with a low lift operation.

Purpose: Consolidate the Porter Creek water on easier-to-manage lands.

Dovel: Concerns about transfer:

1. Less than 1"/acre as decreed
2. Insufficient ditch capacity when ≈ 96 acres are irrigated.
3. Part of right has not been used for ≈ 40 years
(6 acres in Sec 11 and other portions of the right)
4. The change in place of use has already been made,
thus injuring the Dovel right

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Dovel: Concerns about application

1. Lands are already covered by #2 right from Hill Creek, but pumping is required in this instance
2. If junior lands are irrigated at the same time as senior lands, there is a tendency to irrigate the junior lands primarily when water is plentiful, then to switch to the senior lands, causing a high consumptive use at that time.
3. Problematic ditch - floods, washes out roads, etc. (subs onto neighboring property) This has been a historical happening. An increase in capacity will worsen the problem.

Oliver - The ditch carried 150 inches earlier this year

Dovel: The lands under the application can be irrigated by Hill Creek or Payette River as alternate sources. It is not equitable to injure Power Creek Irrigation systems which have no alternative sources.

- Issues
1. Injury - to crops (senior water rights)
 2. Ditch problems are not in the public interest

Dobson: - Other waterusers do not object to applications
- They have offered to fix the ditch

Attempt to Negotiate a Settlement, around Nov 1988

MICROFILMED

JUL 26 1990

COMBINED HEARING

Re: Application No. 65-12842 &
Application for Transfer No. 65-03104, Steve Dobson & Tom Oliver

Place: Second Floor Conference room, Dept. of Water Resources, Boise, ID

Date: 9:00 a.m., Tuesday, August 23, 1988

Hearing conducted by: Bob Fleenor & Dave Tuthill

ROSTER OF ATTENDANCE

[illegible]

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT	)	
	)	
NO. 65-12842 AND APPLICATION FOR TRANSFER	)	NOTICE OF HEARING
	)	
NO. 65-03104 IN THE NAMES OF STEVE DOBSON	)	AND/OR CONFERENCE
	)	
<u>AND TOM OLIVER</u>	)	

On May 16, 1988, Steve Dobson and/or Tom Oliver filed with the Department of Water Resources application for permit No. 65-12842 to appropriate the public waters of the State of Idaho, and application for transfer No. 65-3104 to change the place of use of the public waters of the State of Idaho. On June 20, 1988, the Department received a protest against approval of the application and the transfer from George Dovel.

The Department has set the matter of protest for a combined hearing and/or conference on Tuesday, August 23, 1988, at 9:00 a.m. in the Second Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho, 83706. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall

RECORDED

JUL 26 1990

be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 5th day of August, 1988.

David R. Tuthill
DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

I hereby certify that on the 8th day of August, 1988, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Judy Pense
Judy Pense
Secretary

Certified Mail

Steve Dobson
P.O. Box 366
Horseshoe Bend, ID 83629

Tom Oliver
3357 Osprey Rd.
Eagle, ID 83616

George Dovel
Rt. 1 Box 61
Horseshoe Bend, ID 83629

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JUL 27 1988

JUL 27 1988

CONFERENCE AND HEARING INFORMATION
IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

1. Will the proposed use reduce the quantity of water under existing water 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 project?
5. Will the proposed use conflict with the local public interest?

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 tape 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 submitted to the parties and the parties may be afforded an 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.

Failure to appear at the time and place set for 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.

FILED
JUN 10 1990

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JUL 20 1988

INTER-DEPARTMENT MEMO — 1

FROM *Dave Tuttle*

TO *Bob Fleenor*, *Norm Young*
Department of Water Resources

SUBJECT Water District 65-B, Porter Creek

DATE 7/20/88

Norm. I would suggest that Mr. Dovel
be contacted about withdrawing his
petitions.

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AUG 16 1988

Department of Water Resources
Western Regional Office

Near the end of my period of military leave, Norm was brought into
a water delivery dispute on Porter Creek. In response to a claim
by a wateruser that water diverted under a senior right was being
used on the wrong lands, the wateruser was advised to submit a
petition to cancel the improperly used water right.

On July 5, 1988 we rec'd a petition to cancel (attached). On July 6
I conducted an exam with the watermaster. On July 14 I sent a letter to the

SIGNATURE

water users. (copy attached).
At this point the water delivery is fully under control (thanks to the efforts of a dedicated watermaster), but I am uncertain as to how to respond to the petition to cancel.

Any thoughts?

Dave



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

July 14, 1988

DISTRIBUTION: Attached Mailing List

RE: Water Distribution on Porter Creek

Dear Interested Party:

On July 6, 1988, I accompanied the Watermaster of Water District 65-B, Porter Creek and tributaries, on an inspection of diversion facilities and water uses from Porter Creek. We made a number of observations and determined that some modifications to the water delivery systems are required. Since the inspection, the watermaster has discussed some of the items with individual waterusers, and some corrections to the system have been made.

The purposes of this letter are to apprise interested parties of the current status of water delivery on Porter Creek and to require that improvements be made to specified diversion systems. Improvements specified in this letter must be completed prior to August 1, 1988. Those not completed by that date are subject to legal action by the Department in conjunction with the Water District. Specific observations are as follows:

1. The pipe that flows into the Double Diamond measuring device at the upper diversion (located in the SW1/4 NW1/4 Sec. 7, T 7 N, R 3 E) appeared to be leaking initially, causing the measuring device to be inundated. However, during the past week the area around the pipe has appeared to be dry so the leak may have ceased. If any leaking resumes the pipe should be corrected accordingly.

2. The diversion system for the Double Diamond first priority water right at the lower diversion (located in the NW1/4 SE1/4 Sec. 12, T 7 N, R 2 E) was leaking at the time of the inspection, but has since been sealed. It is important that this seal be maintained during periods when other water rights are shut off.

3. The headgate for the Double Diamond first priority water right at the lower diversion (located in the NW1/4 SE1/4 Sec. 12, T 7 N, R 2 E) cannot now be regulated and locked. It is important that the watermaster have the capability to regulate this diversion in the same manner as the other diversions on the stream. Thus, a proper lockable headgate must be installed.

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JUL 26 1988

page 2

Letter to Porter Creek Interested Parties

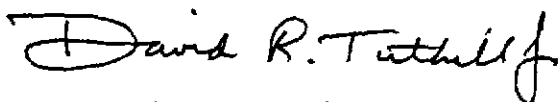
4. Because it is possible to use water from multiple sources on the Double Diamond ranch and the Oliver-Dobson ranch, the irrigators from these ranches must be prepared to demonstrate to the watermaster where water diverted from Porter Creek is being utilized at any time. Pipe connections that mix Porter Creek water with other sources must be valved so that the location of Porter Creek water can be clearly demonstrated. Owners of these ranches must provide the watermaster with a clear and easily read plan to describe how these piping and valve systems are operated. Additionally, she must be allowed to lock any valves that have the potential of diverting water to lands which do not have Porter Creek water rights.

5. In the situation where one field is irrigated with water rights of differing priority dates, the wateruser must clearly distinguish the dividing line(s) between the lands irrigated with senior rights and the lands irrigated with junior rights.

6. Pursuant to Section 42-104, Idaho Code, the appropriation of water must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases. Pursuant to Section 42-916, Idaho Code, any wateruser who wastes water is liable for all damages sustained by any other person, who would have been entitled to the use of such excess water. In a water district with a supply that is as limited as that of Porter Creek, it is imperative that during periods when a wateruser is not able to utilize a senior water right on the lands to which the right is decreed, the water must be immediately made available to junior water rights on the stream, via notification of the watermaster.

The waterusers on Porter Creek are fortunate to have an extremely dedicated and responsive watermaster in Elizabeth (Zippy) Pattee. She has already spent a significant amount of time in learning about the water delivery system and the individual water rights. She has demonstrated a willingness to do her part to make Water District 65-B a very well run operation. The items above constitute refinements of the tools that she needs in this effort. Please contact her or this office if you have questions about implementation of these requirements. We will do our best to insure that your water delivery is fair and in accordance with the law.

Sincerely,



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

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JUL 26 1990

JUL 26 1990

Names and Addresses of
Waterusers and Interested
Parties,
Porter Creek
Water District 65-B

Double Diamond, Inc.
C/O Donald Rumsey
Rt. 1, Box 54
Horseshoe Bend, ID 83629

Arlie L. Woods
Horseshoe Bend, ID 83629

Mary C. Ihrig
Horseshoe Bend, ID 83629

Jack Fry
Horseshoe Bend, ID 83629

George Dovel
Rt. 1 Box 61
Horseshoe Bend, ID 83629

Everett K. Allen
Cascade, ID 83611

Alfred C. Wolfgram
Margaret I. Wolfgram
Box 100
Horseshoe Bend, ID 83629

Patricia L. Adams Miller
5627 Freemont
Boise, ID 83706

Elisabeth V. Wallace
Rt. 1 Box 61
Horseshoe Bend, ID 83629

William F. Yost
Attorney at Law
1120 6th St. So.
P.O. Drawer E
Nampa, ID 83653

William D. Collins
Attorney at Law
Collins & Manly
P.O. Box 2794
Boise, ID 83701

Cleo Cockrum
Rt. 1 Box 54
Horseshoe Bend, ID 83629

Elizabeth Pattee
Watermaster,
Water District 65-B
Gardena, ID 83629

Leo T. Oliver
3357 Osprey Road
Eagle, ID 83616

Steve Dobson
Route 1
Horseshoe Bend, ID 83629

Route 1, Box 61
Horseshoe Bend, Idaho 83629
July 5, 1988

Mr. David R. Tuthill, Jr.
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

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JUL 5 1988

Department of Water Resources
Western Regional Office

HAND DELIVERED

Re: Porter Creek water district 65-B.

Dear Mr. Tuthill:

When our new watermaster, Mrs. Elizabeth Pattee, called me and requested an orientation meeting in the field I, of course, cooperated willingly. Then without any notice of our need to shut down our irrigation or of her intention to shut us down, she closed our headgate completely and chained and locked it closed. By the time she called us to inform of the shutdown, our irrigation lines had emptied more than a mile of buried mainline and rendered our system useless for both fire control and domestic water. This procedure also created a problem with trapped air which takes several days to correct fully once water is turned back in the line.

When I asked Mrs. Pattee why we were shut down she replied that Steve Dobson had requested all of his 80 inch water right and that he and another local resident had instructed her to close and lock only our headgate.

When I explained to her that I had already shut down some of my lines voluntarily in a cooperative agreement to provide more water for Cleo Cockrum of Double Diamond to irrigate land with rights which are junior to all of mine, and advised her which junior rights were still being irrigated, she refused to shut them down saying she had been told only to shut me down. My argument that the few inches I was using would not provide anywhere near the 80 inches Mr. Dobson requested did not alter her decision, nor did my pointing out that Oliver/Dobson were not applying the water they were diverting from Porter Creek to ground with a Porter Creek water right.

Later that day I showed our watermaster the lines which were sprinkling water on ground under priority number 15 but she refused to shut that water off and advised that Mr. Cockrum had said he would quit irrigating under that most junior right when he finished the field in a day or so.

My efforts to reach either Brad Dingee or yourself were, of course, in vain and although I left messages for Mr. Stubblefield for two days he did not return my calls.

Finally I met again with Mrs. Pattee and discussed the fact that Double Diamond's main diversion had no headgate and was wide open permitting almost all of the water, excepting dam leakage, reaching that point to flow down their ditch. Since they were haying on all but two of the fields covered by their number 1 priority, much of that water was being dumped into Jackass Creek and wasted.

Mr. David R. Tuthill, Jr.
July 5, 1988

Page 2

Mrs Pattee admitted that they were wasting a considerable quantity of water there and she also advised me there was no way for her to measure their upper diversion for priorities 4 and 15 since their pipe guage was both inoperative and under considerable muddy water due to a faulty installation. She also agreed that my shutdown had not added to the Oliver/Dobson diversion and several hours later she shut down and locked Double Diamond's upper diversion covering priorities 4 and 15.

That also did not increase the Oliver/Dobson diversion that evening since it too flowed on down into Jackass Creek. However the combination of cool cloudy weather and a rising creek the next morning created a small temporary increase in the water in the Oliver/Dobson ditch.

When I finally reached Mr. Stubblefield on Friday, July 1, 1988 he asked that Mrs. Pattee call him to verify the facts I had related. Then he instructed her to unlock both systems pending the return the following Tuesday of someone familiar with the area. Mrs. Pattee unlocked both systems and opened my valve enough to permit 33 inches of diversion and I left on an overnight trip with the assurance that my three lines would be allowed to run through Monday, July 4th.

However Mrs. Pattee called Jim Dovel that evening and advised him that Mr. Ervin Ballou had instructed her to shut down and lock both lines once again. She agreed to leave a small flow through my pipeline for watering my lawn and garden and for fire protection since approximately 20 inches was leaking through Double Diamond's dam and a measured $7\frac{1}{2}$ inches of that was flowing in the creek by my house during the afternoon.

That slight flow into my pipeline was quietly shut down sometime later and the two small sprinklers I was using to wet the dry grass next to my house emptied my pipeline during the night.

Following my return on Saturday I called Mr. Ballou and explained the necessity for watering our hay during this last critical week before Double Diamond got their hay off and required all of the water available in the rapidly lowering creek.

In direct conflict with what you told Mr. Dingee and me last fall and with the instructions from Mr. Forrest Luthy dated July 24, 1986, a copy of which is enclosed, Mr. Ballou insisted that the watermaster's responsibility stopped at the headgate and that she had no responsibility to either assure that the water was being delivered to ground covered by the appropriate right or to shut down other junior appropriators who had failed to comply with repeated instructions to install a lockable headgate.

Last summer you will recall that Mr. Dingee instructed our watermaster, Mr. Reyes, to shut off my water in spite of the fact that almost all of the water diverted under the number 1 priority then was either dumped into Jackass Creek and wasted, or used to irrigate both 22 acres with priority number 12 and two other parcels with no valid water right. That cost me most of my cutting of alfalfa.

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JUL 26 1990

Mr. David R. Tuthill, Jr.
July 5, 1988

Page 3

The same headgate that Mr. Reyes and I found open and illegally irrigating ground in Section 24 from Double Diamond's number 1 priority diversion last year is open this morning as it has been for months, irrigating a substantial number of acres in Section 24 illegally. For the past 3 days Mr. Cockrum has again been using water supposedly diverted under their 1st priority to irrigate the 22 acres of the 12th priority and he continues to do so this morning through both wheel lines and hand lines.

Although excessive wasting of water was eliminated yesterday with the removal of the rest of the hay bales and the addition of two more wheel lines, that waste alone could have saved my cutting of hay during the past week.

No effort has been made to shut off water in use by priorities 5, 9 and 12 although they are all junior to number 2 and the two largest volumes are also junior to my rights. Priorities 1, 9 and 12 continue to divert water without a headgate after three years of repeated agreement to install one; and after Water Resources' ultimatum to Mr. Rumsey this past March that he would not be permitted to divert water under either priority 1 or 12 until he installed a headgate which could be controlled and locked by the watermaster.

I have a record of that ultimatum being delivered by Mr. Dingee to Mr. Rumsey along with Mr. Rumsey's agreement to install it before diverting any water under that right as well as his apology for not having done so the past two irrigation seasons as directed. The conversation took place during our water district annual meeting on March 21, 1988 in the basement of the Masonic Hall in Horseshoe Bend and was witnessed by all of the water users there and the Water Resources representative who was also present.

After talking with Mr. Norm Young Mr. Ballou called me back and advised that the only way the Department could legally investigate these continued unauthorized uses of water on Porter Creek was for me to file a petition to cancel the water rights there is continuing unauthorized use of water on.

In the interest of initiating an inspection today as outlined by Mr. Ballou and before a dried up creek once again hides the evidence, I herewith submit this letter as a formal petition for the cancellation of the senior Porter Creek rights of both Double Diamond and Oliver/Dobson which permit them to divert water under those rights yet use it elsewhere contrary to statutes. Detailed formal individual petitions will follow shortly to facilitate the investigations.

While both you and Mr. Luthy have spent considerable time and effort trying to make this district work as the law intended, it is obviously the intent of both senior appropriators in my opinion to subvert the purpose of the law which was written to prevent waste and assure maximum use of available water.

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JUL 26 1990

Mr. David R. Tuthill, Jr.
July 5, 1988

Page 4

Mrs. Pattee has advised me that she was not given adequate instruction or direction to accomplish the job of watermaster so I ask that she be given a set of written instructions outlining her specific duties, as well as an on site training period which she has requested. She says she has been told specifically that my water must be shut off and locked shut if either the number 1 or number 2 priority is not receiving their maximum decreed diversion. It would appear that requires additional explanation.

Meanwhile with the potential for significant amounts of rainfall limited, my crops and my lawn and garden are drying up and my firefighting ability has been removed creating an extreme hazard around my house and hay shed. At the same time several inches of water is being wasted down the creek and both junior appropriators and illegal applications continue to use the rapidly decreasing water supply. I shall certainly appreciate receiving any solution you may have to my predicament.

Thank you for your assistance.

Sincerely,

George Dovel

George Dovel

Cc: Elisabeth Wallace

Encls

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JUL 11 1988

Route 1, Box 61
Horseshoe Bend, Idaho 83629
July 5, 1988

JUL 20 1988

Department of Water Resources

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JUL 5 1988

Department of Water Resources
Western Regional Office

Mr. David R. Tuthill, Jr.
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Petition to cancel water right number 65-3104.

Dear Mr. Tuthill:

During the 1982 through 1985 irrigation seasons the former owners of water right number 65-3104, the number 2 priority on Porter Creek, diverted substantial quantities of water under that right and applied it to ground with only Hill Creek and Payette River rights while verbally denying the misuse.

In addition they committed large scale waste of the irrigation water during times of scarcity by doing the following:

1. Failing to maintain the ditch and embankments thereby permitting constant flooding of the county road and of my crops.
2. Diverting far in excess of their water right.
3. Failing to install either a headgate or measuring device and failing to reduce the amount diverted when they were not irrigating, dumping the water into the Payette River and depriving junior irrigators of their share.

Following formation of Water District 65-B in 1986, the right holders installed an inaccurate weir and guage which disguised the flow of 50% more water into their ditch than the right permitted. Then, disregarding good irrigation husbandry and the law, they applied all of the diverted water to ground with no Porter Creek right until the watermaster was called in and Mr. Forrest Luthy instructed him to tell them to cease the practice or shut them down.

Then they moved all of their irrigation pipe to the proper ground and flooded the then dormant pastures until they ran out of water, again depriving junior right irrigators of their water.

In 1987, without permission from the landowners, they attempted to expand their easement by replacing their ditch with a large canal which could not feasibly be maintained in its new form, but which permitted the flow of very large quantities of water for expanded use. At the same time they permitted one of the present co-owners of the ranch and water right to advertise the ranch for sale through his real estate sales business with the claim that it contained a gravity sprinkler irrigation system to irrigate two-thirds more land than was legally possible with the water right used to supply the system.

JUL 20 1988

Mr. David R. Tuthill, Jr.
July 5, 1988

Page 2

In 1988 the new owners of the ranch and water right again (a) failed to perform maintenance on the ditch and embankments; (b) turned an excessive quantity of water into the canal/ditch causing continued damage to my crop land and to the county road; and (c) applied most, and sometimes all, of the water diverted under Porter Creek right 65-3104 to Hill Creek acres with no Porter Creek right.

After their failure to restore the ditch to an acceptable form following both reasonable notice by me and their promise to do so along certain portions, I used my own equipment to repair the mess and provided them with a cleaned ditch through our property that may be easily and cheaply maintained where I worked on it. It is far superior to either the previously existing ditch or to the crude expansion that was attempted.

Once they completed repair efforts to the ditch on their own property, they set up a number of irrigation pipes in the oat fields covered by the Porter Creek right. When you conducted your scheduled inspection of their ditch and gravity system on June 14, 1988 you saw only Porter Creek ground being irrigated with Porter Creek water.

Unfortunately it was the only time that happened this season either before or after your inspection trip. Several days after you left all of the irrigation sprinkler pipe on the Porter Creek ground was removed from the fields and the full 80 inches of water right 65-3104 was being diverted and dumped into the Payette River.

As Porter Creek began getting lower, Oliver/Dobson ranch turned on the repaired river pump to irrigate only ground with Hill Creek and Payette River water rights. Then they began either mixing Porter Creek water with Payette River water to use it on Hill Creek acres, or continued to waste some or all of it. In either event the procedure was a willful violation of statute and public policy in my opinion. Since a watermaster was not yet on duty I refused once again to let them try to establish an adverse right by shutting down my water use in favor of their illegal use.

Subsequently Oliver/Dobson tried to extract a \$2,000.00 payment from me to get them to stop their unlawful diversion of Porter Creek water and Mr. Dobson declared in writing his intention to continue the full diversion otherwise.

Realistically only part of the 30 inches that was then leaking through Double Diamond's dam (see your October 17, 1987 letter to Don Rumsey) was available to Oliver/Dobson at that time. When I insisted that Cleo Cockrum line his dam on June 27, 1988 as a condition to my shutting down two lines to provide him with more water to irrigate lands with rights junior to mine, there remained only 11 inches that leaked past into the Oliver/Dobson ditch plus $7\frac{1}{2}$ inches that leaked through their dam into the ~~Woodbridge~~ ditch or past my house.

JUL 20 1988

Mr. David R. Tuthill, Jr.
July 5, 1988

Page 3

Since there was no way I could utilize the leakage which is a half mile downstream from my point of diversion, paying Oliver/Dobson \$2,000.00 for nothing except to cease an unlawful diversion seemed an exercise in futility at best. Yet when the watermaster began her job they demanded that my rights be shut down immediately in order for them to get more water to waste or misuse. My being shut down did not add any water to their ditch.

Our recorded observations of measurements and waste or misuse of water diverted under right number 65-3104 this irrigation season are available for your perusal. Three minimum observations by Jim and I each day since your June 14th inspection substantiate what I have said herein as do the observations of the two experienced Boise Valley irrigators who also examined the diversion, ditch leaks and misuse of the water. After discussing the law several times with Mr. Dobson and watching him read Mr. Luthy's instructions to water users several weeks ago, it is my opinion that his misuse of the water does not result from ignorance of the law.

By shutting off our priority rights numbers 6, 7 and 11 as well as Double Diamond's rights 4 and 15 during the most critical week of watering, they have destroyed all or at least part of an alfalfa cutting worth approximately \$10,000.00 unless it were to be salvaged by unseasonable rains. Doing that in order to deliberately waste or misuse the water where two other sources of legal water is readily available is inexcusable in my opinion and I hereby petition the Idaho Department of Water Resources to cancel water right 65-3104 following a thorough investigation of the misuse.

May I suggest that your investigator begin by promptly conducting an unannounced early morning inspection of their present diversion of Porter Creek water, the ditch leaks along the county road, the oat fields that have been drying down for two weeks, the small hay field that is drying in windrows, the small pasture that has not been irrigated and finally the Hill Creek ground that is being irrigated.

Jim and I and our other witnesses are available to answer questions accurately and it is our hope that the investigation will be conducted as quickly as possible while both memories and evidence are fresh.

Thank you for your assistance.

Sincerely,

George Dovel

George Dovel

Cc: Elisabeth Wallace

RECEIVED

JUL 26 1990

SPECIAL NOTE: _____

Application No. 65-12842

PROTEST INFORMATION SHEET

Protestant - Name(s)

George Dovel

Address Route 1, Box 61, Horseshoe Bend, ID 83629

Attorney - Name & Address _____

Date Filed 6/20/88

Protest Date 6/20/88

Issues _____

Applicant - Attorney - Name & Address _____

Dates: _____

Acknowledgement letters: _____

Hearing Notice: _____

Hearing Date: _____

Other: _____

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JUL 20 1988

Protest Information submitted in Computer (following hearing): _____

orm No. 202a
/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT ANALYSIS SHEET

D. 7N 2E S.12 NWSE
p.v. S. 2 SESW
SWSE
S.11 NWNE
NENA

INITIAL REVIEW BY 60 DATE 5/24/88 APPLICATION NUMBER 65-12842

REQUIRED INFORMATION

- ☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.)
- ☒ Address
- ☒ Source (See USGS Quad for names of water sources)
- ☒ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
- ☒ County
- ☒ Quantity (flow and/or volume)
- ☒ Period of Use
- ☒ Nature of proposed use (Include description of use.)
- ☒ Description of diverting works
- ☒ Time required for beneficial use of water
- ☒ Place of use or acres irrigated
- ☒ Map
- ☒ Signature (If applicant is corp. partnership, or municipality, title of signator is required)
- ☒ Fee
- ☒ Yes ☐ No* In form to receipt

ADDITIONAL INFORMATION

- ☒ Overlapping place of use (Describe source & relationship to present application on the back.) *65-3104; This app. to bring Porter Cr. water rights up to 1.02 cfs/acre total.*
- ☒ Overlapping point of diversion
- ☐ Yes ☒ No Field check required
- ☐ Yes ☒ No Field report attached
- ☐ Yes ☒ No Critical groundwater area
- ☐ Yes ☒ No Groundwater management area
- ☐ Yes ☒ No Send dam safety information
- ☐ Yes ☒ No Send power requirement letter
- ☐ Yes ☒ No Send fish farm requirement letter
- ☐ Yes ☒ No Power residency affidavit
- ☐ Yes ☒ No Power efficiency form
- ☐ Yes ☒ No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
- ☐ Yes ☒ No Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)
- ☐ See reverse side for additional information

REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____

_____ Date Requested _____

☐ Yes ☐ No In form for advertising
☐ Yes ☐ No Statewide advertising
☐ Yes ☐ No Fee amount, receipt date & No. recorded on application

☐ Idaho Dept. of Health & Welfare ☐ U.S. BLM
☐ Idaho Dept. of Fish & Game ☐ U.S. Forest Service
☐ Idaho Dept. of Lands ☐ Water District
☐ Adjudication Bureau Unit ☐ Other

☒ Yes ☐ No Affidavit of publication received
☒ Yes ☐ No Application published correctly. If not, record action taken.

☒ Yes ☐ No Publication dates & paper, recorded on application
☒ Yes ☐ No Protests received
Final date for protest June 20 1988
☐ Yes ☐ No Protests, dates, resolution of protest, recorded on application
☐ Yes ☐ No Recommendations attached
☐ Yes ☐ No Measuring device required
☐ Yes ☐ No Access port required
☐ Yes ☐ No Will water be delivered by watermaster? If yes, what Dist. _____
☐ Yes ☐ No Special conditions of approval or cover letter below.

☐ See below for additional information

Date of priority recommended _____
By _____ Date _____

By _____ ☐ See below for additional information
Date _____

ADDITIONAL INFORMATION



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

June 21, 1988

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

Re: Application for Permit No. 65-12842, in the Name of Steve Dobson &/or
Tom Oliver

Dear Mr. Dovel:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above-referenced application(s). The Department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application(s) and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water 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 project?
5. Will the proposed use under this permit conflict with the local public interest?

If this office can be of further assistance, please contact us.

Sincerely,

DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT:jp



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

June 21, 1988

Steve Dobson &/or Tom Oliver
P.O. Box 366
Horseshoe Bend, ID 83629

Re: Application for Permit No. 65-12842

Gentlemen:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to your Application No. 65-12842. The Department suggests you contact the protest(s) and to attempt to resolve the protest(s) and to attempt to resolve the protest(s).

If this office has not been advised within twenty (20) days that the protest(s) has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water 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 which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

If this office can be of further assistance, please contact us.

Sincerely,

For
DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Manage

DRT:jp

Enclosure:

Gail - how about if
I give you all the
app's & classes &
you put reviews
straight on, I ask
Gavin?

- data entry error -
2nd name. *Quora*
EW

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: STEVE DOBSON 208-793-2694
 Address: P.O. BOX 366
 HORSESHOE BEND, ID 83629
 Name: TOM OLIVER
 Address: , ID

2. Source: PORTER CREEK Trib. to: PAYETTE RIVER

3. Location of point of diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07N	02E	12	NW	SE			BOISE

4. Water will be used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.840		

5. Total quantity appropriated is:
 0.840 C.F.S. (and/or)

A.F.A.

6. Proposed diverting works:

EXISTING SYSTEM DITCH, MAINLINE AND SPRINKLERS FOR GRAVITY IRR.

7. Time required for the completion of the works and application of the water to the propped beneficial use is _____ years.

8. Non-irrigation uses:
 NONE

9. Description of place of use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07N	02E	2	SE	SW	7	IRR	11.0
			SW	SE		IRR	3.0
						Section Acres	14.0
		11	NW	NE		IRR	10.0

65-12842

Page 1

Date: 05/23/88

JUL 26 1980

9. Description of place of use: continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07N	02E	11	NE NW	1	IRR	18.0
Section Acres						28.0
Total Acres						42.0

12. Remarks:

THE APPLICANT IS TO USE UNAPPROPRIATED WATER FOR AS LONG AS IT'S AVAILABLE. SYSTEM NOW DELIVERS WATER TO SECTION II BUT NOT TO SECTION 2. EXISTING PORTER CREEK RIGHT COVERS LESS THAN 1"/ACRE.

DOBSON, STEVE
OLIVER, TOM
P.O. BOX 366
HORSESHOE BEND, ID 83629

Source: PORTER CREEK

Tributary: PAYETTE RIVER

Diversion Pt: NWSE Sec 12 T 07N R 02E

Use: IRRIGATION (.840 CFS)

Date Filed: 5/16/1988

In: T07N R02E S02 Lot 7 (SESW) SWSE
S11 NWNE Lot 1 (NENW)

42.0 ACRES TOTAL

WATER RIGHT
DATA ENTRY LOG

[illegible]