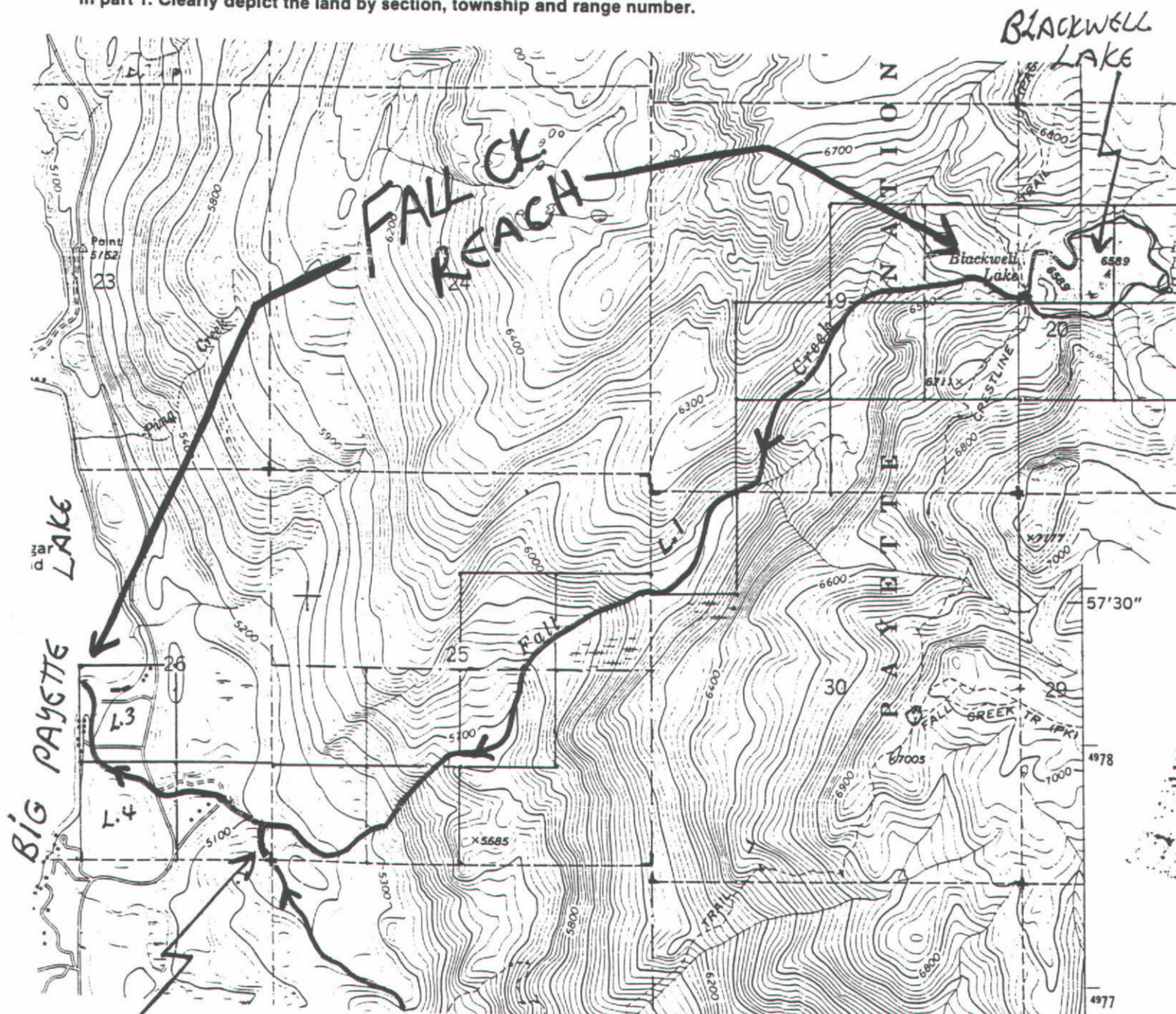


STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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



Split CK in  
SESE S. 26

T 19 N.

R 23 E

R 24 E

MICROFILMED  
L. MAR 2 2004  
4 lots per plat - 11/18/99









T605

6.3

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MAR 22 2004

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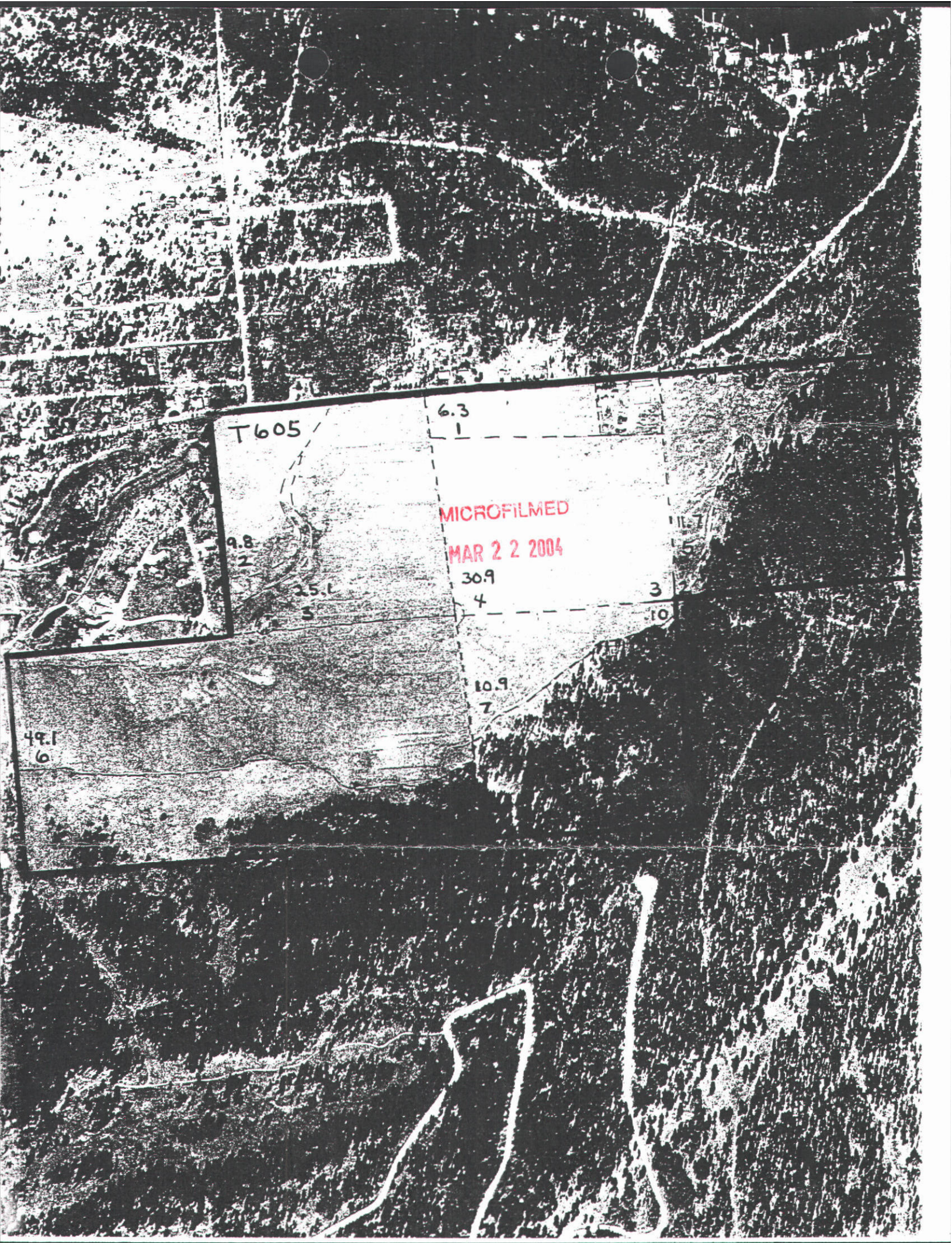
49.1

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7





T605

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1

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MAR 22 2004

30.9

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7

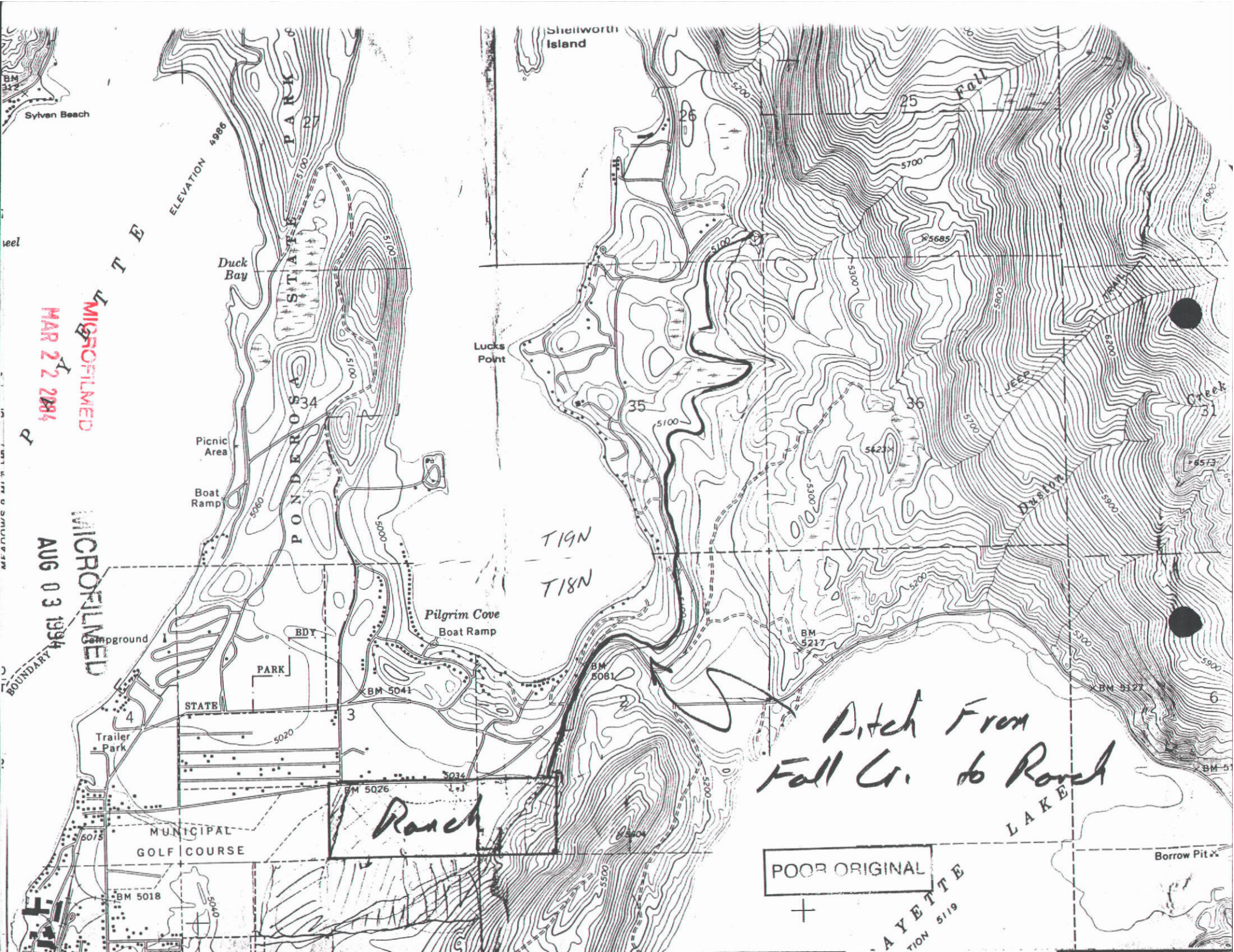
49.1

6









Sylvan Beach

ELEVATION 4986

Duck Bay

PONDEROSA STATE PARK

Picnic Area

Boat Ramp

Pilgrim Cove Boat Ramp

STATE

MUNICIPAL GOLF COURSE

Shellworth Island

Lucks Point

T19N  
T18N

Ranch

Ditch From  
Fall Cr. to Ranch  
LAKE

POOR ORIGINAL



AYETTE  
TION 5119

Borrow Pit

MAR 22 2004

AUG 03 1994

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STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**TRANSFER OF WATER RIGHT**  
TRANSFER NO. 66135

This is to certify that: J B SCOTT  
PO BOX 70001  
BOISE ID 83707-0101  
(208)424-3840

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

**Summary of Water Rights Before the Proposed Change**

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>	<u>Total</u>	<u>Source</u>
65-2923C	WR/Decreed	07/01/1929	1 52 cfs	96.42 af	91 0	91 0	FALL CREEK

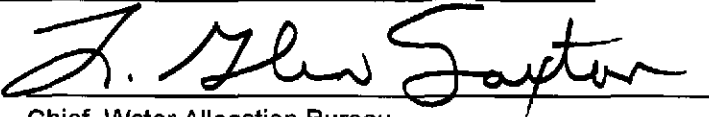
**Purpose of Transfer (Changes Proposed)**

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
65-2923C	NO	NO	YES	NO	YES	YES

**Summary of Water Rights After the Approved Change**

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
65-2923C	65-2923C	N/A	96 4 af	N/A	N/A		N/A	N/A	N/A	N/A
<b>TOTALS</b>		N/A	96.4 af	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 22<sup>nd</sup> day of November, 2002  
  
 Chief, Water Allocation Bureau

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MAR 22 2004



**WATER RIGHT NO. 65-2923C**  
**As Modified by Transfer No. 66135**

In accordance with the approval of Transfer No 66135, Water Right No. 65-2923C is now described as follows.

**Right Holder:** J B SCOTT  
 PO BOX 70001  
 BOISE ID 83707-0101

**Priority Date:** 07/01/1929

**Source:** FALL CREEK                      **Tributary:** PAYETTE LAKE

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
FISH HABITAT STORAGE	01/01	to 12/31		96.4 AF
FISH HABITAT FROM STORAGE	01/01	to 12/31		96.4 AF
				96.4 AF

**LOCATION OF POINT(S) OF DIVERSION:**

FALL CREEK                      SWSWNW    Sec. 20    Twp 19N    Rge 04E    VALLEY County

**PLACE OF USE:** FISH HABITAT STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N 04E 20							X	X		X							

**PLACE OF USE:** FISH HABITAT FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N 03E 26																X	

**CONDITIONS OF APPROVAL**

1. That portion of right 65-2923C described as a diversion rate of 1.52 cfs for irrigation use and all of Right 65-2923B have been abandoned, and Right 65-13597 has been relinquished through approval of Transfer 66135
2. Use of water under this right is subject to control by the watermaster of State Water District No. 65, Payette River
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the release of water from Blackwell Lake.

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MAR 22 2014



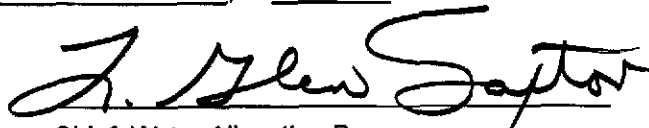
**WATER RIGHT NO. 65-2923C**  
**As Modified by Transfer No. 66135**

**CONDITIONS OF APPROVAL**

4. When water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate the depletion of water caused by this water use.
5. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
6. Use of water under this right may be affected by an agreement between the protestant and the right holder.
7. Approval of Transfer 66135 does not grant any right-of-way or easement across land of another.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer
10. Pursuant to Section 42-1412(6), Idaho Code, this partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Snake River Basin Adjudication court at a point in time no later than the entry of a final unified decree

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 22<sup>nd</sup> day of November, 2002

  
Chief, Water Allocation Bureau

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MAR 22 2004



# TRANSFER #66135 (5768)

Notes by Steve Lester 

March 22, 2002

- ORIGINAL APPLICATION FOLLOWS THIS PAGE.
- \$100 fee paid in 1998 for incomplete application.
- Acceptable application received July 22, 1999.
- Correct fee paid for 1999 submittal.
- Revisions verbally approved by applicant prior to July 2000 publication.  
Applicant initialed revisions on page 1 of original on July 11, 2000.
- Now replaced by amended version received today.

7/22/99 Amended Appl.

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MAR 22 2004



STATE OF IDAHO

RECEIVED

#66135

JUL 13 2000

Transfer No. 5768DEPARTMENT OF WATER RESOURCES  
WESTERN REGION

RECEIVED

JUL 22 1999

## APPLICATION FOR TRANSFER OF WATER RIGHT

OCT 17 2000

PART 1

REVISIONS APPROVED

WATER RESOURCES  
WESTERN REGIONWATER RESOURCES  
WESTERN REGIONName of applicant J. B. SCOTTPhone 208-424-3340Post Office address P.O. Box 70001 Boise A 83707-0101

## A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use  
☒ Change nature of use ☒ Change period of use ☒ Other TRANSFER OWNERSHIP (via split)

2. Describe the reason for the proposed changes APPLICANT HAS SUFFICIENT WATER FROM WATER RIGHT NO. 65-13597, WITH RELEASE OF LANDITION NO. 4, FOR HIS IRRIGATION NEEDS. APPLICANT DESIRES TO ASSIST THE ID. DEPT. OF F+G. IN ENHANCING FISH HABITAT IN FALL CREEK

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

- | 1. Right Number            | Priority                   | Amount (cfs/ac-ft)          | Nature of Use                          | Period of Use                  |
|----------------------------|----------------------------|-----------------------------|--|--------------------------------|
| <u>65-02923</u>            | <u>7/1/1929</u>            | <u>96.4 c.f.</u>            | <u>FISH HAB. STOR (LAW)</u>            | <u>1/1 to 12/31</u>            |
| <u>(a.k.a. #65-02923C)</u> |                            | <u>96.4 c.f.</u>            | <u>FISH HAB. FIZ STOR</u>              | <u>1/1 to 12/31</u>            |
| <del><u>65-02923</u></del> | <del><u>7/1/1929</u></del> | <del><u>96.4 c.f.</u></del> | <del><u>FISH HAB. STOR (LAW)</u></del> | <del><u>1/1 to 12/31</u></del> |
| <del><u>65-02923</u></del> | <del><u>7/1/1929</u></del> | <del><u>96.4 c.f.</u></del> | <del><u>FISH HAB. STOR (LAW)</u></del> | <del><u>1/1 to 12/31</u></del> |

2. Total amount of water being transferred 1.74 cubic feet per second and/or 96.4 acre-feet per annum.
3. Source of water FALL CR. / SPLIT CR. tributary to BIG PRAIRIE LAKE / FALL CR.
4. Point(s) of Diversion: C.J.S. B.J.S. C.J.S. J.S.

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	SW	NW	20	19N	4E	VALLEY	BUCKWELL RESERVOIR / FALL CR.
	SW	SW	SE	26	19N	2E	VALLEY	SPLIT CREEK

## 5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
19N	4E	20							FHS	FHS	FHS								
		19			FHS	FHS					FHS			FHS			FHS		
		30						L.I	FHS										
	3E	25			FHS	FHS					FHS	FHS	FHS				FHS		
		26															FHS	FHS	FHS
																	L3 <sup>+</sup>	L4 <sup>+</sup>	
C = all tracts for FALL CR. water																			
B = just Section 26 for split CR. water																			

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MAR 22 2004

Total acres \_\_\_\_\_



## PART 1

## 6. General Information:

a. Description of diversion system DIVERSION SYS. FOR WATER RT. 65-02923  
IS RUCKWORT DAM (14' HIGH WITH 3' HEADGATE). CURRENT  
DIVERSION FROM FALL IR. TO BE ELIMINATED

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

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

NONE - SEE A, 2 ABOVE

d. Remarks:

---

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Application for Transfer of Water Rights No \_\_\_\_\_

And said application is hereby \_\_\_\_\_, subject to the following limitations and conditions:

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

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MAR 22 2004

PS 2487



WR0749NP  
No. 65-02923X

IDAHO DEPARTMENT OF WATER RESOURCES  
WATER RIGHT PROFILE REPORT

DATE: 09/23/98  
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	C. JOHN STRINGER RT. 3, BOX 720 ONTARIO OR 97914	07/01/1929	IRRIGATION IRRIGATION FROM STORAGE	04/15 10/15 04/15 10/15	2.800 CFS	178.00 AFA
TOTAL DIVERSION:					2.800 CFS	

Water Source: FALL CREEK

Tributary to: BIG PAYETTE LAKE

Stage: DECREED

Point(s) of Diversion: T19N R04E S20 SWNW VALLEY County

Place of use Legal Description for: IRRIGATION

NE				NW				SW				SE													
T	R	S		NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:	SUM	
				Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac			
18N	03E	2	:					:					:			11		:						:	11.0
18N	03E	3	:					:					:					:			40	40	:	80.0	
18N	03E	10	:	10	29			:	38				:					:					:	77.0	
TOTAL ACRES																							168.0		

Place of use location for IRRIGATION FROM STORAGE is the same location as described for: IRRIGATION

Pou County: VALLEY

Other Water Rights Listing Overlapping Place(s) of use:

65-02923A 65-13119 65-13597 65-13724 65-13796

Remarks: GEN POINT OF RE-DIVERSION IN SESE, S.26, T.19N, R.3E.  
DECREE GIVEN LICENSE NUMBER.

Dates: App. Received: Priority Date: 07/01/1929  
Proof Due Date: Proof Made Date:  
Exam Made Date: Exam Sent to S.O.:  
Licensed Date: 05/19/1937

Misc: Water District Number: 65 Field Exam Fee:

Audit: 04/10/86 04/30/88 CONVERT 11/01/95 BCHAPMAN

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MAR 22 2004

15 398



10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO

If yes, describe \_\_\_\_\_

**B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED**

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.52 for irrigation purposes from 4/15 to 10/15  
 (cfs/ac-ft)  
 amount 96.4 for irrig. from purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft) Storage  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	20	19N	4E	1/10/16	Blackwell Lake / Fall Creek

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
18N	3E	2											11						11
		3															40	40	80

Total acres 91**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)**

1. amount 1.28 for irrigation purposes from 4/15 to 10/15  
 (cfs/ac-ft)  
 amount 81.6 for irrig. from purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft) Storage  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)

2. Point(s) of Diversion

Same as above in B2

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
18N	3E	10	10	29			38												77

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MAY 22 2004

Total acres

77B. 4 of 8



WR5809NP  
No. 65-02923A

IDAHO DEPARTMENT OF WATER RESOURCES  
WATER RIGHT PROFILE REPORT

DATE: 11/19/99  
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	C. JOHN STRINGER RT. 3, BOX 720 ONTARIO OR 97914	07/01/1929	IRRIGATION	04/15 10/15	0.400 CFS	
TOTAL DIVERSION:					0.400 CFS	

Water Source: SPLIT CREEK

Tributary to: FALL CREEK

Stage: DECREED

Point(s) of Diversion: T19N R03E S26 SESE VALLEY County

Place of use Legal Description for: IRRIGATION

NE				NW				SW				SE																				
NENE		NWNE		SWNE		SENE		NENW		NWNW		SWNW		SENW		NESW		NWSW		SWSW		SESW		NESE		NWSE		SWSE		SESE		
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM	
18N	03E	2	:						:								11	:													11.0	
18N	03E	3	:						:									:							40	40	:			80.0		
18N	03E	10	:	10	29	:				38	:							:												77.0		
TOTAL ACRES																												168.0				

Pou County: VALLEY

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):  
65-12848 65-13297

Other Water Rights Listing Overlapping Place(s) of use:  
65-02923X 65-13119 65-13597 65-13724 65-13796

Remarks: GEN DECREE GIVEN LICENSE NUMBER.

Dates: App. Received: Priority Date: 07/01/1929  
Proof Due Date: Proof Made Date:  
Exam Made Date: Exam Sent to S.O.:  
Licensed Date: 05/19/1937

Misc: Water District Number: 65 Field Exam Fee:

Audit: 04/10/86 04/30/88 CONVERT 11/01/95 BCHAPMAN

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MAR 22 2004

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10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO

If yes, describe \_\_\_\_\_

### B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount .22 for irrigation purposes from 4/15 to 10/15  
 (cfs/ac-ft)  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp.	Rge.	County	Local name for diversion
		SE	SE	26	19N	36	Valley	Split Creek

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
18N	36	2											11						11
		3														40	40		80

Total acres 91

### C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount .18 for irrigation purposes from 4/15 to 10/15  
 (cfs/ac-ft)  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)

2. Point(s) of Diversion:

AS ABOVE in item B2

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
18N	36	10	10	29			38												77

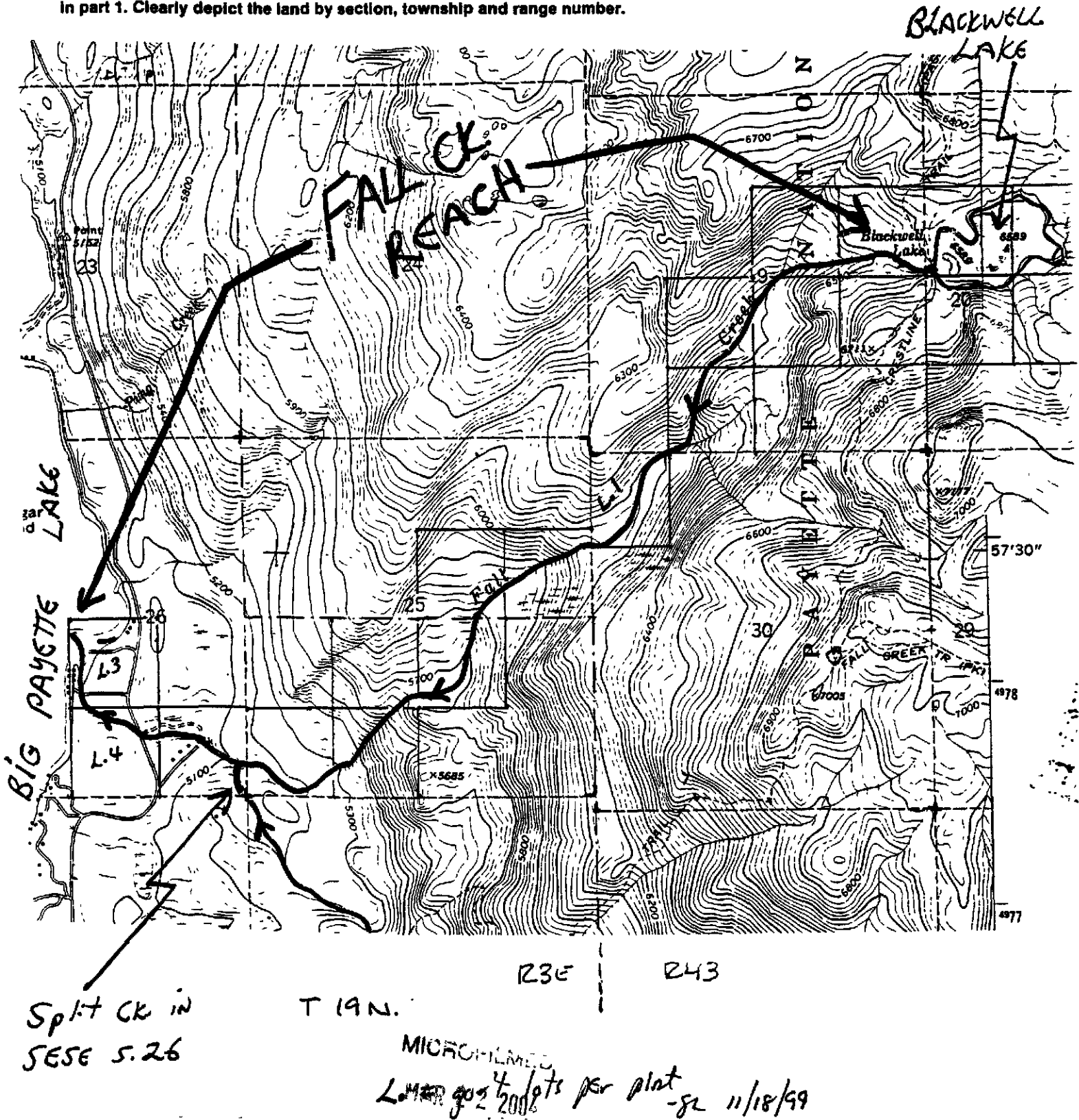
PS. 6 of 8

TOTAL 77



**STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 3**

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





**PART 3**

**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	<u>FISH HABITAT STOR.</u>	<u>96.4 A.F.</u>		<u>1/1</u> to <u>12/31</u>
	<u>FISH HAB. FIZ STOR.</u>	<u>96.4 A.F. <del>174.0</del></u>		<u>1/1</u> to <u>12/31</u>

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

\_\_\_\_\_

\_\_\_\_\_

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

NONE: PORTION OF SW. SECTION 1 AND  
STORAGE RTS. BEING TRANSPORTED  
WILL BE USED FOR FISH HABITAT,  
RATHER THAN IRRIGATION.

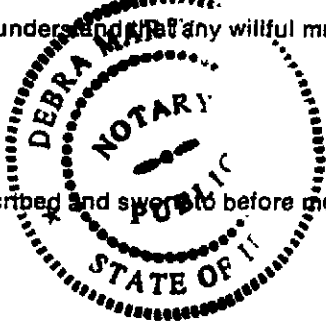
I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

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

Subscribed and sworn to before me this 21st day of July, 1999.

James L. Crawford  
 (Signature of Applicant)

Debra M. [Signature]  
 (Notary Public)



My commission expires 6/2002

**FOR DEPARTMENT USE ONLY**

Transfer contains 8 pages and 4 attachments (A-D)

Received by Kh Date 7/22/99 Protest filed by \_\_\_\_\_

Prelim. check by FL Fee \$100 W024289

Receipted by FL for LG Date 8/19/98

Published in STAR NEWS Copies of protest forwarded by \_\_\_\_\_

Pub. dates 7-6 + 13-00 Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Watermaster recommendation requested on \_\_\_\_\_ Recommended for ☐ approval ☐ denial

\_\_\_\_\_ rec'd. \_\_\_\_\_ by \_\_\_\_\_

Copy of transfer sent to lien holder \_\_\_\_\_

Fee paid per original MICR 1/998.

MAR 22 2006

Pg. 8 of 8



Page 1 of 6STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

Transfer No. \_\_\_\_\_

RECEIVED

JUL 22 1999

WATER RESOURCES  
WESTERN REGION

## APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

REC'd again this date with  
revised version with same date stampName of applicant J.B. Scott Phone 208-424-3840  
Post Office address PO Box 70001 BOISE ID 83707-0101

## A. PURPOSE OF TRANSFER

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

2. Describe the reason for the proposed changes Applicant has sufficient water from water right No. 65-13597, with the release of Condition No. 4, for his current irrigation needs. Applicant desires to maintain and enhance fish habitat in Fall Creek via transfer to Dept. of F&G.

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

1. Right Number Priority Amount (cfs/ac-ft) Nature of Use Period of Use  
65-02923X 7/1/1929 96.4 FISH HAB. STOR (LAKE) 1/1 to 12/31  
(a.k.a. A65-02923C) 96.4 FISH HAB. FR. STOR 1/1 to 12/31  
1.52 CFS. FISH HAB. FR. STOR (FALL CREEK) 1/1 to 12/31  
65-02923B 7/1/1929 .22 CFS FISH HAB. ~~FR. STOR~~ (SPLIT CR.) 1/1 to 12/31
2. Total amount of water being transferred 1.74 cubic feet per second and/or 96.4 acre-feet per annum.
3. Source of water FALL CREEK / SPLIT CR. tributary to BIG PAYETTE LAKE
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	SW	NW	20	19N	4E	VALLEY	BUCKWELL RESERVOIR / FALL CR.
		SE	SE	26	19N	3E	VALLEY	SPLIT CREEK

5 Lands irrigated or place of use:

8/19/98 Original Appl.

Twp	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
19N	4E	20							FHS	FHS		FHS							MICROFILMED
		19			FHS	FHS					FHS			FHS			FHS		MAR 22 2004
		30						FHS											
	3E	25			FHS	FHS					FHS		FHS	FHS			FHS		
		26														FHS	FHS	FHS	
this Original Filed on 8/19/98 - SEE 7/22/99 Revisions																			

Total acres \_\_\_\_\_



**PART 1****6. General Information:**

a. Description of diversion system Diversion system for water right No. 65-029232  
is Blackwell Reservoir Dam (14' high with 3' headgate)

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

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

None, because, with the release of condition  
No. 4 to Water Right 65-13597, Applicant can ade-  
quately meet current irrigation needs.

d. Remarks:

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Application for Transfer of Water Rights No. \_\_\_\_\_

And said application is hereby \_\_\_\_\_, subject to the following limitations and conditions:

Witness my hand this 24<sup>th</sup> day of November, 19 98.

James L. Crawford

**MICROFILMED****MAR 22 2004**



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
**APPLICATION FOR TRANSFER OF WATER RIGHT**

**PART 2**

(Attach one copy for each right)

**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by:

- a. Decree No. \_\_\_\_\_ Decreed to \_\_\_\_\_  
in case of \_\_\_\_\_ vs. \_\_\_\_\_  
dated \_\_\_\_\_ in \_\_\_\_\_ county of \_\_\_\_\_
- b. License No. \_\_\_\_\_ issued by the Idaho Department of Water Resources.
- c. Claim No. \_\_\_\_\_ on file with the Idaho Department of Water Resources.
- d. Transfer No. \_\_\_\_\_ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other \_\_\_\_\_

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_

4. Date or priority \_\_\_\_\_

5. Water is used for the following purpose:

amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
(cfs/ac-ft)  
amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
(cfs/ac-ft)  
amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
(cfs/ac-ft)

6. Total amount of water under right \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

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**MAR 22 2004**

Total acres \_\_\_\_\_

9 Describe any other water rights used for the same purpose as described above \_\_\_\_\_



10 To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO If yes, describe \_\_\_\_\_**B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED**

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.52 + .22 for Irrigation purposes from 4/15 to 10/15  
 (cfs/ac-ft)  
 amount 96.4 for Irrigation purposes from 4/15 to 10/15  
 (cfs/ac-ft)  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)

2. Point(s) of Diversion: N/C

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
18N	3E	2											11						11
		3														40	40		80

Total acres 91**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)**

1. amount ~~1.78~~ 1.06 for Irrigation purposes from 4/15 to 11/15  
 (cfs/ac-ft)  
 amount 81.6 for Irrigation purposes from 4/15 to 11/15  
 (cfs/ac-ft)  
 amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_  
 (cfs/ac-ft)

2. Point(s) of Diversion: N/C

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
18N	3E	10	10	29			38												77

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MAR 22 2004

Total acres 77



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**PART 3**

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

T.19N

R3E	R4E
-----	-----

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**PART 3****B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	FISH HABITAT STORAGE	96.4 ac-ft		1/1 to 12/31
	FISH HAB FROM STORAGE	96.4 ac-ft	1.74 cfs	1/1 to 12/31

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

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

None: Unchanged Portion of Right is independently owned  
= Portion of Storage and In-stream rights being  
transferred will be used for fish habitat,  
rather than irrigation.

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

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

(Signature of Applicant)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(Notary Public)

My commission expires \_\_\_\_\_

**FOR DEPARTMENT USE ONLY**

Transfer contains \_\_\_\_\_ pages and \_\_\_\_\_ attachments

Received by ly Date 8/15/1998 Protest filed by \_\_\_\_\_Prelim. check by \_\_\_\_\_ Fee \$100 W024289 \_\_\_\_\_Receipted by ly Date 8/15/1998 \_\_\_\_\_

Published in \_\_\_\_\_ Copies of protest forwarded by \_\_\_\_\_

Pub. dates \_\_\_\_\_ Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Watermaster recommendation requested on \_\_\_\_\_ Recommended for ☐ approval ☐ denial

\_\_\_\_\_ rec'd. \_\_\_\_\_ by \_\_\_\_\_

Copy of transfer sent to lien holder \_\_\_\_\_

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MAR 22 2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA )  
 ) PARTIAL DECREE PURSUANT TO  
 ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
 ) Water Right 65-02923C  
 )

NAME AND ADDRESS: J B SCOTT  
PO BOX 70001  
BOISE, ID 83707-0101

SOURCE: FALL CREEK TRIBUTARY: BIG PAYETTE LAKE

QUANTITY: 1.52 CFS  
96.42 AFY

PRIORITY DATE: 07/01/1929

POINT OF DIVERSION: T19N R04E S20 SWSNW Within Valley County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	1.52 CFS
	Irrigation from Storage	04-15 TO 10-15	96.42 AFY
	Irrigation Storage	01-01 TO 12-31	96.42 AFY

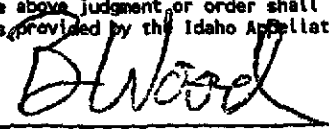
PLACE OF USE: Irrigation Within Valley County  
T18N R03E S02 SWSW 11.0  
S03 SWSE 40.0 SESE 40.0  
91.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
Barry Wood  
Administrative District Judge  
Presiding Judge of the  
Snake River Basin Adjudication





State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

November 25, 2002

J B SCOTT  
PO BOX 70001  
BOISE ID 83707-0101

RE: Transfer No.: 66135 - Water Right 65-2923C - Transfer Approval Notice

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7940.

Sincerely,

*for Pamela S. Skaggs*  
Jeff Peppersack, Manager  
Water Rights Permits Section

JP:klt

Enclosure(s)

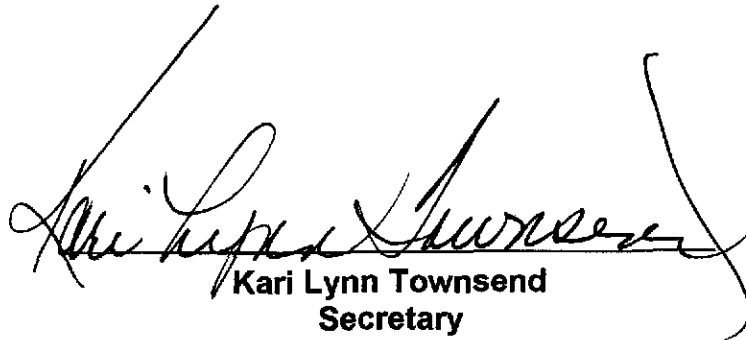
MICROFILMED  
MAR 22 2004

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 25, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**RE: TRANSFER NO. 66135 - WATER RIGHT 65-2923C**

**J B SCOTT  
PO BOX 70001  
BOISE ID 83707-0101**



**Kari Lynn Townsend  
Secretary**

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**MAR 22 2004**





State of Idaho

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

November 12, 2002

RON SHURTLEFF  
WATERMASTER  
102 N MAIN  
PAYETTE

RE: TRANSFER OF WATER RIGHT 65-2923C - (Transfer 66135)

Dear Ron:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water right (Transfer 66135) in the names of J. B. Scott.

If you have any questions, please call me at 208-327-7940.

Sincerely,



Jeff Peppersack, Manager  
Water Right Permits Section

JP:klt

Enclosure

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NOV 22 2004

**EXPLANATORY INFORMATION  
TO ACCOMPANY A  
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

**PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

**EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

**REQUEST FOR HEARING**

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

**ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

**CERTIFICATE OF SERVICE**

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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MAR 22 2004



### **FINAL ORDER**

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

# TRANSFER REVIEW SHEET

Trans # 66135

Date Reviewed 9/4/02 updated 11/20/02

RECEIVED SL

Right No(s). \* 65-2923C

NOV 21 2002

Split? Y N Y N Y N Y N Y N Y N

Department of Water Resources

AREA OF CONCERN: No/Yes N

## PURPOSE OF TRANSFER FOR EACH RIGHT:

Change p/d Change use period Change p/u  
Add p/d Change nature of use

RightID's of From & To records correct? Y N (resolve with State Office personnel) P.D. migrated to WR, xfer on that record  
Check for Partial Decree issuance, etc. since time of application's entry

PROOF OF OWNERSHIP COMPLETE FOR OLD & NEW P/U SEE 9/13/02 memo Lien Holder Release N/A

## GROUNDWATER:

### DRILLING PERMIT

All wells - 046  
DP upgrade req'd Y N (contact GW personnel)  
WMD - North/East/West  
≤ 0.24 cfs/5 acres - No MD  
> 0.24 cfs/5 acres - 067

### WMD

≤ 0.24 cfs/5 acres - No MD  
> 0.24 cfs/5 acres - 01M or 01Q  
Supp irr (irr = only use) - 065-104  
Supp irr (+ other uses) - 100-105

## SURFACE WATER:

WD  
≤ 0.20 cfs/others  
> 0.20 cfs  
WB, SPRINGS/SINK, INACTIVE WD & REST OF STATE  
≤ 0.24 cfs/5 acres - No MD  
> 0.24 cfs/5 acres - 01M or 01Q  
- R04 (WD# 65) WM comments rec'd ✓  
- R02, 01P or No MD  
- R43 assumes ok c 96 af from storage

STANDARD SEASON \_\_\_\_\_ to \_\_\_\_\_ (use X61 if extended season)

STANDARD VOLUME \_\_\_\_\_ af/ac

CONSUMPTIVE USE VOLUME \_\_\_\_\_ af/ac

## USES:

✓ STORAGE - 18C-R02-01P-18B NA USE R40 instead 11/20/02  
IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)  
> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)  
STOCKWATER - R37 (all BLM/USFS)  
MINING - 054-106  
FISH PROP - 029(70'S only)-007-122-106  
HEAT/COOL - R07 (injection well)  
FIRE PROT. - 077  
DAIRY - 082 (zoning if a concern)-106-WD8

## USES:

POWER - 17H-17K (+uses)-025-106  
MUNICIPAL  
Restricted area - 022-075 RAFN - 007-109-X64  
Irr., GW supp to SW - 102  
DOMESTIC  
Surface water - WB5 (Big Wood or Boise above Star Bridge)  
- 27A (Payette River)  
> 1 in restricted area - 070-071-075 (no parks/common areas, etc)  
Irr use listed separate - WB5

## MISC CONDITIONS/REMARKS:

✓ T07 - 1 yr to develop  
✓ T08 - comply or rescind  
T17 - measure all p/d's (used with WB4)  
T18 - Special T17 & R43 combined - multiple pds in WD

X49 - measure p/d's (source chg'd to orig trib)  
X51 - 2+ yrs to develop  
X53 - Use ltd to orig. source availability  
X54 - forfeited ac/rate (used rarely)  
X55 - (transfer shrinks total water to less ac)  
✓ X57 - no right-of-way  
X58 - pending claim (statutory or AJ b/u claim)  
X61 - extended irr season  
X62 - replaces N05/08/09-14  
X63 - replaces C12  
WB4 - + p/ds, cfs & afa (used with T17)  
WD8 - land application of waste water  
01Q - used instead of 01M when there's another meas. Cond (i.e. T17 & 01m)

## Apply one:

T09 - on-going claim in SRBA\*  
✓ T19 - replaces C18 and used on unchg'd portions in SRBA (Recomm. or PD)  
\*Edit condition to fit scenario if not ongoing in SRBA process

✓ Protested -020 X19  
Water Quality - 106-R07

OTHER CONDITIONS/REMARKS X23 c WO 65 Rental pool. WAS T19 CORRECT in this case?

11/20/02 add language c Relinquish (abandon) NATURAL flow per S.O. CONCURRENCE

COMMENTS Shape file completed c S.O. 9/3/02; Process with 65-13724

Database files updated ✓ Approval form printed email to Pam 9/13/02 c header up  
Special Mailing Instructions (cc's, etc) cc JDFG with ownership change form. See 3/28/02 letter c contact.  
Final database update after approval \_\_\_\_\_ \*Comment to WR No(s). \_\_\_\_\_

Will need show cfs in 65-29238 abandoned upon final order in effect

65-29238 Abandoned  
65-13597 Relinquished  
Approval Updates  
Completed 11-22-2002  
JS



## PROTEST INFORMATION SHEET

**APPLICANT:** J. B. Scott

**WATER RIGHT NO:** X-fer No. 5768

**DATE FILED:** 7-22-00 **PROTEST DATE:** 7-24-00

**PROTESTANT(S) NAME & ADDRESS:**

Steve Spencer  
US FOREST SERVICE  
380 Park Center Ste 330  
Boise ID 83706

~~WATERMASTER MARK Limbongh~~ ← per his  
8/24/00  
Request - gr

**~~Attorney Name & Address:~~**

~~Brian McMahan  
Milleman Pittenger & McMahan  
PO Box 1066  
McCall ID 83638~~

**Issues:**

**Applicant - Attorney - Name & Address:**

**Dates:**

**Acknowledgement Letters:** \_\_\_\_\_

**Hearing Notice:** \_\_\_\_\_

**Hearing Date:** \_\_\_\_\_

**Room Confirmation Letter** \_\_\_\_\_

**Other:** \_\_\_\_\_

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

**Lester, Steve**

---

**From:** Lester, Steve  
**Sent:** Friday, September 13, 2002 11:48 AM  
**To:** Skaggs, Pam  
**Subject:** Transfer 66135 for 65-2923C

Pam:

This transfer should be headed your way next week along with Application 65-13724. This is for JB Scott about transferring water to IDFG re Blackwell Lake by McCall. You might have seen the shape file work Mike and Lori worked on last week at S.O. to help with this one.

The draft approval document has been printed and included in the transfer file.

I hope Gary can send it on next week. I take off for my big trip then so will be out of action for awhile.

See you later,

Steve

Dennis Meyer is Scott's local contact  
in Boise 424-3840.

I text him msg. e there about ready  
to go to S.O.

He might call to inquire.

-JC

**Lester, Steve**

---

**From:** Lester, Steve  
**Sent:** Thursday, August 01, 2002 4:19 PM  
**To:** Grindle, Dave  
**Subject:** Transfer Application 66135

Dave:

I am working on this transfer application and hope to wrap it up and get it to the SO soonest. I was advised to get your help to remove the rights shown in the transfer database and add a different right instead.

Current data entry: Claims 65-2923A and 65-2923X. Want to remove both from the transfer.

Different right to add to transfer: Partial Decree 65-2923C, which has already been migrated to the WR side.

I have not used the "remove" function in transfer data entry and heard it can be dicey. Please let me know best way to proceed.

Thanks.

Steve

*Database updated w/ WR Record  
65-2923C 8/2/02.*

*OK to continue.*





**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

**DIRK KEMPTHORNE**  
Governor

**KARL J. DREHER**  
Director

April 26, 2002

MICHAEL E COLLETTE  
US FOREST SERVICE  
380 PARK CENTER STE 330  
BOISE ID 83706

Re: Application for Transfer No. 66135 in the Name of J. B. Scott

Dear Protestant:

This letter is to acknowledge the withdrawal of protest of the above-referenced application for transfer.

The department will now continue to process this application, subject to certain conditions of approval.

If you have any questions please call this office.

Sincerely,

Steve Lester

SL:st

CC: Applicant with Copy of Withdrawal

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MAR 22 2004

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APR 23 2002

WATER RESOURCES  
WESTERN REGION

WITHDRAWAL OF PROTEST

April 22, 2002

Idaho Department of Water Resources  
Wester Region  
2735 Airport Way  
Boise, ID 83705-5082

To Whom It May Concern:

We have reviewed the amended transfer application for water right no. 65-2923C. This water right is owned by J.B. Scott. The USDA Forest Service protested this transfer – originally no. 5768. The application has been highly modified and amended and apparently renumbered to no. 66135.

The transfer now changes the purpose of use from irrigation emphasis to fish habitat with storage and diversion from storage components. The water right now essentially reflects the original water right irrigation descriptions with storage in Blackwell Reservoir and places of use off of the National Forest without encumbering any National Forest System land along Fall Creek.

This eliminates our concern with this transfer. The storage facility remains unchanged on NFS land for the purpose of fish habitat storage. And we believe this more accurately reflects what Mr. Scott wanted to accomplish with the transfer. We therefore withdraw our protest to this transfer.

If you have any questions about this matter, please contact Steve Spencer in Boise at 331-5944.

Sincerely,



MICHAEL E. COLLETTE

MICROFILMED

MAR 22 2004

re J.B. Scott & Co  
Follow up ★

Lester, Steve

**From:** Peppersack, Jeff  
**Sent:** Monday, April 22, 2002 1:24 PM  
**To:** Lester, Steve  
**Cc:** Shaff, Don; Grindle, Dave  
**Subject:** RE: Transfer 66135 for 2 Basin 65 rights

Steve,  
I completed the move for these rights. You may need to have Dave Grindle help you clean up the transfer application data. The application (66135) is currently using the A and X suffix versions of the right (in AJ) for the "to" and "from" records. If I understand correctly, you want the C suffix (now in WR) to be used for the transfer "to" and "from."

Jeff

-----Original Message-----

**From:** Shaff, Don  
**Sent:** Monday, April 22, 2002 12:26 PM  
**To:** Lester, Steve; Peppersack, Jeff  
**Cc:** Larson, Mark; Ciscell, Michael  
**Subject:** RE: Transfer 66135 for 2 Basin 65 rights

Jeff, I started the push on these splits. My apologies, Steve, for forgetting about these in the push for ESPA water district stuff. Thanks for your patience. Jeff, Steve's description below should help with the pedigree tracks for splits X and A.

Thanks,

Don

dshaff@idwr.state.id.us

208/327-7932

<< File: B65 PD Issued 10-31-00.xls >>

-----Original Message-----

**From:** Lester, Steve  
**Sent:** Friday, March 22, 2002 2:22 PM  
**To:** Shaff, Don; Peppersack, Jeff  
**Subject:** Transfer 66135 for 2 Basin 65 rights

Don & Jeff:

I have an unusual situation complicated by lots of stuff and need some help to proceed.

T.66135 was filed in 1999 and advertised by July 2000. Transfer involved split portions of decreed rights 65-2923A & X for applicant J B Scott. The A right included natural flow from Split Creek & the X right included natural flow & storage from Fall Creek, with storage occurring at Blackwell Lake east of Big Payette Lake. Both rights delivered natural flow & storage to a common ditch irrigating land near the McCall golf course.

Scott wanted to transfer his portion of both rights to IDFG. IDFG would manage the water for fishery habitat at Blackwell and in Fall Creek. Protested by Forest Service. Very close to working out settlement of protest at this point. Applicant, protestant and IDFG want this to work.

Somehow this one escaped wr/aj coordination (our fault at Western in transfer processing) and partial decrees were issued October 2000 as follows:

wr A	split in SRBA & partial decree	65-2923B for Split Ck. for Scott
wr X	"	" 2923C for Fall Ck. for Scott
wr A	"	" 2923D for Split Ck. for Whiteman
wr X	"	" 2923E for Fall Ck. for Whiteman.

with  
storage

Scott has B & C rights as result of partial decrees. Scott amended his transfer today to delete B (Split Ck). Processing T.66135 can resume once 65-2923C is migrated to wr side of our database. Then I can re-enter transfer data entry and clean it up (current data entry does not reflect what was proposed ... probably just carried over existing info from VAX when moved the transfer application over in last couple years).



4-15-02

State of Idaho  
Department of Water Resources

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APR 18 2002

WATER RESOURCES  
WESTERN REGION

**RECOMMENDATION OF WATERMASTER**

Application No: Transfer App. 5768 (65-02923C & 65-02923B)

Applicant's Name: J.B. Scott

Watermaster's Recommendation:

- a)      I do not oppose approval of this application
- b)   X   I do not oppose approval of this application if it is conditioned as follows: Idaho Department of Fish and Game to manage storage water for Fishery Habitat In Blackwell Lake, and deliver to Point of use via Fall Creek.
- c)      I oppose approval of this application for the following reasons:
- d) Additional Comment: I see no negative results to this Proposed transfer.

*CURRENT WM  
supports amended  
version*

*Watermaster*

Dated this 15 day of April, 2002

Water District No. 65

Ron Shurtleff  
Ron Shurtleff, Watermaster

Use reverse side of page if you need more space

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MAR 22 2004



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

March 28, 2002

RON SHURTLEFF  
PAYETTE RIVER WATERMASTER  
102 N MAIN  
PAYETTE ID 83661

*Re: J. B. Scott Application for Transfer No. 66135, Amended*

Dear Mr. Shurtleff:

Enclosed is a copy of an amended transfer application for Mr. Scott. Also enclosed are copies of the former wastermaster's comments regarding the original transfer application.

Mr. Scott amended his transfer to only include one water right recently decreed as no. 65-2923C in the Snake River Basin Adjudication (SRBA). That right reflects a portion of a right previously identified as no. 65-2923X for irrigation use of natural flow and storage water from Fall Creek. The "X" right was split into "C" and "E" portions for separate owners in the SRBA.

The original transfer application proposed to use natural flow and storage water from two rights. The new use of that water was to provide fish habitat at Blackwell Lake plus downstream on Fall Creek between the lake and Big Payette Lake. It was most unlikely that the department could have approved the change for natural flow as originally proposed. It is possible the department could have approved the change for storage water as originally proposed.

The USDA Forest Service (FS) protested the original application because part of the proposed place of use was on land administered by FS (Fall Creek flows through public land before reaching state and/or private land farther downstream). FS indicated likely withdrawal of the protest if that issue could be resolved.

In response to the above concerns, the applicant amended the application. First, the natural flow right for Split Creek was deleted from the filing (originally identified as 65-2923A but now split into "B" for Scott and "D" for another owner). Second, the proposed place of use for Fall Creek on FS land was deleted. One tract downstream on Fall Creek remains as a proposed place of use for the release of storage water to be released for

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MAR 22 2004

March 28, 2002

Page 2

delivery to that single tract for fishery habitat in the creek. Third, Mr. Scott agreed to abandon his natural flow portion of 65-2923C if the transfer is approved. Scott's irrigation of the land originally served by surface water rights will occur from wells under an approved ground water permit and a pending application for permit.

The amended transfer proposes to provide Scott's portion of the storage water in Blackwell Lake (about 96 acre feet) to the Idaho Department of Fish and Game (IDFG). A change in water right ownership would be filed if the transfer were approved. IDFG would manage the storage water for fishery habitat in Blackwell Lake and to some extent downstream in Fall Creek. The natural flow portion of Scott's Fall Creek right would be abandoned. The overall impact on downstream water users would probably be positive since Scott would no longer use surface water to irrigate his property.

I realize this a somewhat confusing story but wanted to give you enough background to submit your recommendations for the amended transfer application. I look forward to working with you as the new Payette River watermaster and will be glad to do whatever I can to provide help in this or any other matters. Please feel free to get in touch by calling me at 334-2190 at your convenience.

Please submit your written comments by April 19, 2002.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with the first name "Steve" written in a stylized, elongated manner and the last name "Lester" written in a more standard cursive script.

Steve Lester  
Water Rights Supervisor

Enclosure

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MAR 22 2004





**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

March 28, 2002

DALE ALLEN  
ID DEPT OF FISH & GAME  
3101 S POWERLINE RD  
NAMPA ID 83686

*Re: J. B. Scott Application for Transfer No. 66135, Amended*

Dear Dale:

A few months ago we had a telephone conversation about Mr. Scott's plan to transfer water to your agency. The water involves Fall Creek and Blackwell Lake near McCall. You asked to be apprised of the status of this water transfer.

The transfer application remains protested by the USDA Forest Service. The applicant recently revised the transfer to address the protest. Enclosed is a copy of an amended transfer application (only the relevant Attachment C is included with the copy).

Mr. Scott amended his transfer to only include one water right recently decreed as no. 65-2923C in the Snake River Basin Adjudication (SRBA). That right reflects a portion of a right previously identified as no. 65-2923X for irrigation use of natural flow and storage water from Fall Creek. The "X" right was split into "C" and "E" portions for separate owners in the SRBA.

The original transfer application proposed to use natural flow and storage water from two rights. The new use of that water was to provide fish habitat at Blackwell Lake plus downstream on Fall Creek between the lake and Big Payette Lake. It was most unlikely that the department could have approved the change for natural flow as originally proposed. It is possible the department could have approved the change for storage water as originally proposed.

The protest focuses on that portion of the original application proposing to record a place of use in Fall Creek on federal land administered by the Forest Service. The Forest Service indicated likely withdrawal of the protest if that issue could be resolved. The revised application only identifies one place of use tract downstream from Blackwell

*re Xfer  
Appraisal:*

*Send CC to IDFG*

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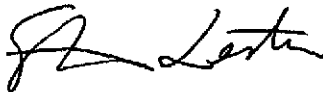
MAR 22 2004

March 28, 2002  
Page 2

Lake. The downstream site is located on state land according to the applicant. Storage water would be released and delivered to that downstream point for fishery habitat use under the amended transfer application.

The protestant is considering the amended application. I will keep you informed of this application as processing continues.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with the first name "Steve" written in a stylized, connected manner to the last name "Lester".

Steve Lester  
Water Rights Supervisor

Enclosure

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MAR 22 2004



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

March 22, 2002

STEVE SPENCER  
USDA FOREST SERVICE  
380 PARKCENTER BLVD STE 330  
BOISE ID 83706

*Re: J. B. Scott Application for Transfer No. 66135, Amended*

Dear Steve:

Enclosed is a copy of the amended transfer application for Mr. Scott. As you can see, the only place of use beyond the reservoir is a single tract downstream in SESE Section 26. Copies of the transfer application attachments are not included since they remain unchanged from the original filing.

Please review the amended application. The enclosed withdrawal form can be submitted to this office if the amended filing will resolve the Forest Service protest.

Your written reply within thirty (30) days of the date of this letter will be appreciated. A hearing will be scheduled to resolve the matter if the protest cannot be withdrawn. The applicant and protestant are welcome to submit a signed settlement agreement together with a protest withdrawal if the parties so desire. Please let me know if you need further assistance regarding this transfer application.

Sincerely,

Steve Lester  
Water Rights Supervisor

Enclosure

CC: J. B. Scott c/o Jim Crawford and/or Dennis Moyer

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MAR 22 2004



J. B. SCOTT  
501 BAYBROOK COURT  
BOISE, IDAHO 83706

P.O. Box 70001 • BOISE, IDAHO 83707-0101  
(208) 424-3840 • FAX (208) 424-3850

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MAR 22 2002  
WATER RESOURCES  
WESTERN REGION

March 21, 2002

Mr. Steve Lester  
Water Rights Supervisor  
Idaho Department of Water Resources  
Western Division  
2735 Airport Way  
Boise, Idaho 83705-5082

RE: Application for Transfer No. 66135 and Application for Permit No. 65-13724

Dear Steve:

Enclosed is a copy of the amended transfer application which contains the completed the items as requested and discussed. This application has been signed by Jim Crawford, as authorized, and notarized.

We look forward to proceeding with this matter and obtaining approval by the Department.

Again, thank you for your assistance.

Sincerely,

  
Dennis Moyer

enclosure

cc: J B Scott  
Jim Crawford

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MAR 22 2004



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

March 4, 2002

J B SCOTT  
C/O DENNIS MOYER  
PO BOX 70001  
BOISE ID 83707-0101

*Re: Application for Transfer No. 66135 and Application for Permit No. 65-13724*

Dear Dennis:

Enclosed is an amended transfer application based on discussions between the applicant's representatives, the protestant and the Idaho Department of Water Resources (IDWR). Please review the transfer application for completeness and accuracy. Please complete the following items for the transfer application.

1. Page 2, item 6d, Remarks: explain the applicant's legal access to the land proposed as a place of use for water to be used as "fish habitat from storage." The idea is that storage water will be released for delivery to this downstream point at or near the head of the irrigation ditch, which will no longer be used. Storage water will be delivered to the downstream site but not withdrawn from the creek. The applicant can show some legal basis (land ownership, easement etc.) for describing a water right with a place of use in SESE Section 26.
2. Page 5, item 10, Forfeiture question: complete and explain if necessary. The question applies to the five year period prior to the original application filed in July 1999 (July 1994 through July 1999). A suggested response for a valid defense to forfeiture based on past conversations with Jim follows. *"Yes. Have diverted or been able to divert all of the right but extreme maintenance problems prevented full use of the water as noted in the June 25, 1998, letter from Jim Crawford to IDWR. A pipeline to replace the ditch was not cost effective."* A copy of Jim's letter is attached for your convenience but does not need to be included with the application.
3. Page 7: Notarized signature of the applicant or applicant's legal representative. A footnote clarifies that application information remains the responsibility of the applicant despite IDWR assistance in preparing the form.

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J. B. Scott  
March 4, 2002  
Page 2

4. Anything else: please make any changes to the application if mistaken information has been included.

Due to legal considerations beyond my expertise, I am not sure if IDWR can approve the Section 26 place of use for water delivered from storage to that instream site. But it is worth including it on the transfer in anticipation of approval. The place of use for water to be held in Blackwell Lake ("fish habitat storage") does not appear to present any difficulties.

Meanwhile, processing will continue for revised ground water Application No. 65-13724. This application has not been advertised yet but will be in the last two weeks of March.

The completed transfer application can be returned to me at your earliest convenience. A fee is not needed to amend the transfer filing since re-advertising will not occur. Please let me know if you need any assistance, and thank you for your attention to these matters.

Sincerely,



Steve Lester  
Water Rights Supervisor

Enclosure

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MAR 22 2004

T. 65135 JB Scott

S.O. MEETING

12/20/01

NOTES RE  
12/17/01  
MEMO

Norm Y., Glen S., Jeff R., -82

Partial deems 65-2923 B } total 1.74 cfs w/ full vol. implied  
-2923 C } 96.4 Af storage  
91 Acres

G.W. Permit 65-13547 (1995) field exam 1997 → .33 cfs  
120.4 AFA (V<sub>0</sub>)  
84 Acres

UR = 252 AFA  
conditional as supplemental right

Appl 65-13724 (1997) F. l. to replace 13547 before it was  
reinstated  
to make whole g.w. supply 81 Acres  
held 1997 & future mit. delay into  
processing  
processed 2002 re future mit. condition  
accepted

TOTAL storage & Blackwell = 178 Af (dam safety)  
- 96.42 = Scott  
81.58 balance = wh. held / USFF

parties never responded to applicants re Zone's  
attempts to include in discussion



Stan Clark - wants us keep not. Am. interest

Noon - work w/ players to make it happen,

but keep it simple.

P.O. / tentative - pending cases suggest it'll happen despite partial down - work for updates

Scott Johnston -

can. characterize its position, keep strong.

uptake of don. its volatility of storage

don't read column after answer (Lynn) & then right effort put some resources & data (get note to those times).

100% give idea ok, problem to waste signif. cond. on older give since not happy w/ firm.

Better = we 13724 as sub give right, when appears relatively 13597.

But 13597 = 84 ac.

13724 = 81 ac.

it took 84 w/ full firm, required 13724 w/ advanced priority

After strong - suggest Scott with a demonstration pt to deliver things to ... show some layout to that site that can be converted to 5015 w/ own changes.

# Ultimate / Best solution

mid. streamflow

(already discussed of Scott)

Enroll (gift?) some to water bank for use in

supplying mid. streamflow

... long + complex

→ Watch for decision Falls Ct. in Pasadena ...  
some common elements re Scott situation

## Next

check after + give appl. fix as needed

reliable prehy. conf.

... results ... what does IDFG think?

P.O. 65-2923C migrate to work for  
after process to continue

## MEMORANDUM

TO: Norm Young, Glen Saxton and Jeff Peppersack  
(separate copies to each person)

FROM: Steve Lester *SL*

DATE: December 17, 2001

RE: J. B. Scott Application for Transfer

---

Mr. Scott owns irrigated land in McCall east of Lick Creek Road near Ponderosa State Park. The land has been irrigated with surface water and supplemented with ground water. Scott has two surface water rights: one with natural flow and storage from Fall Creek, and the other with natural flow from Split Creek (actually an unnamed stream per topo) tributary to Fall Creek. Water is stored in Blackwell Lake and released for downstream diversion from an earth ditch just past the confluence of Fall and Split creeks. He began discussing his water right situation with IDWR in early 1998.

Scott wants to ~~remove~~ the surface water rights from his place because the long delivery ditch has been unusable since about 1993. Repeated attempts to improve the ditch have not been successful. He looked into replacing the ditch with a pipeline but found it too expensive. Scott hopes to let IDFG take over the surface water to maintain the fishery resource of Fall Creek downstream from Blackwell Lake. Scott would continue irrigating with ground water.

Scott filed *Transfer Application 66135* (formerly 5768) in mid 1999. He proposed the following ideas:

- Change all of his natural flow and storage surface water to fish habitat use at Blackwell Lake and in Fall Creek (although advised that the natural flow component of the plan cannot be approved) between Blackwell and Payette lakes.
- IDFG would file an ownership change upon approval.
- Allow ground water to fully irrigate his land by processing *Application 65-13724* for use with supplemental ground water Permit 65-13597. Allow 65-13597 to be a primary right by changing its conditions of approval (but it only supplies part of the water needed for the acres).

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MAR 22 2004

The transfer was published and protested by the Forest Service in mid 2000. Application 65-13724 was not published pending clarification of some problems with the filing. The portion of the surface water rights not owned by Scott is associated with land "down the

\* CORRECTION - ditch has been usable but unpredictable in amount of water deliverable to P/L per maintenance problems. See Crawford's 6/25/98 letter in file plus applicant's 3/22/02 amended application. -SL

ditch" from Scott. The surface water rights were split by SRBA claims. Western Region attempted to discuss the situation with the other owner to no avail.

Scott offered a fairly good defense to forfeiture of his surface water rights. Scott's rights were pending in the SRBA until recently issued as Partial Decrees 65-2923B and 65-2923C. The SRBA process should have been stayed pending resolution of the transfer – I do not know what went wrong in our process. I suppose the partial decrees dismiss the forfeiture question in Scott's transfer. The other owner holds Partial Decrees 65-2923D and 65-2923E.

The transfer parties met a couple times at Western to discuss the issues. IDFG is not a party and has not attended any meetings but has telephoned several times to express its interest. All the participants are interested in settling to allow Blackwell Lake to be used for fishery maintenance in Fall Creek. Everyone wants to avoid a hearing.

Scott revised his transfer in October 2001. He deleted the natural flow part of the plan and instead just seeks to change the nature, period and place of use of storage water in 65-2923C. The 96 af of storage would provide fish habitat use at Blackwell Lake and downstream in Fall Creek. The amended transfer lists Fall Creek tracts in the P/U.

The Forest Service has concerns about listing creek tracts as a P/U on public land. Similar concerns need to be addressed for creek tracts on private land in the terminal portion of Fall Creek.

One solution might include limiting the fish habitat P/U to Blackwell Lake. This would not protect storage water released to the creek. But Forest Service has control of most the creek below the lake, leaving the short reach of private land as an area of concern. Ideally, another party would seek to transfer the natural flow portion of the rights to a location downstream from Payette Lake. That would protect the flow in Fall Creek and benefit downstream users. Another solution might be to place the natural flow in the water bank. Any proposed action for the natural flow part of Scott's rights would need to show how the natural flow and storage aspects of Scott's rights could be separated.

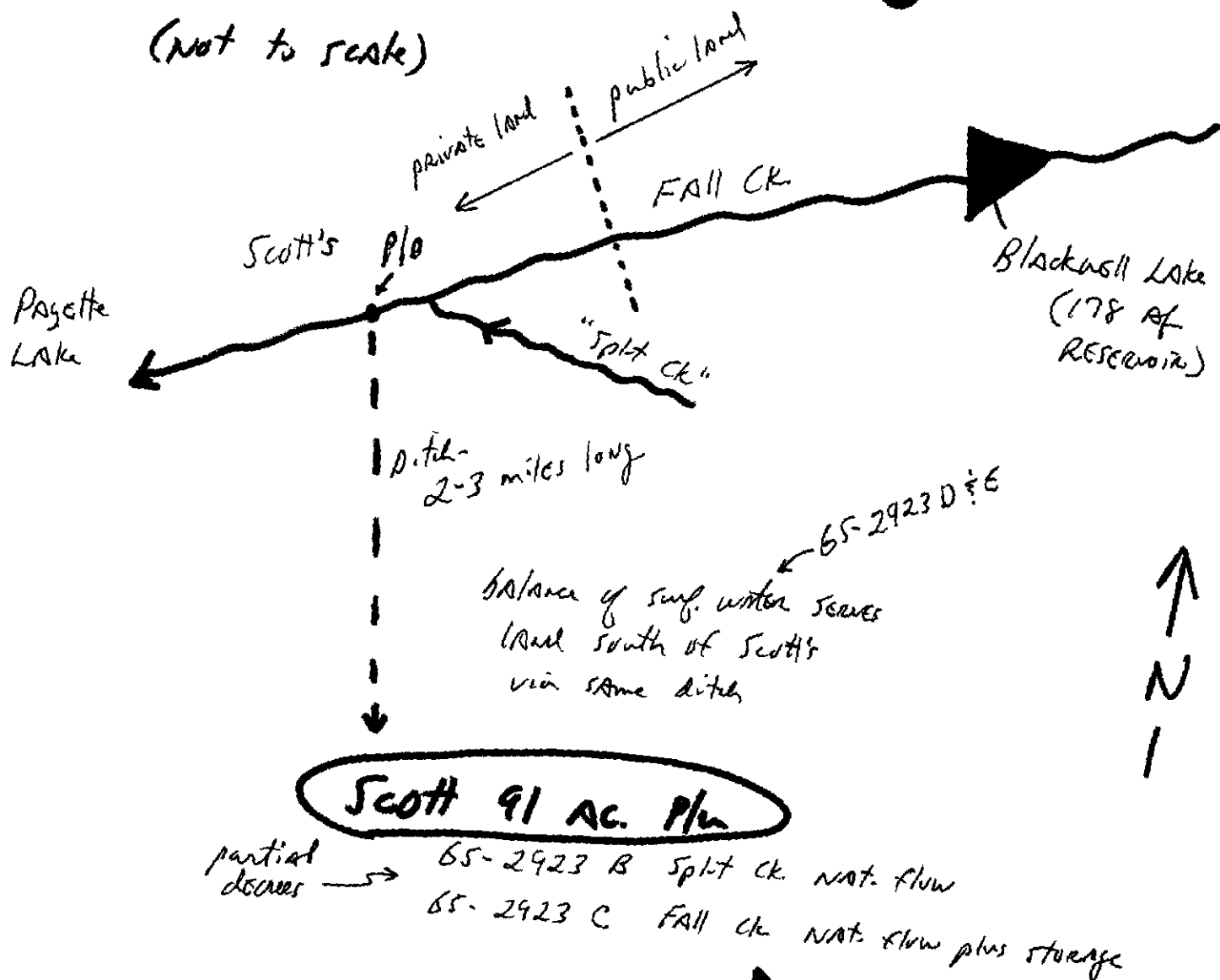
*The purpose of the meeting on December 20 is to discuss administration's perspective on this situation, particularly if a transfer approval sets a precedent. The issue of de facto instream use can be addressed. Additional information is attached to depict the scenario.*

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MAR 22 2004



J. B. Scott  
(Not to scale)



### Consider

- SEVER S.W. from P/O?
- Let g.w. be primary?
- Transfer at least storage to IOFs for fish habitat at Reservoir & Fall Ck.?
- Abandon NAT. flow part of S.W.? or transfer to downstream party?

### Supplement with:

- G.W. Permit 65-13597  
REINSTATED  
EXAMINED  
license pending
- G.W. Appl. 65-13924 to "make whole"  
MICROFILMED  
MAR 22 2006

(updated 12/14/07)

8/5/98



Page \_\_\_\_\_ of \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCESTransfer No. 66135

## APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

10/17/01 AMENDED version too hard to read - this

Name of applicant \_\_\_\_\_ Phone \_\_\_\_\_

Post Office address Worksheet shows Amended specs -SL

## A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use  
☒ Change nature of use ☒ Change period of use ☐ Other \_\_\_\_\_
2. Describe the reason for the proposed changes Applicant desires to assist IDEG in  
enhancing fish habitat in Fall Creek by changing storage use. Natural flow  
will be abandoned contingent on transfer approval and approval of  
ground water irrigation (65-13597 & 65-13724).

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

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>65-2923C</u>	<u>7/1/1929</u>	<u>96.4</u>	<u>Fish Habitat Storage</u>	<u>1/1</u> to <u>12/31</u>
		<u>96.4</u>	<u>Fish Habitat from</u>	<u>1/1</u> to <u>12/31</u>
			<u>Storage</u>	
				to
				to

2. Total amount of water being transferred 96.4 cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.3. Source of water Fall Creek tributary to Payette Lake

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	<u>SW</u>	<u>SW</u>	<u>NW</u>	<u>20</u>	<u>19N</u>	<u>4E</u>	<u>Valley</u>	<u>dam at Blackwell Lake</u>

5. Lands irrigated or place of use: LAKE in S, 20, Fall Creek in others

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>19N</u>	<u>36</u>	<u>25</u>			<u>✓</u>	<u>✓</u>					<u>✓</u>		<u>✓</u>	<u>✓</u>		<u>✓</u>			
		<u>26</u>														<u>✓</u>	<u>✓</u>	<u>✓</u>	
	<u>4E</u>	<u>19</u>			<u>✓</u>	<u>✓</u>					<u>✓</u>			<u>✓</u>		<u>✓</u>			
		<u>20</u>							<u>✓</u>	<u>✓</u>		<u>✓</u>							
		<u>30</u>						<u>✓</u>											

MAY 22 2004

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# SRBA DIRECTORS REPORT 65-02923B

[Return to SRBA Home Page](#)

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IWT072

IDAHO DEPARTMENT OF WATER RESOURCES  
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 65-02923B

Name and Address: J B SCOTT  
PO BOX 70001  
BOISE, ID 83707-0101*No storage*Source: SPLIT CREEK

Tributary: FALL CREEK

Quantity: .22 CFS

Priority Date: 07-01-1929

Diversion Point: T19N R03E S26 SESE Within Valley County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-15 TO 10-15	.22 CFS

Place of Use:	Irrigation	Within Valley County
	T18N R03E S02	SWSW 11
	S03	SWSE 40
	91 Acres Total	SESE 40

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

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[Return to SRBA Home Page](#)

---

*Rights have been partially decreed  
but won't display on IWATRS*

MICROFILMED

MAR 22 2004



## IDAHO DEPARTMENT OF WATER RESOURCES

**Adjudication Recommendation Report 65-2923B V1**

WATER RIGHT NUMBER. 65-2923B V1

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	DANIEL P OSTERMILLER PO BOX 741 MC CALL, ID 83638 (208)634-2428
Original Owner	C JOHN STRINGER RT 3 BOX 720 ONTARIO, OR 97914
Current Owner	J B SCOTT PO BOX 70001 BOISE, ID 837070101 (208)342-2712

Priority Date. 07/01/1929

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SPLIT CREEK	FALL CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/15 to 10/15	0.220 CFS	
	<u>Total Diversion</u>	0.220 CFS	

Location of Point(s) of Diversion

SPLIT CREEK	SE1/4SE1/4	Sec. 26, Twp 19N, Rge 03E, B.M
VALLEY County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
18N	03E	2												11.0					11.0
18N	03E	3															40.0	40.0	80.0

Total Acres 91

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

MICHAEL J. SCOTT

JAN 2 2 2002

JAN 2 2 2002

IDAHO DEPARTMENT OF WATER RESOURCES  
Adjudication Recommendation Report 65-2923B V1

Comments:

1. SBOCK 8/16/1999 COPIED FROM REMARKS

Comment: MAPS AND SALES AGREEMENT ATTACHED \*CHANGE OF OWNERSHIP COMPLETED BY L.R.W. ON 8/6/93. | ADDRESS CHANGE BY CLAIMANT LETTER 4/15/1999 SS.

2. AJU10-JS 9/24/1999 AJU10 CONDITION UPDATE

Comment: CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

Dates and Other Information:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Defendant:

Plaintiff:

Civil Case Number:

Judicial District:

Notice of Error Flag: NONE RECEIVED

State or Federal: S

Owner Name Connector: OR

Water District Number: 65

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

MICROFILMED

MAR 22 2004

# SRBA DIRECTORS REPORT 65-02923C

[Return to SRBA Home Page](#)

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IWT072

IDAHO DEPARTMENT OF WATER RESOURCES  
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

---

Right Number: 65-02923C

Name and Address: J B SCOTT  
PO BOX 70001  
BOISE, ID 83707-0101

*With storage... change  
to all year f.h. storage;  
f.h. from storage*

Source: FALL CREEK

Tributary: BIG PAYETTE LAKE

Quantity: 1.52 CFS  
96.42 AFY

Priority Date: 07-01-1929

Diversion Point: T19N R04E S20 SWSWNW Within Valley County

Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-15 TO 10-15	1.52 CFS
	Irrigation from Storage	04-15 TO 10-15	96.42 AFY
	Irrigation Storage	01-01 TO 12-31	96.42 AFY

Place of Use: Irrigation Within Valley County

T18N R03E S02	SWSW 11	
S03	SWSE 40	SESE 40
91	Acres Total	

Irrigation from Storage  
Same as Other Use

Irrigation Storage  
Same as Other Use

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

*Abandon  
to  
IDFG*

---

[Return to SRBA Home Page](#)

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MICROFILMED

MAR 22 2004

## IDAHO DEPARTMENT OF WATER RESOURCES

**Adjudication Recommendation Report 65-2923C V1**

WATER RIGHT NUMBER: 65-2923C V1

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	DANIEL P OSTERMILLER PO BOX 741 MC CALL, ID 83638 (208)634-2428
Current Owner	J B SCOTT PO BOX 70001 BOISE, ID 837070101 (208)342-2712
Original Owner	C JOHN STRINGER RT 3 BOX 720 ONTARIO, OR 97914

Priority Date: 07/01/1929

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
FALL CREEK	PAYETTE LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION FROM STORAGE	4/15 to 10/15		96.42 AF
IRRIGATION	4/15 to 10/15	1.520 CFS	
IRRIGATION STORAGE	1/01 to 12/31		96.42 AF
	<u>Total Diversion:</u>	1.520 CFS	96.42 AF

Location of Point(s) of Diversion

FALL CREEK	SW1/4SW1/4NW1/4	Sec 20, Twp 19N, Rge 04E, B M.
VALLEY County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
18N	03E	2											11.0						11.0
18N	03E	3															40.0	40.0	80.0

Total Acres: 91

IRRIGATION FROM STORAGE same as IRRIGATION  
IRRIGATION STORAGE same as IRRIGATION

Conditions of Approval:

MICRO...

SEP 22 2001



## IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 65-2923C V1

- 1 C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE SECTION 42-1412(6), IDAHO CODE.

Remarks:Comments:

1. SBOCK 8/18/1999 COPIED FROM REMARKS  
 Comment. MAPS AND SALES AGREEMENT ATTACHED | \*\*\*\*\*  
 POINT OF RE-DIVERSION IN SESE, S.26, T.19N, R 3E \*\*\*\*\*  
 \*CHANGE IN OWNERSHIP COMPLETED BY L R W ON 8/6/93. | ADDRESS CHANGE BY CLAIMANT LETTER  
 4/15/1999 SS
- 2 SBOCK 9/21/1999 STORAGE  
 Comment: YEAR ROUND STORAGE FOR IRR WAS ADDED TO THIS RIGHT SINCE IT IS NO LONGER A GEN  
 PROVISION IN THE SRBA
- 3 AJU10-JS 9/24/1999 AJU10 CONDITION UPDATE  
 Comment: CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10

Dates and Other Information:

Decreed Date:  
 Enlargement Use Priority Date.  
 Enlargement Statute Priority Date  
 Defendant:  
 Plaintiff:  
 Civil Case Number  
 Judicial District:  
 Notice of Error Flag: NONE RECEIVED  
 State or Federal: S  
 Owner Name Connector: OR  
 Water District Number 65  
 Generic Max Rate Per Acre:  
 Generic Max Volume Per Acre:  
 Swan Falls Trust or Nontrust  
 Swan Falls Dismissed:  
 DLE Act Number.  
 Carey Act Number.  
 Mitigation Plan: False

MKR

12/17/2001

J. B. SCOTT  
501 BAYBROOK COURT  
BOISE, IDAHO 83706

P.O. Box 70001 • BOISE, IDAHO 83707-0101  
(208) 424-3840 • FAX (208) 424-3850

RECEIVED

OCT 17 2001

WATER RESOURCES  
WESTERN REGION

October 3, 2001

Mr. Steve Lester  
Western Division  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, Idaho 83705-5082

VIA: Hand Delivery

RE: Application to Transfer #5768  
Application to Permit #65-13724

Dear Mr. Lester

Enclosed please find the following:

1. Letter dated September 27, 2001 from Mr. J.B. Scott, owner, to you authorizing Mr. Jim Crawford to submit the revised applications noted above.
2. Letter dated September 10, 2001 from Mr. Jim Crawford to you concerning the revision of the above applications.
3. Application for Permit #65-13724, dated April 15, 1997, with initialed revisions.
4. Application for Transfer of Water Right #5768, dated July 13, 2000, with initialed revisions.
5. Request to Process, dated September 17, 2001 and attached letter from Jim Crawford to you concerning mitigation September 17, 2001.

Thank you for your assistance in this matter.

If you have any questions, please call me at 208-424-3865 or Mr. Jim Crawford at 208-634-6732.

Sincerely,

  
Dennis Moyer  
Real Estate Manager

enclosures

cc: Mr. Steve Spencer, US Forest Service  
w/ copies of applications and letters.

MICROFILMED

MAY 22 2004

J. B. SCOTT  
501 BAYBROOK COURT  
BOISE, IDAHO 83706

P.O. Box 70001 • BOISE, IDAHO 83707-0101  
(208) 424-3840 • FAX (208) 424-3850

RECEIVED

OCT 17 2001

WATER RESOURCES  
WESTERN REGION

September 27, 2001

Mr. Steve Lester  
Western Division  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, Idaho 83705-5082

RE: Application to Transfer #5768  
Application to Permit #65-13724

Dear Mr. Lester:

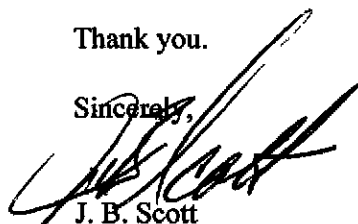
In the past, Milleman, Pittenger, McMahn & Pemberton, LLP has corresponded with the Idaho Department of Water Resources on my behalf in the matter of the above referenced applications.

This letter is to notify you that Jim Crawford has been authorized to submit the revised applications referenced in our letter, dated September 10, 2001, directly to you. The submittal of these revised applications will not be through the Milleman, Pittenger, McMahn & Pemberton law firm noted above.

If you have any questions, please call Jim Crawford at 208-634-6732 or Dennis Moyer at 208-424-3865.

Thank you.

Sincerely,



J. B. Scott

MICROFILMED

MAR 22 2004

J. B. SCOTT  
501 BAYBROOK COURT  
BOISE, IDAHO 83706

P.O. Box 70001 • BOISE, IDAHO 83707-0101  
(208) 424-3840 • FAX (208) 424-3850

RECEIVED

OCT 17 2001

WATER RESOURCES  
WESTERN REGION

September 10, 2001

Mr. Steve Lester  
Western Region  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, Idaho 83705-5082

RE: Application to Transfer # 5768  
Application for Permit # 65-13724

Dear Mr. Lester:

Thank you for taking time to meet with us on September 6th. We appreciate your efforts in helping to deal with these concerns.

As discussed, we are requesting that the surface water rights and storage rights and obligations under Water Rights #56-02923C and # 65-02923B for the irrigation of approximately 91 acres be abandoned and transferred in the Application for Transfer #5768. Specifically, the in-stream natural flows of 1.52 CFS in #65-02923C (Fall Creek) and .22 CFS in #65-02923B (Split Creek) would be abandoned, while the storage portion of #65-02923C (Blackwell Lake) which is 96.42 AFY would be transferred to the Idaho Department of Fish and Game.

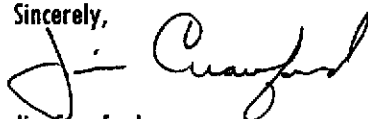
The Application for Permit #65-13724 is for ground water and is intended to request approval for a quantity to equal that of the surface water being abandoned under the separate application for transfer. Additional possible future wells are shown in alternative locations that would allow total production up to the amount allowed to irrigate a total of approximately 91 acres.

Please note that these applications for abandoning surface water rights and transferring storage anticipates a corresponding approval of the permit for ground water. In the event that the ground water permit is not approved, we simultaneously withdraw the abandonment application.

Again, thank you for your help.

If you have any questions, please call me at 208-634-6732 or Dennis Moyer at 208-424-3865.

Sincerely,



Jim Crawford  
For J.B. Scott

enclosures

MICROFILMED

MAR 22 2004

*to abandon natural  
flow in 2 rights*

*"Correspondence 10-17-01 abandonment"*

*Conditional abandonment*



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

April 24, 2001

BRIAN L MCMAHAN  
MILLEMANN PITTENGER MCHAHAN & PEMBERTON LLP  
PO BOX 1066  
MCCALL ID 83638

*Re: J. B. Scott Transfer Application No. 66135 (old no. 5768)*

Dear Brian:

Your letter of March 16 requested more time for the above referenced transfer application. The request is approved for an additional six months. The extension will expire October 24, 2001.

Please note the new transfer number for Mr. Scott's application. The new number results from a database change in department records. No other change to the application has occurred.

Please let me know if you need further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', is written over a horizontal line.

Steve Lester  
Water Rights Supervisor

cc: Steve Spencer, USDA Forest Service  
Mark Limbaugh, Payette River Watermaster

MICROFILMED

MAR 22 2004



**MILLEMANN, PITTENGER, McMAHAN & PEMBERTON, LLP**  
**ATTORNEYS AT LAW**

706 NORTH FIRST  
POST OFFICE BOX 1066  
MCCALL, IDAHO 83638

STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. PEMBERTON

TELEPHONE (208) 634-7641  
FACSIMILE (208) 634-4516  
E-MAIL mpm@micron.net

March 16, 2001

Idaho Department of Water Resources  
Western Region  
Attn: Steve Lester  
2735 Airport Way  
Boise, ID 83705-5082

RECEIVED

MAR 19 2001

WATER RESOURCES  
WESTERN REGION

Re: J. B. Scott Transfer Application No. 5768

Dear Steve:

This letter will follow your letter to me dated October 4, 2000. The purpose of this letter is to request another six month interruption in the processing of the above-referenced Transfer Application. It is my understanding that the current six-month interruption will expire on April 4, 2001. Accordingly, another six-month interruption is requested. This request is made pursuant to Water Appropriation Rule 40.01.d. This request is being made in order to give us more time to resolve the issues which have arisen. Thank you.

Sincerely,

*Brian L. McMahon*

BRIAN L. McMAHAN

BLM/plp

cc: Client  
Jim Crawford  
Steve Spencer, USDA Forest Service  
Joe Mallett

MICROFILMED

MAR 22 2001



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

October 4, 2000

**BRIAN L MCMAHAN**  
**MILLEMANN PITTENGER & MCMAHAN LLP**  
**PO BOX 1066**  
**MCCALL ID 83638**

***Re: J. B. Scott Transfer Application No. 5768***

Dear Brian:

This letter acknowledges a six month interruption in processing the above referenced transfer application as requested in your September 20, 2000, letter. Processing can resume prior to six months from the date of this letter if the applicant makes a written request to that effect or if the parties submit other information sufficient to allow a resumption.

If the issues remain unresolved at the end of six months, the applicant can make a written request to extend the interruption period for another six months. At any time in this process, the applicant can request a hearing in lieu of having or seeking more time.

Please let me know if you need more information in this regard.

Sincerely,

A handwritten signature in cursive script that reads 'Steve Lester'.

Steve Lester  
Water Rights Supervisor

Cc: Michael Collette & Steve Spencer, USDA Forest Service

MICROFILMED

MAR 22 2004

RECEIVED

SEP 22 2000

WATER RESOURCES  
WESTERN REGION

**MILLEMANN, PITTENGER & McMAHAN, LLP**  
**ATTORNEYS AT LAW**  
706 NORTH FIRST  
POST OFFICE BOX 1068  
MCCALL, IDAHO 83638

STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. PEMBERTON

TELEPHONE (208) 634-7641  
FACSIMILE (208) 634-4516  
E-MAIL mpm@cyberhighway.net

September 20, 2000

Idaho Department of Water Resources  
Western Region  
Attn: Steve Lester  
2735 Airport Way  
Boise, ID 83705-5082

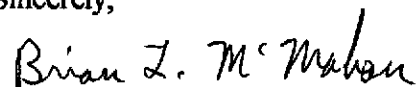
Re: J. B. Scott Transfer Application No 5768

Dear Steve:

This letter will follow and confirm our telephone conversation on the morning of September 20<sup>th</sup> regarding the above-referenced matter. The purpose of this letter is to request a six month interruption in the processing of the above-referenced Transfer Application. This request is made pursuant to Water Appropriation Rule 40.01.d. This request is being made in order to give us more time to work with the Protestant (U.S. Forest Service) and the City of McCall in resolving the issues which have arisen. In talking to all of the other parties, we are in agreement that all of the issues regarding this Transfer Application can be resolved, but we simply need more time to get everyone up to speed and then get the appropriate documentation done.

Thank you for your assistance

Sincerely,



BRIAN L. McMAHAN

BLM/plp

cc: Client  
Jim Crawford  
Steve Spencer (USDA Forest Service)  
Joe Mallett

MICROFILMED

MAR 22 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way, Boise, Idaho 83705

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE:

9/18/00

TO:

Brian McMahon

FROM:

Steve Lester

Fax 208-634-4516

DOCUMENT DESCRIPTION:

J.B. Scott transfer application #5768-

checking status. At this point, IDWR needs to schedule

prehearing conference, parties need to demonstrate that issues

resolved so protest withdrawn, or applicant should request ID

TOTAL PAGES SENT:

0

+ COVER SHEET

CONTACT:

writing that processing be interrupted for up to  
6 months (water Appropriation Rule 40.01. d).

Please let me know by 9/22/00 which ~~path~~ path  
will apply.

MICROFILMED

MAR 22 2004

Thanks,  
JR

United States  
Department of  
Agriculture

Forest  
Service

Boise Adjudication Team  
Recreation and Lands  
Intermountain Region

380 ParkCenter, Suite 330  
Boise, ID 83706

---

Reply to: 2540

Date: September 12, 2000

Gary Spackman  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, ID 83705-5082

**RECEIVED**

**SEP 13 2000**

WATER RESOURCES  
WESTERN REGION

Dear Gary:

This is our response to your August 30, 2000, letter to Steve Spencer requesting that we contact you by September 15<sup>th</sup> concerning any progress toward settlement of our protest of J.B. Scott's transfer application no. 5768.

Steve has met with people representing Mr. Scott and has talked with Mr. McMahan. A possible settlement was drafted, which Mr. McMahan received late last week. Steve and Mr. McMahan talked this morning. It was agreed that we would contact you to let you know that resolution is being actively pursued and suggest that a pre-conference hearing is not needed at this time. Steve will contact you by October 20<sup>th</sup> to let you know how things are progressing if a settlement has not been reached at that time.

If you have any questions about this matter, please contact Steve Spencer in this office at 331-5944.

Sincerely,



MICHAEL E. COLLETTE  
Team Leader  
Boise Adjudication Team

Cc: Brian L. McMahan

MICROFILMED

MAR 22 2004





**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

August 30, 2000

J B SCOTT  
PO BOX 70001  
BOISE ID 83707-0101

Re: Application for Transfer No. 5768

Dear Applicant:

Enclosed please find a copy of the protest(s) filed against the above-referenced application for transfer. You should be aware that the following are the criteria we consider when either approving or denying an application for transfer:

1. Will other water rights be injured by the transfer?
2. Will the change constitute an enlargement in the use of the original right?
3. Will the proposed change conflict with the local public interest?
4. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

The department suggests you contact the protestant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If we have not heard from you by September 15, 2000, IDWR will schedule a prehearing conference. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

If we may be assistance, please contact us.

Sincerely,

  
Gary Spackman

GS:st

CC: Brian McMahan

Encl. Copy of Protest

MAR 22 2004



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

August 30, 2000

STEVE SPENCER  
US FOREST SERVICE  
380 PARK CENTER STE 330  
BOISE ID 83706

Re: Application for Transfer No. 5768

Dear Protestant:

This office acknowledges receipt of your protest opposing the above-referenced application for transfer. The following are the criteria we consider when either approving or denying an application for transfer:

1. Will other water rights be injured by the transfer?
2. Will the change constitute an enlargement in the use of the original right?
3. Will the proposed change conflict with the local public interest?
4. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

The department suggests you contact the protestant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If we have not heard from you by September 15, 2000, IDWR will schedule a prehearing conference. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

If we may be of assistance, please contact us.

Sincerely,

  
Gary Spackman

GS:st

CC: Brian McMahan

Encl. Copy of Application

MICROFILMED

MAR 22 2004

RECEIVED

AUG 24 2000

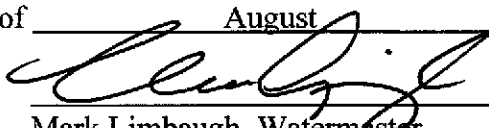
WATER RESOURCES  
WESTERN REGION**RECOMMENDATION OF WATERMASTER**Application No: Transfer App. 5768 (65-02923C & 65-02923B)Applicant's Name: J. B. Scott

## Watermaster's Recommendation:

- a)      I do not oppose approval of this application.
- b)   X   I do not oppose approval of this application if it is conditioned as follows: Storage water right transfer to fish habitat is  
conditioned upon no storage releases from the reservoir storing  
the water for fish habitat. The water must remain in the reservoir  
for the new fish habitat use.
- c)   X   I oppose approval of this application for the following reasons:  
The transfer of the natural flow water right for 1.74 cfs to  
instream fish habitat creates an instream flow water right that  
cannot be held by anyone other than the State of Idaho.  
Conversion of an irrigation water right to an instream flow is not  
protected under Idaho water law at this time.
- d) Additional Comment: See attached.

Dated this 21<sup>st</sup> day of August, 2000

Water District No. 65

  
Mark Limbaugh, Watermaster

Use reverse side of page if you need more space

MICROFILMED

MAR 22 2004

RECEIVED

AUG 24 2000

WATER RESOURCES  
WESTERN REGION

**Comments:**

In reviewing this Application for Transfer, No. 5768, there were two issues I have dealt with, namely 1) an irrigation storage water right to be transferred to a fish habitat beneficial use; and 2) a natural flow irrigation water right to be transferred to an instream flow water right for fish habitat use.

**1) Storage water right transfer:** I believe that in order to transfer an irrigation storage water right to a fish habitat use, the water must remain in the reservoir for the habitat use to exist. If this transfer were to be approved, the storage right would only exist if the water were to remain in the lake. Any release of stored water downstream would evacuate the proposed habitat use. I have therefore conditioned the approval of this transfer to preclude the release of the storage water from the reservoir.

**2) Natural flow conversion:** In assessing the transfer of the natural flow irrigation water right to a fish habitat instream use, I have concluded that the only entity within the State of Idaho which can legally hold an instream flow water right is the Idaho Water Resource Board on behalf of the state. Currently, there are no instream flow water right conversion statutes available to allow this transfer to occur. Therefore, I have opposed this portion of the transfer application.

If a pre-hearing conference were scheduled for this application, I would appreciate the opportunity to attend. I am also recommending that the Advisory Board of Water District No. 65 object to this application and intervene in this matter before the Department in order to protect the natural flow water rights in the Payette River Basin from a precedent-setting opinion on transferability of natural flow irrigation water rights to instream uses.

MICROFILMED

MAR 22 2004

# CONVERSATION MEMORANDUM

DATE 8/14/00

FILE T. 5768

NAME OF PARTY Brian McMahon for J.B. Scott

EMPLOYEE JR

RE: Pre-hearing conference postponed

& Jim Crawford

On 8/11/00, Applicant (re Dennis Moyer - ok with McMahon) met with protestant (Steve Spencer for Forest Service) & IDFG (Don Anderson) in Boise. They called me via conference call to discuss some options.

We mostly talked about issue of converting natural flow irrigation to instream flow for new use. They mentioned interest by City of McCall in obtaining use of the natural flow.

Today McMahon confirmed that parties are working on settlement & asked IDFG to wait before scheduling pre-hearing conference.

Call up in 30 days to check situation - consider scheduling conference after that if still necessary.

MICROFILMED  
MAR 22 2004



# Publisher's Affidavit of Publication

STATE OF IDAHO

.ss

County of Valley

I, Carol J. Wright, being duly sworn and say, I am the receptionist of The Star-News, a weekly newspaper published at McCall, in the County of Valley, State of Idaho; that said newspaper is in general circulation in the county of afore said and is a legal newspaper; that the PUBLIC NOTICE, a copy of which is enclosed hereto and is a part hereof, was published in said newspaper once a week for a period of two weeks in the regular and entire issue of every number there of during the period of time of publication, and was published in the newspaper proper and not in a supplement; and that publication of such notice began July 6, 2000 and ended July 13, 2000.

*Carol J. Wright*

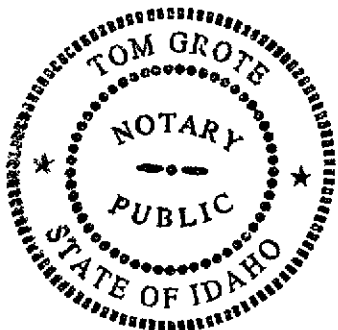
Subscribed and sworn before me this the 18th day of July, 2000.  
STATE OF IDAHO

COUNTY OF VALLEY

On this 18th day of July, in the year of 2000, before me, a Notary Public, personally appeared Carol J. Wright, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

*Tom Grote*

Tom Grote  
Notary Public for Idaho  
Residing at McCall, Idaho  
Commission Expires 2/8/06



MICROFILMED  
MAR 22 2004

*See  
other  
side  
over →*

# **NOTICE OF APPLICATION FOR WATER RIGHT**

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

65-13954 Ormiston, Steven R., P.O. Box 594, Donnelly, ID 83615. Source: Spring, Tributary: Cascade Reservoir. Source: Davis Creek. Tributary: Cascade Reservoir. Diversion Pt: SESESE Sec 34 T 16N R 03E in Valley County. NWNE Sec 31 T 16N R 04E in Valley County. Use: Stockwater (0.020 CFS). Stockwater Storage (7.00 AF). Wildlife Storage (7.00 AF). Recreation Storage (7.00 AF). Diversion to Storage (0.020) CFS. Total Diversion: (0.020 CFS). Date Filed: 6/26/2000. In: Valley County.

T16N R03E S34 SESE. Applicant agrees to mitigate consumptive use in the future as needed.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee

of \$25.00 for each application on or before July 24, 2000. The protestant must also send a copy of the protest to the applicant. Karl J Dreher, Director 2tc/713

Notice of Proposed Change of Water Rights, Transfer No 5768

Notice is given that J.B. Scott of P.O. Box 70001, Boise, ID 83707 has applied to the Department of Water Resources to change the Nature, Period and Place of Use pursuant to

I.C. Sec. 42-222 splitting two decreed irrigation rights recorded as follows in Valley County: Sections in this notice are in the following Townships: S2, 3 and 10 in T18N R3E; S25 and 26 in T19N R3E; S19, 20 and 30 in T19N R4E

#65-02923A, Split Creek, 0.40 cfs, diverted in SESE, S26. Source is a local name for an unnamed stream

(Continued on Page 17)

(Continued from Page 15)

#65-02923X, Fall Creek, 2.80 cfs and 178 af of storage, diverted in SWNW, S20. Water is stored in Blackwell Lake, released into Fall Creek, and rediverted at the Split Creek diversion.

Both rights have a priority date of 7-1-1929 and irrigate the same 168 acres in portions of SWSW S2, SE 1/4 S3 and N 1/2 S10. The site is east of Big Payette Lake near the golf course in McCall. The applicant's share of the rights is all of the irrigated land in S2 and 3 (91 acres).

Proposed Change for Both Rights

Split the rights and cease using water on the applicant's 91 acres. Irrigation water historically used for the 91 acres will be used for year around instream uses as needed. Water will be released from Blackwell Lake to enhance fish habitat between Blackwell and Big Payette Lakes. Water will remain in Split Creek to enhance fish habitat downstream from the above described Split Creek diversion point. Applicant's portions of the rights will be described as follows:

#65-02923B, Split Creek, 0.22 cfs, natural flow for use in SE 1/4 S26.

#65-02923C, Fall Creek, 1.52 cfs and 96.4 af (storage), natural flow and storage for use downstream from Blackwell Lake to the mouth of the creek. Place of use will be in portions of S19, 20, 25, 26 and 30.

Total proposed use is 1.74 cfs and 96.4 af of storage. The proposed site is north of the current place of use.

Any protest against approval of the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of \$25 for each application on or before July 24, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J Dreher, Director 2tc/713

MICROFILMED  
MAR 22 2004

United States  
Department of  
Agriculture

Forest  
Service

Boise Adjudication Team  
Recreation and Lands  
Intermountain Region

380 ParkCenter, Suite 330  
Boise, ID 83706

W026769

LM

Reply to: 2540

Date: July 24, 2000

Gary Spackman  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, ID 83705-5082

**RECEIVED**

**JUL 24 2000**

**WATER RESOURCES  
WESTERN REGION**

Dear Gary:

The Forest Service is protesting transfer number 5768 filed by J.B. Scott for water right number 65-02923C. This transfer is to change the purpose of use and place of use. The change in purpose of use is from irrigation to fish habitat. Many of the new places of use are on National Forest System land.

J.B. Scott has a special use permit issued by the Forest Service for the purpose of maintaining a dam and associated structures to store water for irrigation, fish habitat improvement and domestic purposes at Blackwell Lake in Section 20, T19N, R4E.

This transfer requests to add new places of use on National Forest System land in the N½ of Section 25, T19N, R3E and Sections 19, 20 and 30, T19N, R4E. J.B. Scott is not authorized to occupy the National Forest in Sections 19, 25 and 30 for this purpose.

If you have any questions about this matter, please contact Steve Spencer in this office at 331-5944.

Sincerely,



MICHAEL E. COLLETTE  
Team Leader  
Boise Adjudication Team

Cc: Brian L. McMahan  
Dave Alexander

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MAR 22 2001



IDAHO FISH AND GAME  
Southwest Region  
3101 S Powerline Road  
Nampa, ID 83686

Dirk Kempthorne/Governor  
Rod Sando/Director

July 7, 2000

RECEIVED

JUL 12 2000

WATER RESOURCES  
WESTERN REGION

Gary Spackman  
Idaho Department of Water Resources  
Western Region Office  
2735 Airport Way  
Boise, Idaho 83705-5082

Re: Application for Transfer No. 5768/J.B. Scott  
Applications for Permit Nos. 65-13954/Ormiston & 63-12582/Campbell  
Dear Mr. Spackman:

Application for Transfer No 5768: The Idaho Department of Fish and Game has been working with Mr. Scott and his agents for quite some time to accomplish the transfer of water rights for the benefit of the fishery resources in Blackwell Lake and Fall Creek.

Mr. Scott has been very accommodating in his efforts to complete the processes necessary to allow his water rights to be used to best benefit fish and angling in these popular and important waters. The Department of Fish and Game supports Mr. Scott's proposal and the intent to improve fish habitat.

Since this is a rather complicated request, it may have several different solutions or ways to structure the transfer request. We are very willing to participate as necessary to successfully complete the intent of this proposal.

Applications for Permit Nos. 65-13954 & 63-12582: We do not anticipate any conflicts or significant adverse effects with fish and wildlife habitats by permitting these two water rights.

Thank you for the opportunity to comment. Please direct any questions to Don Anderson, Regional Fishery Manager at 634-8137.

Sincerely,

Al VanVooren  
Regional Supervisor

MICROFILMED

JUL 22 2000

AV:DA:sag

cc: IDFG-NRB  
IDFG-McCall Office (Don Anderson)

IDFG support

# CONVERSATION MEMORANDUM

DATE 8/8/66

FILE T. 5768

NAME OF PARTY Dennis Meyer 4624-3885 (Boise #)

EMPLOYEE SL

RE: PVG-Hearing Conference

Meyer is Boise Rep. for J.B. Scott's office.  
Meyer called to request & coordinate a conference  
to see if can quickly resolve protest. Meyer's  
office is in same building as protestant's (Forest Service)  
office in Boise.

Additional calls & file research showed:

transfer filed by M. Hemenow Law firm for Scott,  
attorney is the contact for Scott.

transfer signal by Crawford for Scott per Attachment  
A of Application.

Crawford & Meyer vis-<sup>tel</sup> IDMR office previously  
to discuss processing etc.

To facilitate a conference, M. Hemenow office must  
be included as primary contact for Applicant.

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MAR 22 2004



**WATER RESOURCES  
WESTERN REGION**

MAR 22 2004

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JUL 13 2000


WATER RESOURCES  
WESTERN REGION

**MILLEMANN, PITTENGER & McMAHAN, LLP**  
ATTORNEYS AT LAW  
708 NORTH FIRST  
POST OFFICE BOX 1066  
MCCALL, IDAHO 83638

STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. PEMBERTON

TELEPHONE (208) 634-7841  
FACSIMILE (208) 634-4516  
E-MAIL [mpm@cyberhighway.net](mailto:mpm@cyberhighway.net)

July 12, 2000

Idaho Department of Water Resources  
Western Region  
Attn: Steve Lester   
2735 Airport Way  
Boise, ID 83705-5082

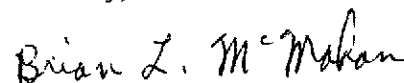
Re: J. B. Scott Transfer No 5768

Dear Steve.

This letter is in response to your letter to me dated June 27<sup>th</sup> regarding the above-referenced matter. Jim Crawford has initialed and dated page one of the Transfer Application ✓ showing the approval of your revisions. That page one, as well as the other seven pages of the Application, accompany this cover letter.

If you need anything further, please let me know. Thank you for your help.

Sincerely,



BRIAN L. McMAHAN

BLM/plp

Encs.

cc: Client w/o enc.  
Jim Crawford w/o enc.

MICROFILM

JUL 13 2000



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

June 28, 2000

MARK LIMBAUGH  
102 N MAIN  
PAYETTE ID 83661

Re: Application for Transfer No. 5768 in the Name of J. B. Scott

Dear Watermaster:

Enclosed is a copy of the above-referenced application for transfer. Also enclosed is a form for your recommendation concerning this application.

Please review the application and return any comments you might have within two weeks.

If you have any questions or need information, feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

Gary Spackman

GS:st

Encl: Copy of Application  
Recommendation of Watermaster Form

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SEP 22 2000



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

June 28, 2000

SCOTT GRUNDER  
STATE OF IDAHO  
DEPT OF FISH & GAME  
3101 S POWERLINE RD  
NAMPID 83686

Re: Application for Transfer No. 5768 in the Name of J. B. Scott

Dear Sir:

Enclosed is a copy of the above referenced application for transfer that may be of interest to your agency. The proposed use of this application is from surface water. Please review the application and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by July 24, 2000.

If you have any questions regarding the application, please contact this office.

Sincerely,

Gary Spackman

GS:st

Encl. Copy of Application

MICROFILM

MAR 22 2001



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

June 28, 2000

MARVIN E WHITHEAD JR  
BRYCE H NEFF  
PO BOX 1794  
MCCALL ID 83638

Re: Application for Transfer No. 5768 in the Name of J. B. Scott

Dear Sir:

Enclosed is a copy of the above-referenced application for permit that may be of interest to you. Please review the application and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by July 24, 2000.

If you have any questions regarding the application, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

Gary Spackman

GS:st

Encl: Copy of Application

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JUN 22 2001





**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

June 28, 2000

THOMAS W KERR  
PO BOX 853  
MCCALL ID 83638

Re: Application for Transfer No. 5768 in the Name of J. B. Scott

Dear Sir:

Enclosed is a copy of the above-referenced application for permit that may be of interest to you. Please review the application and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by July 24, 2000.

If you have any questions regarding the application, please contact this office.

Sincerely,

Gary Spackman

GS:st

Encl: Copy of Application

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SEP 22 2000



State of Idaho  
**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

June 27, 2000

BRIAN L MCMAHAN  
MILLEMANN PITTENGER & MCMAHAN LLP  
PO BOX 1066  
MCCALL ID 83638

*Re: J. B. Scott Transfer No. 5768*

Dear Brian:

Enclosed is the final revision of the transfer application for Mr. Scott. As we discussed earlier today, I revised page 1 from the November 1999 information sent to you. The current version includes eight pages. The changes reflect minor housekeeping items, mostly found on the first page.

The application will be advertised in the McCall newspaper in the first two weeks of July. The protest deadline will be July 24, 2000.

The related request to change the conditions of approval of ground water right no. 65-13597 will be evaluated with the transfer application.

To facilitate transfer processing, please have your client or a party legally empowered to sign for him review the enclosed version of the transfer. That person can approve of this version by initialing and dating the top right hand corner of page 1 where noted. Jim Crawford has already been identified as having the legal authority to sign for Mr. Scott. If someone other than Scott or Crawford approves the transfer corrections, please include a written foundation for this action.

Thanks again for your help in this matter, and please contact me at your earliest convenience if you have any questions. The enclosed version of the application can be returned to me within thirty (30) days.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester  
Water Rights Supervisor

Enclosure

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MAY 22 2004

**MILLEMANN, PITTENGER & McMAHAN, LLP**  
ATTORNEYS AT LAW  
708 NORTH FIRST  
POST OFFICE BOX 1066  
MCCALL, IDAHO 83638

RECEIVED

JUN 14 2000

WATER RESOURCES  
WESTERN REGION

STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. PEMBERTON

TELEPHONE (208) 634-7641  
FACSIMILE (208) 634-4516  
E-MAIL mpm@cyberhighway.net

June 13, 2000

Idaho Department of Water Resources  
Western Region  
Attn: Steve Lester  
2735 Airport Way  
Boise, ID 83705-5082

Re: J B Scott Transfer Application

Dear Steve:

This letter is in response to your letter dated November 26, 1999, and this letter supplements all of our subsequent correspondence and telephone conversations. The purpose of this letter is to respond to the two questions raised in your November 26<sup>th</sup> letter

First, you asked for verification of the beneficial use of the surface water in question during the 1988 to 1992 irrigation seasons. Attached to this letter is the Affidavit of Daniel P. Ostermiller, the owner of the subject property during the 1988 through 1992 irrigation seasons. As he explains in his Affidavit, he used the water from the subject water rights every year in order to irrigate the pastures for cattle grazing. He also did regular and routine maintenance of the storage works and the diversion and water transportation devices, as more fully explained in his Affidavit. Also included with this letter is a photocopy of an aerial photo of the subject property taken in 1984. That photocopy was obtained from the USDA Consolidated Farm Services Agency office in Emmett and, on the back of the photo, Nancy Hutchens of CFSA has indicated the date of the photo and that "no other coverage is available."

The other question you posed in your November 26<sup>th</sup> letter was "what effect, if any, will occur on the delivery of the unchanged portions of the surface water rights if the transfer is approved?" As Jim Crawford explained to you last Friday, the delivery of both the changed and unchanged portions of the rights has always been problematic due to water transportation losses and other inefficiencies of the system. These same problems will continue to occur for the unchanged portions of the rights if the transfer is approved. In fact, to the best of our knowledge, the unchanged portions of the respective rights have not been beneficially used at all for quite a number of years.

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2000 6 15

Steve, I trust that the foregoing is responsive to your questions. If it is not, or if you need additional information, please let me know.

Sincerely,

*Brian L. Mc Mahan*

BRIAN L McMAHAN

BLM/plp

Encs

cc Client  
Jim Crawford

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JUN 22 2001

STATE OF IDAHO, )  
 ) ( ss  
 County of Valley. )

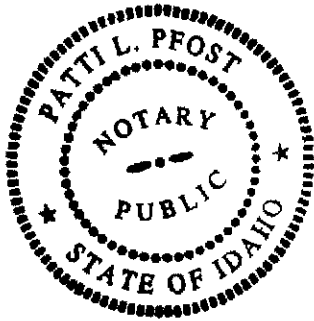
2 I make this Affidavit based upon my own personal knowledge. I make this  
 3 affidavit in relation to the J B Scott Transfer Application received by the Idaho Department of  
 4 Resources (IDWR) on July 22, 1999. This Affidavit is also in response to Steve Lester's  
 5 letter dated November 26, 1999, and February 16, 2000, regarding the same. This Affidavit is  
 6 to assist IDWR in verifying the beneficial use of the surface water in question during the  
 7 thorough 1992 irrigation seasons.

4 The work accomplished each year included regular and routine maintenance of the storage works and the diversion and water transportation devices. Additionally, headgate repair was performed as needed, the Blackwell dam and the ditches through which the water was transported were cleaned each year, and a floating log dike was installed in Blackwell Lake during those years

  
DANIEL P OSTERMILLER

MICROFILMED  
1982

SUBSCRIBED AND SWORN to before me this 8 day of March, 2000.



Patti L. Frost  
NOTARY PUBLIC FOR IDAHO  
Residing at: McCall, Idaho  
My Commission Expires: 2/22/2006



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MICROFILMED

MAR 22 2004

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GEM - BOISE - VALLEY  
FARM SERVICE AGENCY  
1805 HWY 16 RM. 4  
EMMETT, ID 83617 94.77

Date of photo is 1984,  
no other coverage is available  
N Hutchens

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MAR 22 2004



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

April 3, 2000

BRIAN L MCMAHAN  
MILLEMANN PITTENGER & MCMAHAN LLP  
PO BOX 1066  
MCALL ID 83638

***Re: J. B. Scott Transfer Application***

Dear Brian:

Thank you for your recent letter regarding this transfer application. It appears that an aerial photo from the 1988-1992 period is not available. Your idea of the older photo plus the affidavit from the prior owner should be sufficient to verify beneficial use during that time. The approach at IDWR on these matters is to work with the best available information, which in this case is the aforementioned material.

The remaining topic concerns possible implications regarding the unchanged portions of the proposed water rights split. It is certainly understandable that such information can be hard to track down. Let's revisit this issue within about 90 days.

Processing of the transfer application will be stayed until July 1, 2000 pending the results of your efforts. Please let me know if you need anything before that time.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester  
Water Rights Supervisor

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MAR 22 2004

**MILLEMANN, PITTENGER & McMAHAN, LLP**  
**ATTORNEYS AT LAW**  
706 NORTH FIRST  
POST OFFICE BOX 1066  
MCCALL, IDAHO 83638

RECEIVED

MAR 15 2000

WATER RESOURCES  
WESTERN REGION

STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. PEMBERTON

TELEPHONE (208) 634-7641  
FACSIMILE (208) 634-4516  
E-MAIL mpm@cyberhighway.net

March 14, 2000

Idaho Department of Water Resources  
Western Region  
Attn: Steve Lester  
2735 Airport Way  
Boise, ID 83705-5082

Re. J. B. Scott Transfer Application

Dear Steve.

This letter will follow your letter to me dated February 16, 2000, regarding the above-referenced Transfer Application. The only aerial photo the USDA Consolidated Farm Services Agency office in Emmett has is a black and white photo dated 1984, a copy of which is attached. On the back side of that copy Nancy Hutchens has indicated that "date of photo is 1984, no other coverage is available." Will this copy of the photo with Nancy's notation regarding no other coverage be adequate? Do you need a reproduction of the photo from its negative? Please advise.

In addition to that aerial photo, we have obtained the Affidavit of Daniel P. Ostermiller, a copy of which is also attached to this letter. If the 1984 aerial photo is not sufficient, will it be sufficient when used in conjunction with Dr. Ostermiller's Affidavit? Please advise.

We are still in the process of ascertaining the status of the unchanged portions of the subject water rights. It appears that some of the land that was benefitted by the unchanged portions now belongs to the City of McCall as part of its expanded golf course; therefore, we are attempting to locate someone at the City offices who is knowledgeable or that can become knowledgeable regarding this matter. As you may know, there has been substantial turnover at the McCall City offices in the recent past, so our efforts in this regard are frustrating at best. Additionally, due to the fact that the Spring Mountain Ranch developer, O'Neill Enterprises, allowed some of the property to revert back to the original owners (Whiteman, et. al.), we are also now attempting to make contact with the Whiteman parties to ascertain what their position is regarding the unchanged portions of the subject water rights. Contacting the Whiteman parties has also proved to be frustrating and time consuming because there are apparently three partners -

MICROFILMED

MAR 22 2000

March 14, 2000

Page 2

- one of which is apparently in South America at the present time. Due to the difficulties in contacting knowledgeable parties regarding both the City property and the Whiteman property, our efforts are taking more time than we would like them to, and it appears that this will not change in the near future. Accordingly, please give us additional time as we are attempting to contact all of the affected parties and get everyone "on the same page" regarding this matter.

Please let me know whether or not the photocopy of the aerial photo (with the notation on the backside) and the Ostermiller Affidavit will be adequate for the verification of beneficial use. Also please let me know if there is a problem with getting more time to continue to pursue the Whiteman parties and the City of McCall. Thank you

Sincerely,

*Brian L. McMahon*

BRIAN L McMAHAN

BLM/plp

Encs.

cc: Jim Crawford  
Dennis Moyer

MICROFILMED

MAR 22 2004

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MICROFILMED

MAR 22 2004

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GEM - BOISE - VALLEY  
FARM SERVICE AGENCY  
1805 HWY 16 RM. 4  
EMMETT, ID 83617 9462

Date of photo is 1984,  
no other coverage is available  
N Hutchens

MICROFILMED

MAR 22 2004

COPY

AFFIDAVIT

RECEIVED  
MAR 15 2000  
WATER RESOURCES  
WESTERN REGION

STATE OF IDAHO, )  
( ss  
County of Valley. )

1. Daniel P. Ostermiller, being first duly sworn, deposes and states as follows:

2. I make this Affidavit based upon my own personal knowledge. I make this Affidavit in relation to the J. B. Scott Transfer Application received by the Idaho Department of Water Resources (IDWR) on July 22, 1999. This Affidavit is also in response to Steve Lester's letters dated November 26, 1999, and February 16, 2000, regarding the same. This Affidavit is made to assist IDWR in verifying the beneficial use of the surface water in question during the 1988 through 1992 irrigation seasons

3. I owned the subject real property (SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, and the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 3, all in T18N, R3E, B M, Valley County, Idaho) during the period in question, i.e., during the 1988 through 1992 irrigation seasons. Cattle grazed the subject property every year during that period of time, and I used all of the water from the subject water rights every year in order to irrigate the pastures for cattle grazing.

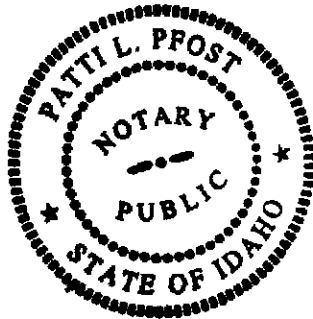
4. The work accomplished each year included regular and routine maintenance of the storage works and the diversion and water transportation devices. Additionally, headgate repair was performed as needed, the Blackwell dam and the ditches through which the water was transported were cleaned each year, and a floating log dike was installed in Blackwell Lake during those years.

5. In short, all of the water appurtenant to what is now J. B. Scott's real property was put to beneficial use each year from 1988 through 1992 for irrigation of the subject real property.

  
DANIEL P. OSTERMILLER

MICROFILMED  
MAR 22 2004

SUBSCRIBED AND SWORN to before me this 8 day of March, 2000.



Patti L. Frost  
NOTARY PUBLIC FOR IDAHO  
Residing at: McCall, Idaho  
My Commission Expires: 8/22/2006

MICROFILMED

AFFIDAVIT OF DANIEL P. OSTERMILLER APR 22 2004



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

February 16, 2000

BRIAN L MCMAHAN  
MILLEMANN PITTENGER & MCMAHAN LLP  
PO BOX 1066  
MCCALL ID 83638

*Re: J. B. Scott Transfer Application*

Dear Brian:

This letter is a reply to your letter of February 7, 2000 in the above referenced transfer application for Mr. Scott. You posed two questions in your letter.

First, the best verification of beneficial use for the period of 1988 through 1992 would be aerial photos normally available from the USDA Consolidated Farm Services Agency (CFSA, formerly known as ASCS). While that office may not have their "regular" large-scale photo coverage for those dates, the CFSA often has annual color slides of irrigated land. Prints can be made from those slides. The prints can be submitted for aerial confirmation of irrigation for a given time period. If you use this method, please remember to identify the date of the photo and to mark at least the section corners on the photos. The CFSA office for Valley County is located in Emmett due to federal government office consolidation. The CFSA telephone number in Emmett is 365-3527.

If you cannot obtain aerial photo coverage for that period, the affidavit of the former owner will probably suffice. A definite answer cannot be given because the final decision in these matters is left to the department's State Office. My recommendation to the State Office in that event would be to accept the affidavit as sufficient for the purposes of the transfer. A stronger case can be made for your client if you obtain the CFSA photos or document that such coverage is not available. That documentation should accompany the affidavit should that prove to be the case.

Second, you inquired about the status of the unchanged portion of the rights. No transfer application or other appropriate water right action has been filed with the department to allow any part of the rights in question to flow to the lake and then be pumped from the lake to a place of use. The change did not occur with respect to legal uses of the water rights. I do recall some conversations about this idea within the past few years but have not been able to identify any action before the department to accomplish that significant water right change.

I hope this letter adequately answers your questions. Your response within 30 days of the date of this letter will keep the transfer application in good standing. Thank you for your attention to these matters, and please let me know if I can provide any help to you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steve Lester', is written over a light-colored background.

Steve Lester  
Water Rights Supervisor

MICROFILMED

MAR 22 2004

**MILLEMANN, PITTENGER & McMAHAN, LLP**  
**ATTORNEYS AT LAW**708 NORTH FIRST  
POST OFFICE BOX 1088  
MCCALL, IDAHO 83638STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. FENBERTONTELEPHONE (208) 634-7641  
FACSIMILE (208) 634-4518  
E-MAIL [mpm@cyberhighway.net](mailto:mpm@cyberhighway.net)

February 7, 2000

VIA FACSIMILE (208) 334-2348Idaho Department of Water Resources  
Western Region  
Attn: Steve Lester  
2735 Airport Way  
Boise, ID 83705Re: J. B. Scott Transfer Application Received by IDWR July 22, 1999

Dear Steve:

This letter will follow the message I left on your voice mail last Friday, January 28, 2000. As I indicated in that voice mail message, we are continuing to work on the issues raised in your November 26<sup>th</sup> letter, but we need your feedback on a couple of items. First, you asked for verification of the beneficial use of the surface water in question during the 1988 through 1992 irrigation seasons. Attached to this letter is a draft Affidavit of Daniel P. Ostermiller, the owner of the subject property during the 1988 through 1992 irrigation seasons. Will his Affidavit be sufficient verification of beneficial use?

Second, you asked what effect, if any, will occur on the delivery of the unchanged portions of the surface water rights if the transfer is approved. We are aware that at one time the then-owner of the property benefitted by the unchanged portions (i.e., the developers of Spring Mountain Ranch, being Peter O'Neill and O'Neill Enterprises, Inc.) were attempting to work a deal with the City of McCall whereby the water under recommended Water Right Nos. 65-02923E and 65-02923D would have ultimately been allowed to continue on down Fall Creek and into Big Payette Lake. Then, the City of McCall would pump that same water back out of Big Payette Lake at a different location on the Lake, but the water would still be used to irrigate the same land (which we understand is now part of the McCall Golf Course). Did this change ever occur? If so, it appears that the delivery of the unchanged portions would be benefitted by the Scott transfer.

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MAR 22 2004

February 7, 2000  
Page 2

Depending upon the outcome of the two major questions raised above, we probably also have a couple of smaller questions regarding your proposed revisions to the Transfer Application itself. Please give us your response to the issues raised in this letter at your earliest convenience. Thank you.

Sincerely,

*Brian L. McMahon*

BRIAN L. McMAHAN

BLM/plp

Enc.

cc: Client w/enc.

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MAR 22 2004

**AFFIDAVIT**

STATE OF IDAHO, )  
( ss.  
County of Valley. )

1. Daniel P. Ostermiller, being first duly sworn, deposes and states as follows:
2. I make this Affidavit based upon my own personal knowledge. I make this Affidavit in relation to the J. B. Scott Transfer Application received by the Idaho Department of Water Resources (IDWR) on July 22, 1999. This Affidavit is also in response to Steve Lester's letter dated November 26, 1999, regarding the same. This Affidavit is made to assist IDWR in verifying the beneficial use of the surface water in question during the 1988 through 1992 irrigation seasons.
3. I owned the subject real property (SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, and the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 3, all in T18N, R3E, B.M., Valley County, Idaho) during the period in question, i.e., during the 1988 through 1992 irrigation seasons. Cattle grazed the subject property every year during that period of time, and I used all of the water from the subject water rights every year in order to irrigate the pastures for cattle grazing.
4. The work accomplished each year included regular and routine maintenance of the storage works and the diversion and water transportation devices. Additionally, headgate repair was performed as needed, the Blackwell dam and the ditches through which the water was transported were cleaned each year, and a floating log dike was installed in Blackwell Lake during those years.
5. In short, all of the water appurtenant to what is now Joe Scott's real property was put to beneficial use each year from 1988 through 1992 for irrigation of the subject real property.

---

DANIEL P. OSTERMILLER

MICROFILMED  
AFFIDAVIT OF DANIEL P. OSTERMILLER - 1  
MAR 22 2004



SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

AFFIDAVIT OF DANIEL P. OSTERMILLER - 2

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MAR 22 2004



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

November 26, 1999

Steven J. Millemann  
Millemann Pittenger & McMahan, LLP  
PO Box 1066  
McCall, ID 83638

*Re: J. B. Scott Transfer Application and Application for Permit No. 65-13724*

Dear Mr. Millemann:

I am responding to your July 21, 1999 letter to Lori Graves, Senior Water Resources Agent at this office. That letter included the transfer application in the name of Mr. Scott in which irrigation water from Blackwell Lake was proposed to be reconfigured for fish habitat purposes in the Fall Creek drainage.

The transfer application is enclosed for suggested revisions as noted. Also enclosed are a copy of page 1 of the transfer in which the revised portions are highlighted. Replacement pages for the Part 2 portion of the application are attached. A page of explanatory notes is included for your convenience.

Processing can resume once the applicant approves the revisions and the filing is returned to this office. In order to build a stronger case for the transfer plan and for the request to revise the conditions of approval of Permit No. 65-13597 regarding supplemental use of that ground water right, please submit the following additional information:

1. Verification of beneficial use of the surface water in question during the 1988 through 1992 irrigation seasons (aerial photos are probably the best method to do this); and
2. What effect, if any, will occur on the delivery of the unchanged portions of the surface water rights if the transfer is approved?

As you noted in your letter, Mr. Scott has experienced delivery/beneficial use problems since he purchased the land in 1993. The validity of the surface water rights should be determined for the five year period prior to his ownership.

Application for Permit No. 65-13724 was filed in 1997 to provide complete irrigation coverage when combined with the earlier ground water right, no. 65-13597. If the junior ground water filing were to be approved, the place of use would be fully satisfied with ground water instead of with surface water. If the transfer application and permit revision are successful, application 65-13724 can be withdrawn. If the permit revision is not approved, application 65-13597 can be processed to make the situation whole with respect to ground water. No action is needed at this time by the applicant for no. 65-13724.

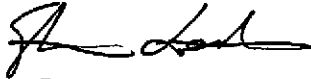
**MICROFILMED**

**MAR 22 2004**

November 26, 1999  
J. B. Scott  
Page 2 of 2

Please let me know if you have any questions about these issues. A response within thirty (30) days of the date of this letter is needed to keep the transfer application viable. Thank you for your attention to these matters.

Sincerely,



Steve Lester  
Water Rights Supervisor

Enclosures

Cc: Lori Graves, IDWR Western Region  
IDWR State Office

**MILLEMANN, PITTENGER & McMAHAN, LLP**

**ATTORNEYS AT LAW**

706 NORTH FIRST  
POST OFFICE BOX 1066  
MCCALL, IDAHO 83638

STEVEN J. MILLEMANN  
GREGORY C. PITTENGER  
BRIAN L. McMAHAN  
AMY N. PEMBERTON

TELEPHONE (208) 634-7641  
FACSIMILE (208) 634-4516  
E-MAIL mpm@cyberhighway.net

July 21, 1999

RECEIVED  
JUL 22 1999  
WATER RESOURCES  
WESTERN REGION

Lori Graves,  
Senior Water Agent  
Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705-5082

Re: J.B. Scott / Idaho Department of Fish and Game

Dear Lori:

Believe it or not, I am writing to submit the Application of J.B. Scott to transfer his Blackwell Reservoir, Fall Creek/Split Creek Water Rights to the Department of Fish and Game and to change the nature of the use from irrigation to fish habitat enhancement. Towards that end, I enclose the following:

1. The Application for Transfer of Water Rights: This is the Application which you had partially completed on behalf of my client. However, Jim Crawford inadvertently signed the portion of the Application, at page 2, which is reserved for the Director of the Department. Therefore, I have prepared a clean Application, which includes the information you placed on the Application; and, completes the balance of the required information. The Application consists of the six pages of the Application itself, together with attached information regarding the water rights in question.

2. A Preliminary / Water Management Plan for Blackwell Lake, which has been prepared locally by the Department of Fish and Game.

3. A copy of Mr. Scott's Special Use Permit, from the McCall Ranger District of the Payette National Forest, for the Blackwell Reservoir Property; and,

4. The Application for transfer which you prepared. I thought you might want to have this for your reference; and, because it confirms, at page 6, your receipt of the Application and the \$100.00 fee.

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MAR 22 2004

To review, Mr. Scott intends to transfer the water rights referenced in the Application to the Department of Fish and Game, for their use in enhancing and maintaining fish habitat in the Fall Creek Drainage. Mr. Scott is prepared to make the transfer, only if condition number 4 to his Water Right Permit No. 65-13597 is deleted. In other words, he is happy to donate the water rights to the Department of Fish and Game, so long as he can use Permit No. 65-13597 as his primary source of water for irrigation of his property. In your September 24, 1998 correspondence, you asked for several other documents, which I would like to address.

As far as a conveyance document from Mr. Scott to the Department of Fish and Game, we would anticipate that Mr. Scott will assign his water rights to the Department upon the approval of the transfer and removal of condition number 4. We would use the Department's standard form for assignment of those water rights.

You also desired a historical account of beneficial use up to 1987 and from 1988 on. This water right was originally owned by Joe Stringer, a prior owner of both Mr. Scott's property and the property which has subsequently been developed as Spring Mountain Ranch by O'Neil Enterprises. Through 1987, the water rights were used to irrigate the Stringer-Whiteman Ranch. A portion of the "Stringer-Whiteman Ranch" was purchased by Dan and Lisa Ostermiller who, in turn, received from Stringer a transfer of the water rights which are the subject of the enclosed Application. After the Ostermillers' purchase of the Ranch, and from the 1988 through 1993, the water rights were utilized to irrigate the property now owned by Mr. Scott. Mr. Scott acquired the property from the Ostermillers in 1993. The water rights were then transferred from the Ostermillers to Mr. Scott. Since then, the water has sporadically been used; however, the delivery system is difficult and expensive to maintain. Therefore, the use of the water for enhancement of fish habitat and the use by Mr. Scott of the water associated with Permit 65-13597 to irrigate his property is a much more sensible approach, which is also strongly in the public interest.

The original Stringer water right has been referred to as 65-02923X. It was for 178 acre feet and 2.8 cfs. The portion of the water right which has inured to the benefit of Mr. Scott was split out as A65-02923B and A65-02923C. I have enclosed the pertinent documents confirming that split. When I last checked, the owners of the remaining water associated with 65-02923X were O'Neil Enterprises (Spring Mountain Ranch), or Marvin Whiteman. There were discussions at one point about the potential transfer of that portion of the water right to the City of McCall. I'm not aware that the transfer was ever consummated. Therefore, I assume that either O'Neil Enterprises or Mr. Whiteman, who has since taken back part of the Spring Mountain Ranch property, are the current owners of the remaining water.

I hope that the enclosed information provides the basis for the Department to proceed with this transfer. Upon notice that the Department intends to act favorably on the Application for Transfer and the removal of condition number 4 from Water Right Permit No. 65-13597, then

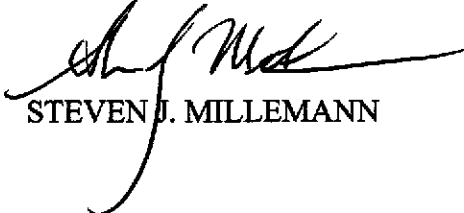
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MAR 22 2004

July 21, 1999  
Lori Graves  
Page 3

I will prepare the conveyance document from Mr. Scott to the Department of Fish and Game. This will be accompanied by a request for termination of Mr. Scott's Special Use Permit, contemporaneous with an Application by the Department for a Special Use Permit from the United States Forest Service. This is the manner in which Special Use Permits are, in effect, transferred, rather than by direct assignment.

If you have any questions or are in need of any additional information, do not hesitate to contact me. Otherwise, I would appreciate a status update from you, once you have had an opportunity to review the enclosed Application. Thank you for your continuing assistance.

Very truly yours,



STEVEN J. MILLEMANN

SJM/dm

Encs.

cc: Clients

Don Anderson, McCall Office, Idaho Department of Fish & Game (w/enclosures)

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MAR 22 2004



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

September 24, 1998

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

Steve Millemann  
PO Box 1066  
McCall ID 83638

RE: J. B. Scott Transfer

Dear Steve:

Enclosed is J. B. Scott's partially completed transfer. The transfer has already been paid for by Jim Crawford. We have a Power of Attorney form from Jim for J. B., so the transfer can be signed by either one. The highlighted items on the transfer form have yet to be completed and are self explanatory. As we discussed on the phone, attachments need to include:

A copy of a conveyance document between J. B. and Fish & Game explaining that the transfer is only for J. B.'s 96.4 acre feet portion of storage volume listed on the water right and that J. B.'s live flow portion for irrigation will be abandoned as a result of an approved transfer. If the transfer is going to be in J. B. Scott's name, the conveyance document should also state that once the transfer is approved, the ownership on the appurtenant water right documents will change from J. B. Scott to Fish & Game.

A special use permit from the owner of the Blackwell Lake property to Fish & Game.

If Fish & Game chooses to list Fall Creek as part of their place of use, a list of the property owners downstream from the reservoir for tracts where the creek flows, a map of their locations, and copies of their acknowledgement of the transfer. This is needed to establish Fish & Game's possessory interest in the place of use.

A detailed fish release management plan from the Fish & Game.

Historical account of beneficial use up to 1987 (for adjudication), then from 1988 to now (for transfer). Discuss why non-use should be excused rather than cause for forfeiture of the water right. Enclosed is a supporting letter from Jim Crawford, which is good, but still needs to reference the above dates.

Identify the owners of the remaining 77 acres of water right 65-02923X.

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MAP 2 2 2004



If you have any questions Steve, please call me at 334-2190.

Sincerely,



Lori Graves  
Sr. Water Agent

Encl: transfer appl., instructions

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MAR 22 2004



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

August 5, 1998

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

JIM CRAWFORD  
PROPERTY MGR J B SCOTT  
1096 LICK CREEK RD  
MCCALL ID 83638

### ***RE: SURFACE AND GROUND WATER RIGHTS***

Dear Jim:

I am finally able to respond to your letter of June 25, 1998 in which you pose some good questions about the use of ground water versus surface water for the irrigated land in McCall. A lot of issues are involved but a brief summary can identify the key points.

The attached diagram shows the basic layout as I understand it. The main question is whether or not the appurtenant surface water (65-02923A and 65-02923X) can be severed from the place of use and replaced with ground water (65-13597 and/or 65-13724), which will become the sole source for continued irrigation.

It is not possible to remove the condition of approval in 65-13597 that defines this as a supplemental right because an expansion of use would occur under that right. However, it is possible to use pending application 65-13724, originally filed as a replacement right for 65-13597 when the latter had lapsed, to make the situation whole: the combined ground water rights could supply all of the water for the acres.

The surface water could be transferred to the Idaho Department of Fish and Game (IDFG) for releases from Blackwell Lake for instream flow maintenance. Some unanswered questions remain for this part of the plan. The only way to determine the answers is to file some type of application. Here are *some of the issues that the Idaho Department of Water Resources (IDWR) must resolve if a transfer application for this scenario is filed.*

1. Have the surface water rights been forfeited in part or in whole because beneficial use has not occurred for more than five consecutive irrigation seasons? Can forfeiture be excused due to extenuating circumstances that you have mentioned in our conversations?

2. Is a storage right subject to forfeiture under the same terms as a natural flow right?

3. The storage portion of the surface water rights might be transferrable to IDFG for storage and release from storage. This would provide 178 acre-feet of stored water for instream flow maintenance (see 65-02923X). This assumes that the forfeiture hurdle has been cleared.

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MAR 22 2004

August 5, 1998

Page 2

4. The natural flow (cfs) portion of the surface water rights is more troubling. It does not appear that natural flow diverted from the source for irrigation use can be transferred to a natural flow instream use where no diversion from the stream will occur. This has been a contentious issue in Idaho for several years and will probably remain so until a legislative solution is found.

The only way to obtain a natural flow right at this time for instream maintenance is via the minimum streamflow process. IDFG has played an important role in that process throughout Idaho. That is probably not a viable option in this case.

5. If 178 acre-feet of storage is not sufficient for IDFG needs, would IDFG be willing to seek a new storage permit for the balance of water needed (presumably to provide multiple fills of the reservoir since a storage right is assumed to cover one fill per year)? A new permit would be subject to senior water right pressures within the Payette River Water District. A new permit might also be subject to future mitigation concerns related to salmon flows within the Snake River basin.

*The recommended steps at this time include the following:*

a. Let IDWR complete the licensing process for 65-13597, which was field inspected by IDWR last October. I will ask staff to expedite licensing of this right.

b. When the license is issued, use those details to revise application 65-13724 as needed. Request that 65-13724 act as a primary right to be used to make the place of use "whole."

c. When step b is taken, also file a transfer application to change at least the nature, season and place of use for the storage portion of 65-02923X. IDFG can file the transfer assuming that a contract or other legal conveyance of the right is at least in process.

d. Perhaps IDFG would like to explore additional options for instream maintenance for Fall Creek (new permit and/or other steps?).

I think that a way can be found to achieve most if not all of the outcomes that you have described. I look forward to working with you and with IDFG in this effort.

Sincerely,

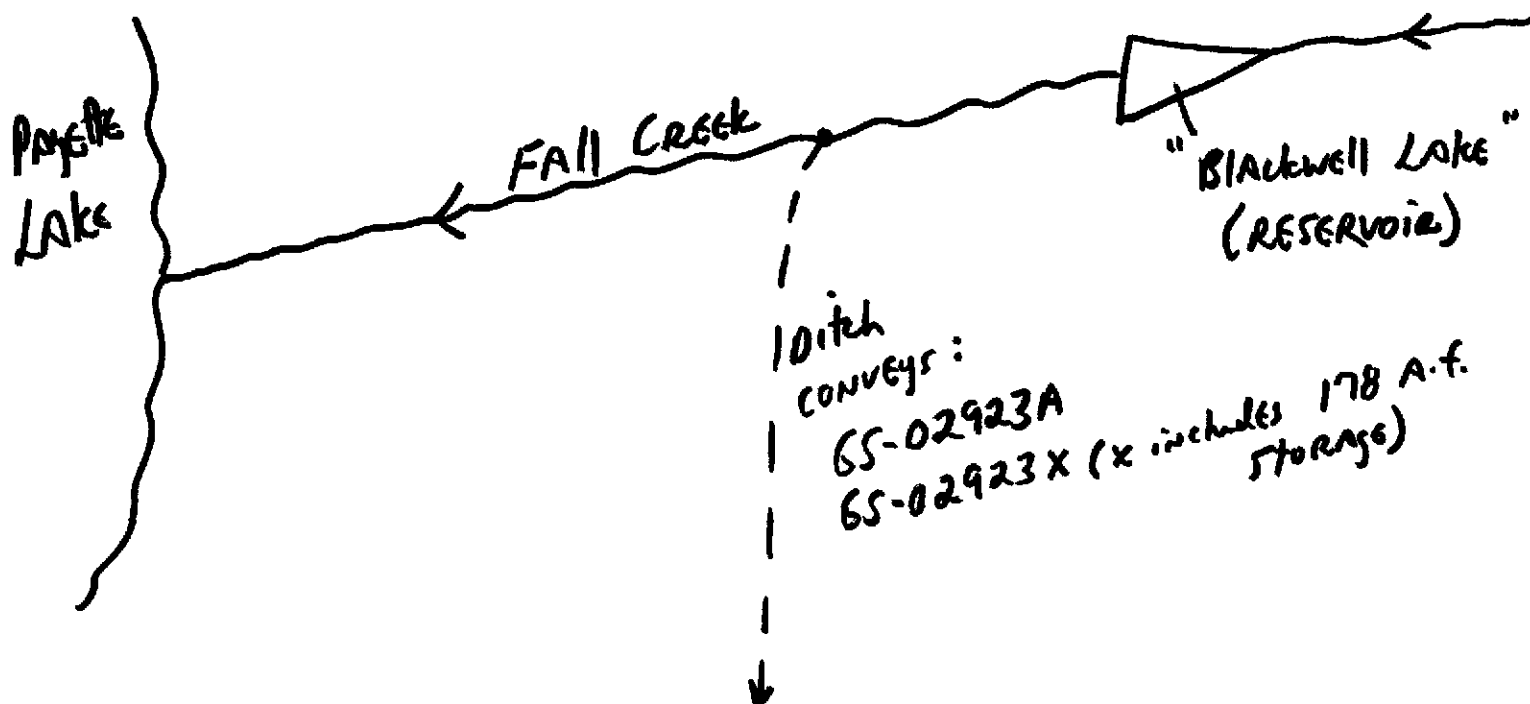


Steve Lester  
Water Rights Supervisor

Enclosure

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MAR 22 2004

~ J. B. SCOTT ~



not to seek

### CONSIDER

- SEVER surface water from plu?
- let ground water supply plu?
- transfer at least storage portion of surface water rights to IDrig for instream flow releases from reservoir?
- forfeit direct flow portion of surface water rights?

WELL (1) 65-13597

RE-instated permit,  
supplemental use,  
license pending

(2) 65-13724

pending application,  
use this to make  
whole" so well  
water provides 100%  
irrigation needs (?)

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SEP 22 2006


-JR 8/5/98

RECEIVED

JUN 29 1998

WATER RESOURCES  
WESTERN REGION

1096 Lick Creek Rd.  
McCall, Id. 83638  
June 25, 1998

Steve Lester   
Idaho Department of Water Resources  
2735 Airport Way  
Boise, ID. 83705

Dear Steve,

As a follow-up to our conversation a while back, I would like to submit a proposal for your review and comment.

As you know, we have two water rights dating back to 1929 on the Blackwell Reservoir. The water right numbers are A65-02923B and A65-02923C. Our water leaves the reservoir and flows down Fall Creek to a diversion where it enters our ditch. It then winds three miles along a mountainside to the ranch. The ditch is well over 60 years old and was dug by hand and horse. Over the years it has silted in and washed out several times. Even when the ditch was at it's best, only a fraction of the water ever reached the ranch due to the nature of the soil. In 1993 we purchased the ranch and spent much time restoring the ditch. Later that same year there was an earthquake in eastern Idaho that was felt around the McCall area. Ever since that tremor we lost about half of the water that we were able to get to the ranch. The water just disappeared with no obvious leaks.

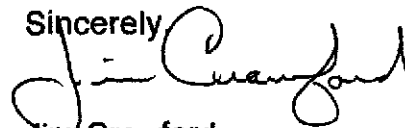
In 1995 we applied and received a water right permit, number 65-13597, to drill and store supplemental water needed to irrigate the ranch. Over the last few years, however, the amount of supplemental water needed has increased to almost 100 % because of the deterioration of the ditch.

What I would like to propose is that we abandon or donate our water rights on the Blackwell Reservoir in exchange for the deletion of condition number 4 on our permit number 65-13597, changing it from a supplemental water right to a primary water right.

We have been working with the Idaho Department of Fish and Game for several years on the timing and release of the water from the reservoir for fish management. They are very interested in the dam if we were to abandon it or could donate it to them.

I would appreciate your thoughts on this matter or ask that you might pass this letter on to the proper authority for review. I hope that we can find a solution that will benefit everyone.

Sincerely,



Jim Crawford  
Property Mgr., J. B. Scott  
1-208-634-6732

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MAR 22 2004

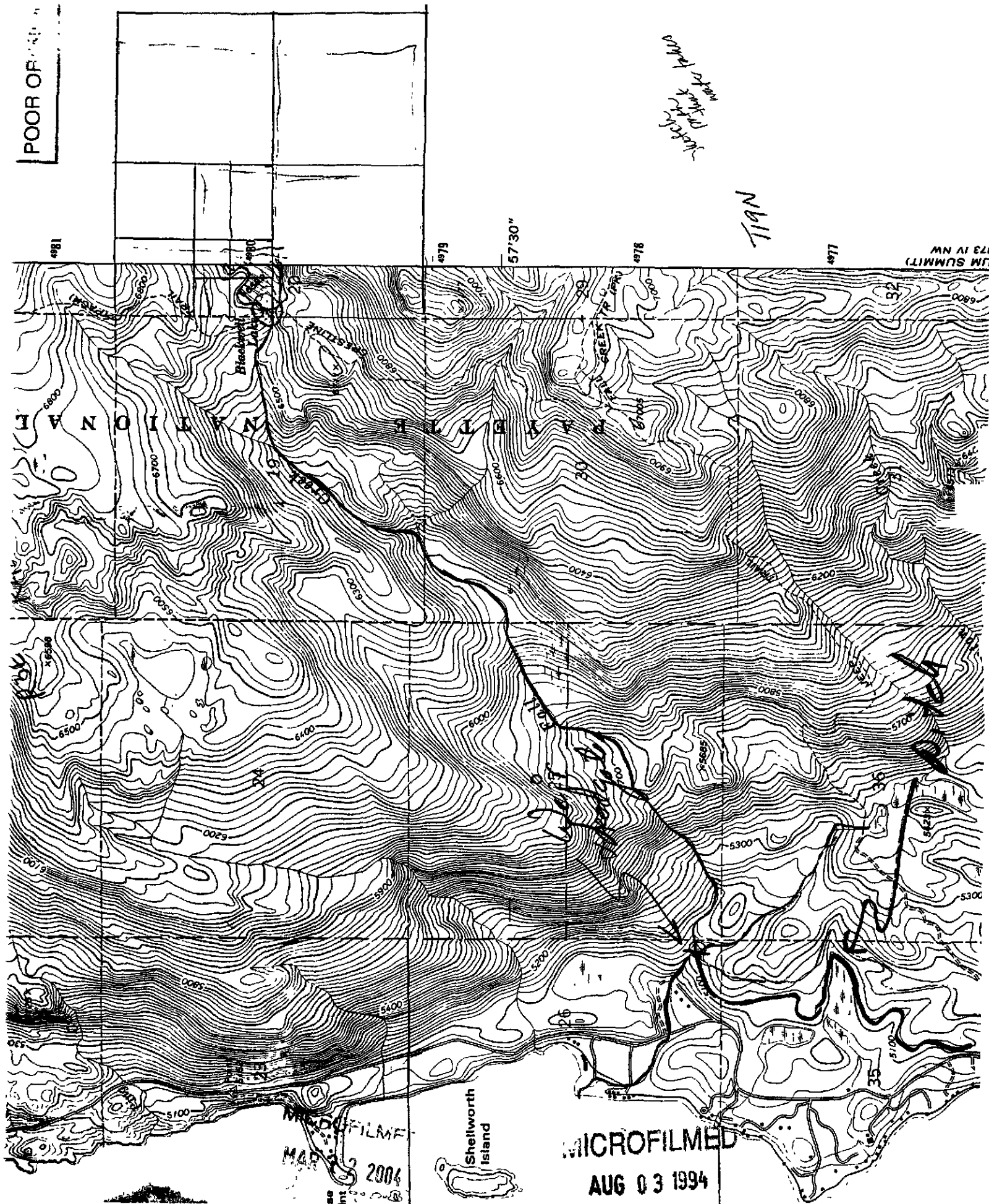
*Ditch history letter*

5

St. John's  
St. John's  
St. John's

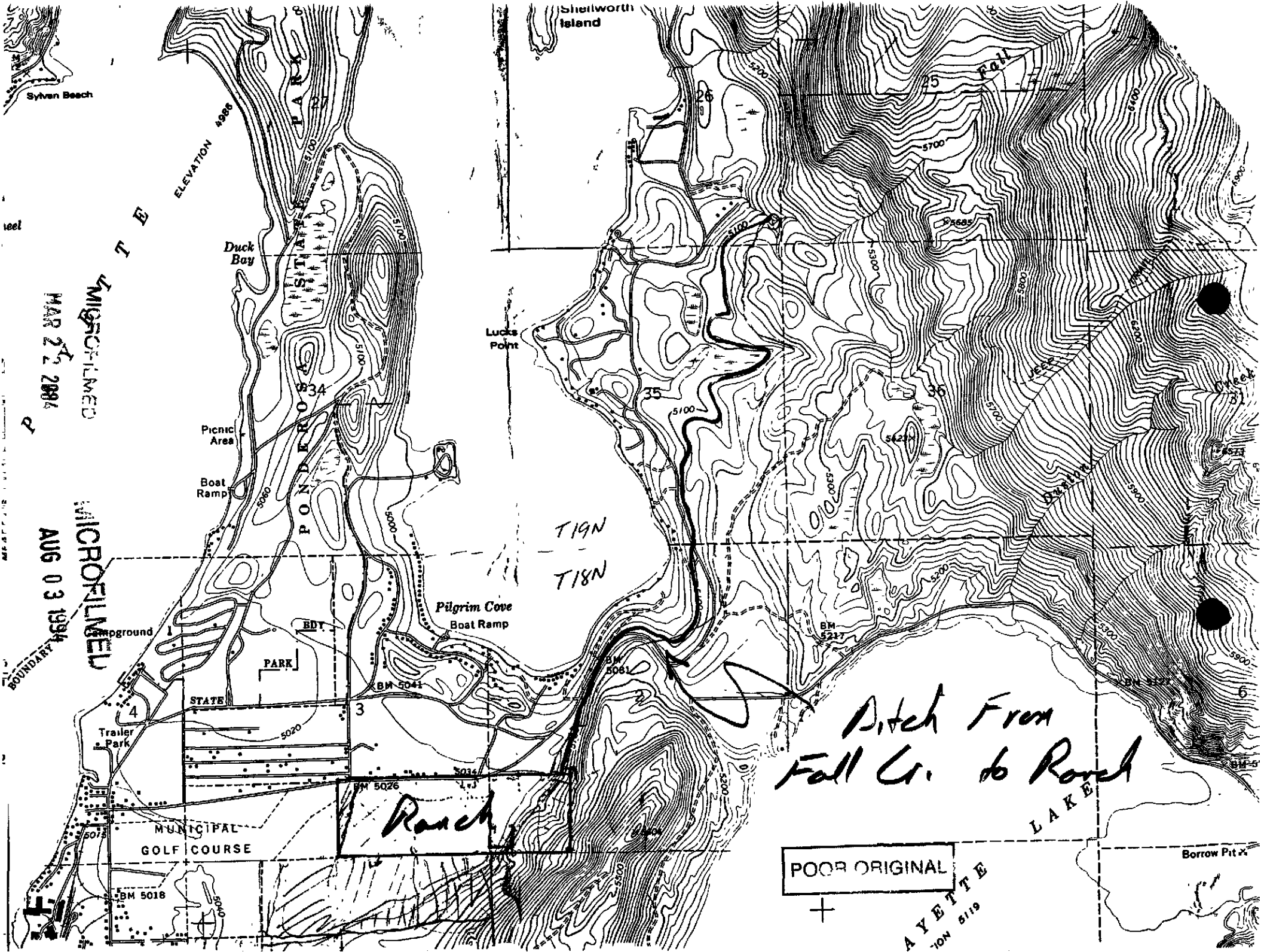
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 (LIMBOS MC



**MICROFILMED**

AUG 03 1994



Sylvan Beach

ELEVATION 4900

Duck Bay

PONDEROSA STATE PARK

Picnic Area

Boat Ramp

Lucks Point

Pilgrim Cove Boat Ramp

Ranch

MUNICIPAL GOLF COURSE

Ditch From Fall Cr. to Ranch LAKE

POOR ORIGINAL

AYETTE  
TON 5119

MAR 22 2006

AUG 03 1994

MICROFILMED

MICROFILMED



— NO ACTION NOW - wait for owner's proposal —

CONVERSATION MEMORANDUM

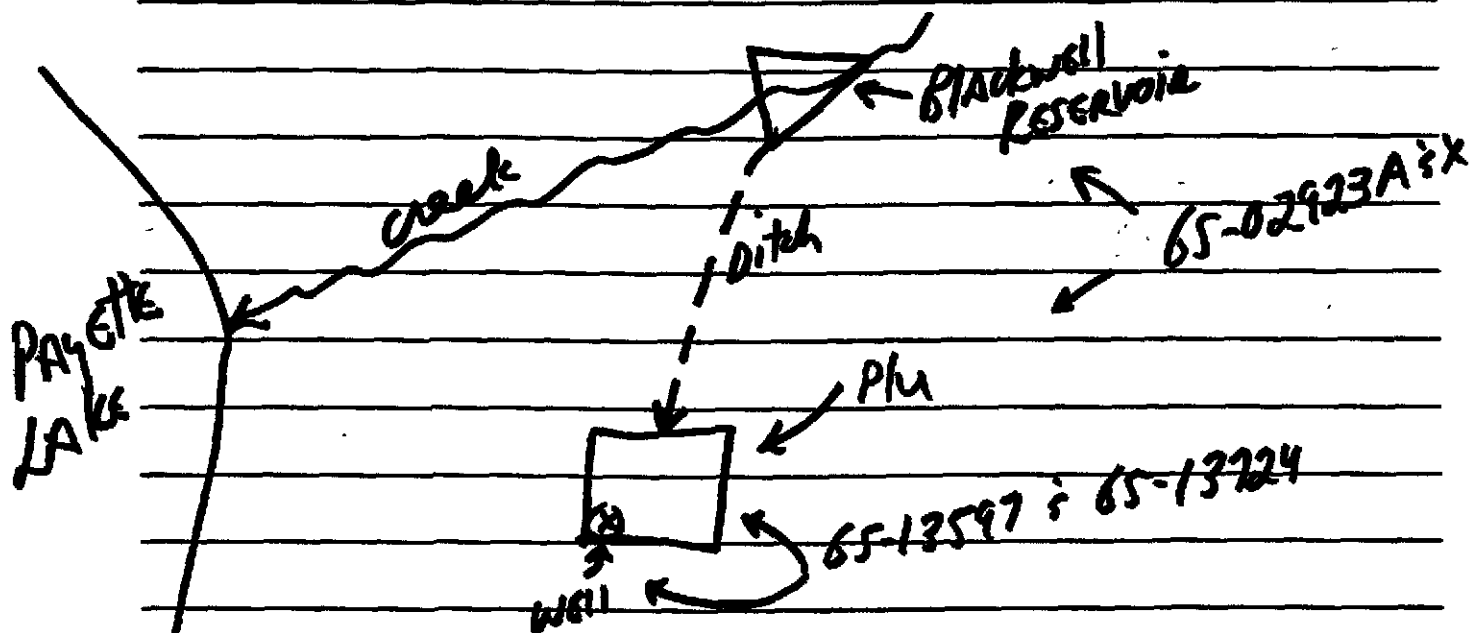
DATE 4/10/98

Dennis  
Moye = Real Est Mgr.  
424-3865

FILE 65-13597

NAME OF PARTY Jim Crawford Property Mgr 65-13724  
EMPLOYEE JR A65-02923B + C \*

RE: J B Scott Property & McCall - Office Visit



Rights 65-02923A & X cover plu in 65-13597 & 65-13724.

" " include Blackwell Reservoir & ditch.

" 65-13597 covers well, lapsal but re-instated, field exam 10/97, not licensed yet.

" 65-13724 filed 5/97 to cover at that time lapsal right; 13724 is pending appl. that until now could not be processed (adv. delay & mitigation issues).

\* 65-02923A → A65-02923A split to B (Scott) & D (other)

65-02923X → A65-02923X " " C (Scott) & E (other)

For Scott = A65-02923B & C

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MAR 22 2004

- Cont. Next page

# CONVERSATION MEMORANDUM

DATE \_\_\_\_\_

4/10/98

**FILE**

**NAME OF PARTY**

Crawford - continued

**EMPLOYEE**

Pg 2

**RE:**

Owner has had lots of problems with ditch water - doesn't effectively cover the land. That's why owner obtained g.w. right.

Would like to sever dike water from land. IDFG is interested in controlling the Reservoir water, mostly to keep full storage until fall when water would be released for Kokanee migration. Perhaps IDFG would also lease the water to water bank (?).

Somewhat like a transfer would be needed to at least change the N/P & P/L. This might work if land was retired from irrigation. After the transfer, Scott could seek a new (primary) g.w. right for the well & ~~acres~~ acres.

Above might be a win-win scenario for everyone.

Scott will submit a letter of proposed action to IDNR to comment on. Then owner can ~~consider~~ consider options & make appropriate ~~microfilm~~ <sup>microfilm</sup>.

Stolley has been involved in this discussion to

MAR 22 2004

**NOTICE OF PROPOSED CHANGE OF WATER  
RIGHTS, TRANSFER NO. 5768**

Notice is given that **J. B. SCOTT** of PO Box 70001, Boise ID 83707 has applied to the Department of Water Resources to change the Nature, Period and Place of Use pursuant to I.C. § 42-222 by splitting two decreed irrigation rights recorded as follows in Valley County:

Sections in this notice are in the following Townships: S2, 3 and 10 in T18N R3E; S25 and 26 in T19N R3E; S19, 20 and 30 in T19N R4E.

#65-02923A, Split Creek, 0.40 cfs, diverted in SESE, S26. Source is a local name for an unnamed stream.

#65-02923X, Fall Creek, 2.80 cfs and 178 af of storage, diverted in SWNW, S20. Water is stored in Blackwell Lake, released into Fall Creek, and rediverted at the Split Creek diversion.

Both rights have a priority date of 7-1-1929 and irrigate the same 168 acres in portions of SWSW S2, SE ¼ S3 and N ½ S10. The site is east of Big Payette Lake near the golf course in McCall. The applicant's share of the rights is all of the irrigated land in S2 and 3 (91 acres).

**PROPOSED CHANGE FOR BOTH RIGHTS**

Split the rights and cease using water on the applicant's 91 acres. Irrigation water historically used for the 91 acres will be used for year around instream uses as needed. Water will be released from Blackwell Lake to enhance fish habitat between Blackwell and Big Payette Lakes. Water will remain in Split Creek to enhance fish habitat downstream from the above described Split Creek diversion point. Applicant's portions of the rights will be described as follows:

#65-02923B, Split Creek, 0.22 cfs, natural flow for use in SE ¼ S26.

#65-02923C, Fall Creek, 1.52 cfs and 96.4 af (storage), natural flow and storage for use downstream from Blackwell Lake to the mouth of the creek. Place of use will be in portions of S19, 20, 25, 26 and 30.

Total proposed use is 1.74 cfs and 96.4 af of storage. The proposed site is north of the current place of use.

Any protest against approval of the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of \$25 for each application on or before July 24, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

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**MICROFILMED**

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