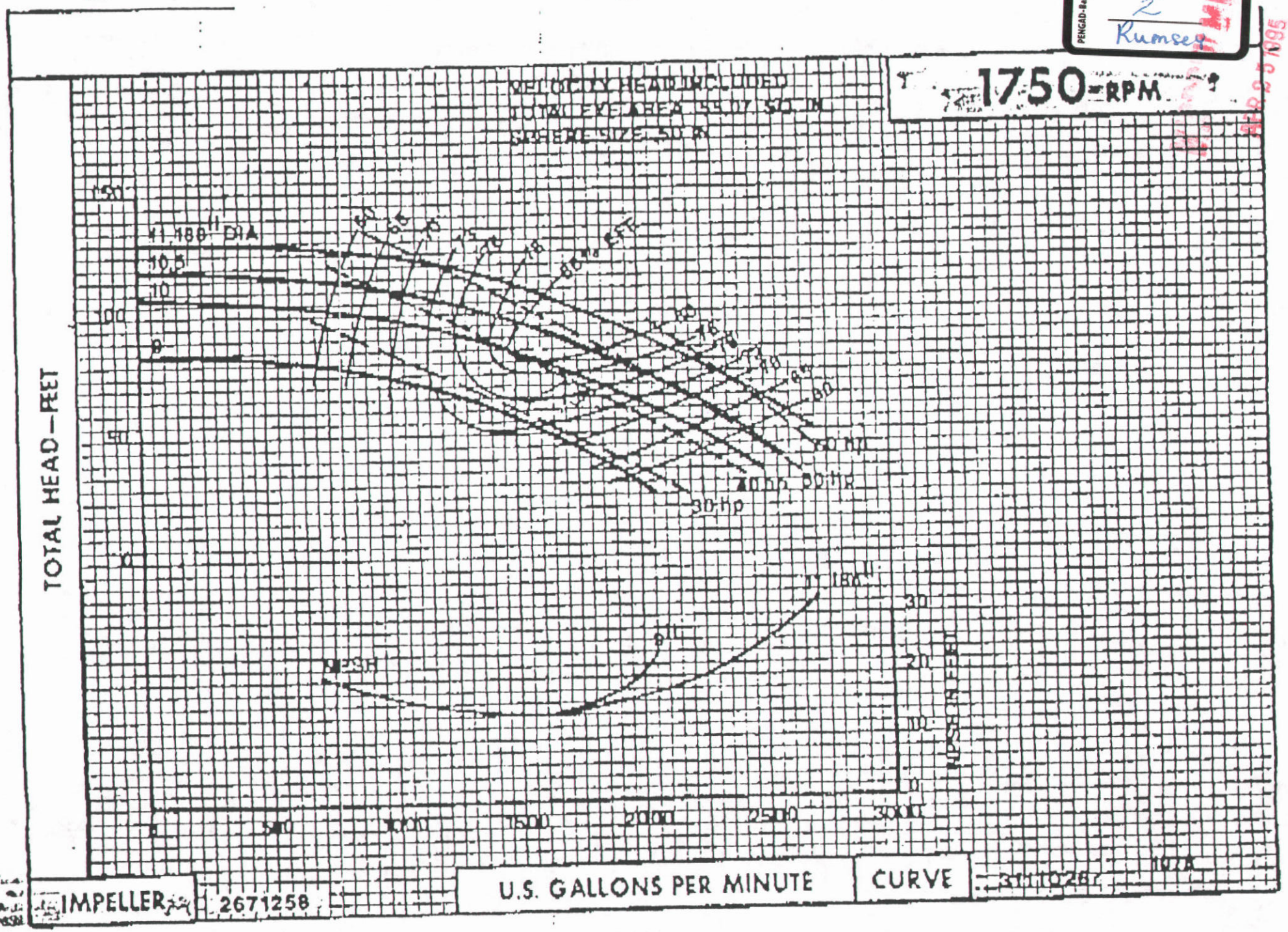
DEPOSITION EXHIBIT 2 Rumsey
PENCAD-Bayonne, N.J.
MFD
APR 25 1995



CUSTOMER _____ JOB NAME _____

S.O. NO. _____ SERIAL NO. _____

Issues

Forfeiture found? none apparent from evidence?
expansion " ? not if Watermaster has adequate control (note: Deputy Wm for Boyette R. 1992 was also Wm for Porter Ck. & is retiring in 1993)

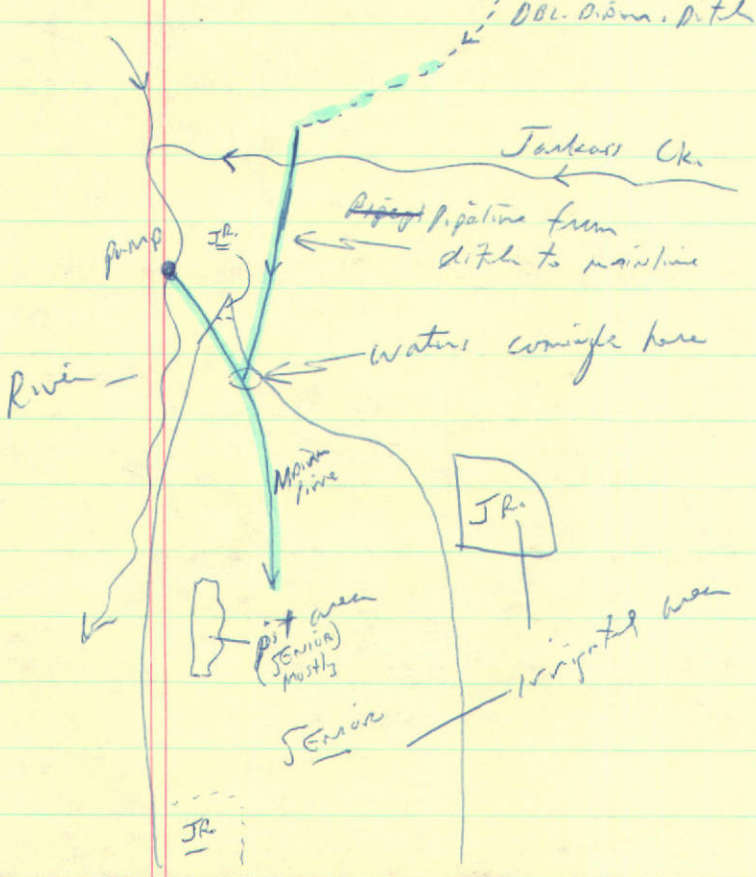
/

Could have controls on Porter Ck & Boyette pipeline to regulate deliveries & pond to prevent expansion

injury? Depends, not with ~~good~~ good controls for Wm

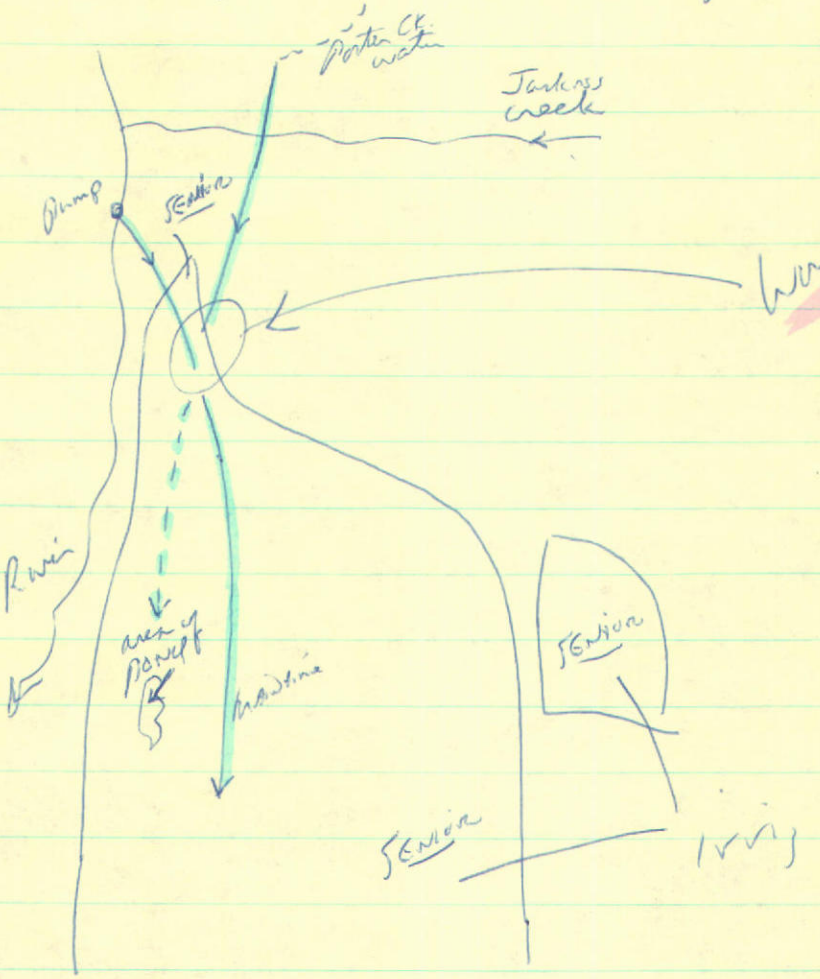
public interest?

Schematic - currently from Porter Ck. & main to field:



Pre-transfer approval

If transfer approved - need to control water going to ponds vs. water going to irrig



pond area would be junior Porter Ck. water

Christie Shirley

Hired by George Dowd who trained her to make weir measurements etc.

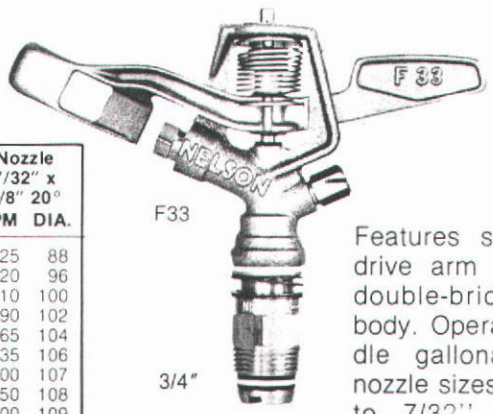
Calculations of her observations made by George.

Kept diary 3x/day checking weirs, headgates (?), sprinkler pipes, overflow at Jackass Creek.

Sometimes ran into town while there.

Repeated readings & Errors specific days to show process from her diary

Nelson F33 Series



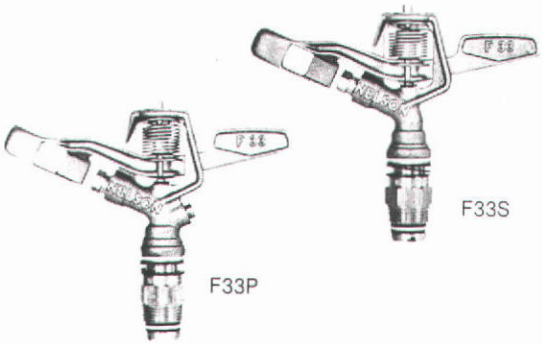
Features sturdy brass drive arm and rugged double-bridged brass body. Operated in middle gallonage range, nozzle sizes from 9/64" to 7/32". Trajectory angle is 25°.

TWO NOZZLES F33

NOZ. P.S.I.	Nozzle 9/64" x 3/32" 7° GPM	DIA.	Nozzle 5/32" x 3/32" 7° GPM	DIA.	Nozzle 11/64" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 1/8" 20° GPM	DIA.	Nozzle 13/64" x 1/8" 20° GPM	DIA.	Nozzle 7/32" x 1/8" 20° GPM	DIA.
25	4.18	80	4.83	82	5.55	83	6.31	85	7.40	85	8.30	86	9.25	88
30	4.58	81	5.28	85	6.07	88	6.93	91	8.15	91	9.15	94	10.20	96
35	4.95	82	5.71	87	6.57	90	7.51	94	8.83	94	9.93	97	11.10	100
40	5.29	83	6.11	88	7.03	92	8.03	96	9.46	96	10.65	99	11.90	102
45	5.61	84	6.48	89	7.46	94	8.53	98	10.05	98	11.30	101	12.65	104
50	5.91	85	6.82	90	7.87	95	9.00	100	10.60	100	11.90	103	13.35	106
55	6.20	86	7.15	91	8.25	96	9.45	101	11.10	101	12.50	104	14.00	107
60	6.48	87	7.47	92	8.60	97	9.86	102	11.60	102	13.00	105	14.50	108
65	6.75	88	7.78	93	8.93	98	10.27	103	12.10	103	13.50	106	15.00	109
70	7.00	89	8.08	94	9.25	99	10.66	104	12.50	104	14.00	107	15.45	110
75	7.25	90	8.37	95	9.56	100	11.02	105	12.90	105	14.40	108	15.90	111
80	7.49	91	8.65	96	9.87	101	11.36	106	13.25	106	14.80	109	16.30	112

TWO NOZZLES WITH VANE F33V

NOZ. P.S.I.	Nozzle 9/64" x 3/32" 7° GPM	DIA.	Nozzle 5/32" x 3/32" 7° GPM	DIA.	Nozzle 11/64" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 1/8" 20° GPM	DIA.	Nozzle 13/64" x 1/8" 20° GPM	DIA.	Nozzle 7/32" x 1/8" 20° GPM	DIA.
40	5.29	91	6.11	94	7.03	96	8.03	101	9.46	101	10.65	105	11.90	106
45	5.61	92	6.48	96	7.46	98	8.53	104	10.05	104	11.30	106	12.65	108
50	5.91	93	6.82	98	7.87	100	9.00	106	10.60	106	11.90	107	13.35	110
55	6.20	94	7.15	100	8.25	102	9.45	108	11.10	108	12.50	108	14.00	112
60	6.48	95	7.47	101	8.60	103	9.86	109	11.60	109	13.00	110	14.50	114
65	6.75	96	7.78	102	8.93	104	10.27	110	12.10	110	13.50	112	15.00	116
70	7.00	97	8.08	103	9.25	106	10.66	111	12.50	111	14.00	114	15.45	118
75	7.25	98	8.37	104	9.56	108	11.02	112	12.90	112	14.40	116	15.90	120
80	7.49	100	8.65	105	9.87	110	11.36	113	13.25	113	14.80	118	16.30	122



SINGLE NOZZLE F33S OR F33P

NOZ. P.S.I.	Nozzle 9/64" GPM	DIA.	Nozzle 5/32" GPM	DIA.	Nozzle 11/64" GPM	DIA.	Nozzle 3/16" GPM	DIA.	Nozzle 13/64" GPM	DIA.	Nozzle 7/32" GPM	DIA.
25	2.88	80	3.52	82	4.24	83	5.00	85	5.90	86	6.85	88
30	3.15	81	3.85	85	4.64	88	5.50	91	6.50	94	7.55	96
35	3.40	82	4.16	87	5.02	90	5.96	94	7.05	97	8.20	100
40	3.64	83	4.45	88	5.37	92	6.38	96	7.55	99	8.80	102
45	3.86	84	4.72	89	5.70	94	6.78	98	8.00	101	9.35	104
50	4.07	85	4.98	90	6.01	95	7.16	100	8.45	103	9.90	106
55	4.27	86	5.22	91	6.30	96	7.52	101	8.85	104	10.40	107
60	4.46	87	5.45	92	6.57	97	7.85	102	9.25	105	10.75	108
65	4.65	88	5.68	93	6.83	98	8.18	103	9.60	106	11.10	109
70	4.83	89	5.90	94	7.09	99	8.50	104	9.95	107	11.40	110
75	5.00	90	6.11	95	7.34	100	8.80	105	10.25	108	11.70	111
80	5.17	91	6.30	96	7.58	101	9.09	106	10.50	109	12.00	112

SINGLE NOZZLE WITH VANE F33SV OR F33PV

NOZ. P.S.I.	Nozzle 9/64" GPM	DIA.	Nozzle 5/32" GPM	DIA.	Nozzle 11/64" GPM	DIA.	Nozzle 3/16" GPM	DIA.	Nozzle 13/64" GPM	DIA.	Nozzle 7/32" GPM	DIA.
40	3.64	91	4.45	94	5.37	96	6.38	101	7.55	105	8.80	106
45	3.86	92	4.72	96	5.70	98	6.78	104	8.00	106	9.35	108
50	4.07	93	4.98	98	6.01	100	7.16	106	8.45	107	9.90	110
55	4.27	94	5.22	100	6.30	102	7.52	108	8.85	108	10.40	112
60	4.46	95	5.45	101	6.57	103	7.85	109	9.25	110	10.75	114
65	4.65	96	5.68	102	6.83	104	8.18	110	9.60	112	11.10	116
70	4.83	97	5.90	103	7.09	106	8.50	111	9.95	114	11.40	118
75	5.00	98	6.11	104	7.34	108	8.80	112	10.25	116	11.70	120
80	5.17	100	6.30	105	7.58	110	9.09	113	10.50	118	12.00	122

Sprinkler performance data has been obtained under ideal test conditions and may be adversely affected by wind, poor hydraulic entrance conditions, or other factors. Nelson Irrigation Corporation makes no representation regarding droplet conditions, uniformity, or application rate.

NOTES:

Highest point of stream is 8' above nozzle with standard 11/64" nozzle at normal operating pressure. STATED PERFORMANCE AT **NOZZLE** PRESSURE.

APR 2 5 199

Nelson F32S Series

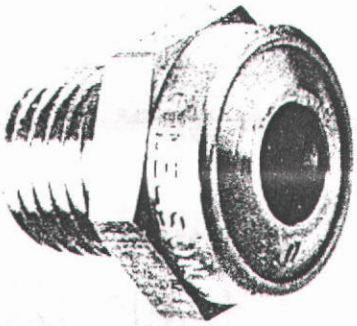
SINGLE NOZZLE F32S

NOZ. P.S.I.	Nozzle 7/64" GPM	DIA.	Nozzle 1/8" GPM	DIA.	Nozzle 9/64" GPM	DIA.
25	1.73	77	2.25	78	2.88	80
30	1.89	78	2.47	79	3.15	81
35	2.05	78	2.68	80	3.40	82
40	2.19	79	2.87	81	3.64	83
45	2.32	80	3.05	82	3.86	84
50	2.45	80	3.22	83	4.07	85
55	2.57	81	3.38	84	4.27	86
60	2.68	82	3.53	85	4.46	87
65	2.79	82	3.68	86	4.65	88
70	2.90	83	3.82	86	4.83	89
75	3.00	83	3.96	87	5.00	90
80	3.10	84	4.09	87	5.17	91

SINGLE NOZZLE WITH VANE F32SV

NOZ. P.S.I.	Nozzle 7/64" GPM	DIA.	Nozzle 1/8" GPM	DIA.	Nozzle 9/64" GPM	DIA.
25	1.73	78	2.25	82	2.88	85
30	1.89	79	2.47	84	3.15	87
35	2.05	80	2.68	85	3.40	89
40	2.19	81	2.87	86	3.64	91
45	2.32	82	3.05	87	3.86	92
50	2.45	83	3.22	88	4.07	93
55	2.57	84	3.38	89	4.27	94
60	2.68	85	3.53	90	4.46	95
65	2.79	86	3.68	91	4.65	96
70	2.90	87	3.82	92	4.83	97
75	3.00	88	3.96	93	5.00	98
80	3.10	89	4.09	94	5.17	100

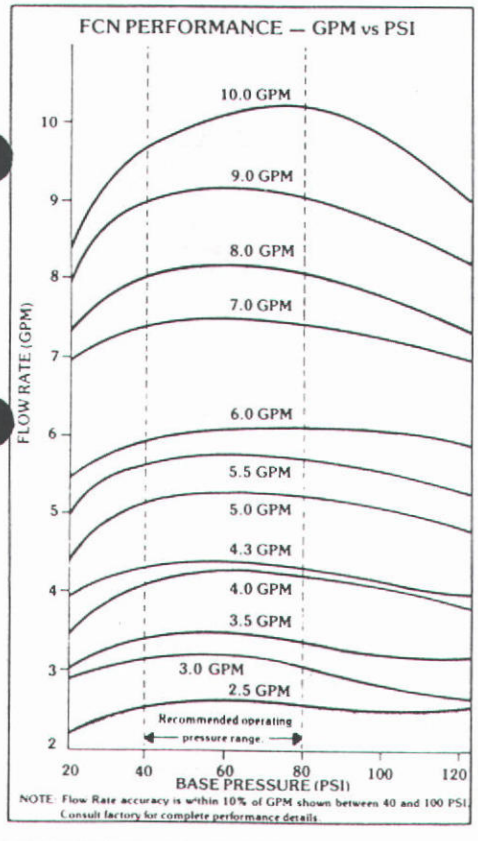
Nelson FCN® Flow Control Nozzles



Many factors can influence the way you apply water through your sprinkler systems. Differences in field elevation. Excessive pipe friction losses. Even fluctuations in your pump pressure.

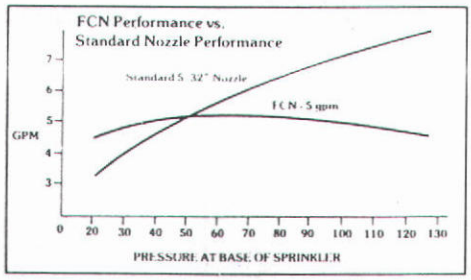
With the Nelson FCN Flow Control Nozzle, you can now minimize the effect those factors have on your water application pattern, allowing you to achieve a more uniform application of water on all parts of your field.

The Nelson FCN is designed to replace the standard nozzles in your impact sprinklers. Used with hand line, wheel line or solid set sprinkler systems, the FCN can help equalize the flow rate from each sprinkler on the line. Or if you irrigate with a center pivot system, the FCN can help maintain a constant flow rate.

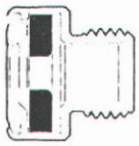


Note: FCN performance data has been obtained under ideal test conditions and may be adversely affected by wind, poor hydraulic entrance conditions, or other factors. Nelson Irrigation Corporation makes no representation regarding droplet conditions, uniformity, or application rate.

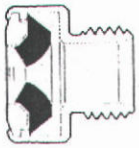
What does a more uniform water application pattern mean to you as an irrigator? It can mean an increase in your crop yield. A reduction in your pumping costs. And, just as importantly, a savings in water, fertilizer, and costly farm chemicals.



The chart above illustrates how the FCN serves to maintain a constant flow rate over a wide range of pressure. Notice that the GPM of a standard 5/32" nozzle will vary as much as 40% when the pressure changes from 40 psi to 80 psi, while the GPM of the FCN holds nearly constant during an identical pressure change.



FLOW CONTROL NOZZLE UNDER MINIMUM PRESSURE



FLOW CONTROL NOZZLE UNDER HIGH PRESSURE

PATENT #4091996 AND OTHERS PENDING

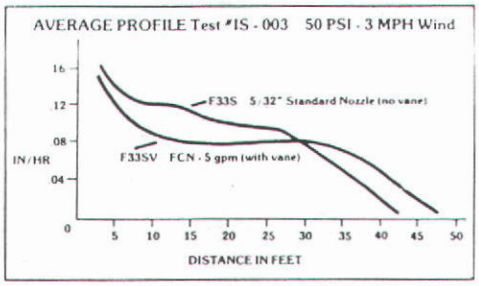
PRINCIPLE OF OPERATION

The FCN is a brass nozzle cartridge which contains a flexible orifice that contracts as the pressure increases, allowing the GPM discharge to be held constant. Since the stream is discharged across the orifice directly into the atmosphere, the pressure drop normally associated with flow control devices does not occur. Additionally, the threshold pressure — the pressure at which the FCN achieves rated flow — is much lower than that of base flow control devices.

WATER DISTRIBUTION

The average water distribution profile of a sprinkler equipped with a FCN is not significantly different from that of a sprinkler equipped with a standard nozzle. The variances shown in the comparative profiles above right are largely a result of differences in arm stroke rate, nozzle exit conditions, and stream-straightener vanes.

The total amount of water collected is essentially the same, indicating that under low wind conditions there is very little difference in irrigation efficiency or in the amount of water lost as mist. High wind test results are not yet available.

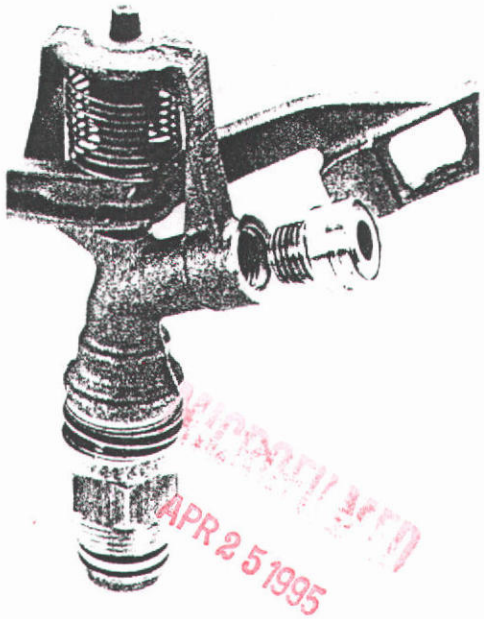


Sprinkler Performance Radius (feet) with vane

Base Psi	3 FCN Size (nominal gpm)								
	2.5	3.0	3.5	4.0	5.0	6.0	7.0	9.0	10.0
40	45	45	46	48	51	53	54	55	56
50	47	47	47	49	52	54	55	51	58
60	47	48	48	50	52	55	56	58	59
70			48	50	52	56	57	59	60
80			49	51	53	56	59	59	60

Stated performance is with F32SVand F33SV sprinklers (with vane) in no-wind test conditions. Radius is reduced 4% to 12% when used without vane (highest reduction is in high gpm range). Derate performance 2% to 4% when using F44V series sprinklers. For complete performance details, consult factory.

FCN™ FLOW CONTROL NOZZLE ORDER INFORMATION			
2FCN for ½" Impacts		3FCN for ¾" Impacts	
Model	GPM Size	Model	GPM Size
2FCN	2.0	3FCN	2.5
2FCN	2.5	3FCN	3.0
2FCN	3.0	3FCN	3.5
2FCN	3.5	3FCN	4.0
2FCN	4.0	3FCN	4.3
		3FCN	5.0
		3FCN	5.5
		3FCN	6.0
		3FCN	7.0
		3FCN	8.0
		3FCN	9.0
		3FCN	10.0



APR 25 1995

PERFORMANCE FOR 20J H
Highest point of stream is 7' above nozzle.*

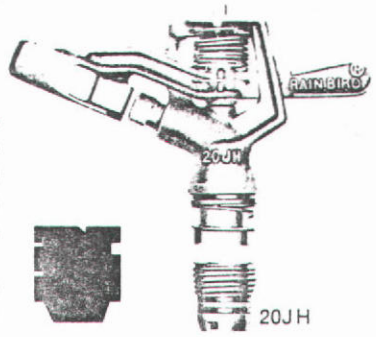
P.S.I. @ Nozzle	Nozzle 3/32" Dia.	GPM	†Nozzle 7/64" Dia.	GPM	Nozzle 1/8" Dia.	GPM	Nozzle 9/64" Dia.	GPM
35	72	1.51	76	2.13	77	2.76	79	3.43
40	73	1.62	77	2.27	78	2.94	80	3.66
45	74	1.72	78	2.40	79	3.11	80	3.87
50	74	1.80	78	2.53	79	3.27	81	4.08
55	75	1.88	78	2.65	80	3.43	81	4.27
60	75	1.98	79	2.76	80	3.57	82	4.45

PERFORMANCE FOR 20EJ H
Highest point of stream is 7' above nozzle.*

P.S.I. @ Nozzle	Nozzle 3/32" Dia.	GPM	† Nozzle 7/64" Dia.	GPM	Nozzle 1/8" Dia.	GPM	Nozzle 9/64" Dia.	GPM
35	75	1.51	77	2.13	79	2.75	82	3.43
40	76	1.62	78	2.27	80	2.94	83	3.66
45	77	1.72	79	2.40	81	3.11	84	3.87
50	78	1.80	80	2.53	82	3.27	85	4.08
55	79	1.88	81	2.65	82	3.43	86	4.27
60	79	1.98	81	2.76	82	3.57	87	4.45

20J H/20EJ H

All-new sprinkler including **"H" bearing;** widely used in all types of permanent systems, on center pivots and in general field applications. Rugged enough for hand move and solid set systems. Now cataloged with 3/32" nozzle. Excellent performance extended in low to medium application rates. Performance is maintained under windy conditions with non-clog vane in "E" model. ½" male bearing.



RAIN BIRD®

PERFORMANCE FOR 20A H 7° Highest point of stream is 3' above nozzle (aluminum arm model).*

ALUMINUM ARM

P.S.I. @ Nozzle	†Nozzle 7/64" 7° Dia.	GPM	Nozzle 1/8" 7° Dia.	GPM	Nozzle 9/64" 7° Dia.	GPM
15	—	—	43	1.75	45	2.20
20	43	1.55	45	1.97	47	2.53
25	45	1.73	47	2.21	49	2.83
30	47	1.89	49	2.44	51	3.10
35	48	2.05	51	2.66	53	3.36
40	50	2.20	52	2.86	54	3.61
45	51	2.32	54	3.04	56	3.82
50	52	2.44	55	3.22	57	4.03

BRONZE ARM

P.S.I. @ Nozzle	†Nozzle 5/32" 7° Dia.	GPM	Nozzle 11/64" 7° Dia.	GPM	Nozzle 3/16" 7° Dia.	GPM	Nozzle 13/64" 7° Dia.	GPM	Nozzle 7/32" 7° Dia.	GPM
15	47	2.68	48	3.24	50	3.91	52	4.46	55	5.08
20	49	3.04	50	3.72	52	4.33	54	5.13	57	5.80
25	51	3.43	52	4.17	54	4.87	56	5.75	59	6.54
30	53	3.78	54	4.57	56	5.38	58	6.30	61	7.20
35	54	4.10	55	4.96	57	5.84	60	6.83	63	7.79
40	56	4.40	57	5.32	59	6.27	62	7.31	65	8.35
45	57	4.68	58	5.65	60	6.66	64	7.76	67	8.88
50	59	4.95	60	5.95	62	7.03	65	8.18	69	9.38

PERFORMANCE FOR 20A H 12° Highest point of stream is 4' above nozzle (aluminum arm model).*

ALUMINUM ARM

P.S.I. @ Nozzle	†Nozzle 7/64" 12° Dia.	GPM	Nozzle 1/8" 12° Dia.	GPM	Nozzle 9/64" 12° Dia.	GPM
20	47	1.55	50	1.97	50	2.53
25	49	1.73	52	2.21	52	2.83
30	51	1.89	54	2.44	55	3.10
35	54	2.05	55	2.66	57	3.36
40	55	2.20	57	2.86	58	3.61
45	56	2.32	59	3.04	60	3.82
50	58	2.44	60	3.22	61	4.03

BRONZE ARM

P.S.I. @ Nozzle	†Nozzle 5/32" 12° Dia.	GPM	Nozzle 11/64" 12° Dia.	GPM	Nozzle 3/16" 12° Dia.	GPM	Nozzle 13/64" 12° Dia.	GPM	Nozzle 7/32" 12° Dia.	GPM
20	51	3.04	52	3.72	54	4.33	57	5.13	60	5.80
25	54	3.43	56	4.17	56	4.87	60	5.75	63	6.54
30	56	3.78	58	4.57	60	5.38	62	6.30	66	7.20
35	58	4.10	59	4.96	61	5.84	64	6.83	68	7.79
40	60	4.40	61	5.32	63	6.27	66	7.31	70	8.35
45	61	4.68	63	5.65	64	6.66	68	7.76	71	8.88
50	63	4.95	64	5.95	66	7.03	69	8.18	73	9.38

PERFORMANCE FOR 20A H 20° Highest point of stream is 4' above nozzle (aluminum arm model).*

ALUMINUM ARM

P.S.I. @ Nozzle	†Nozzle 7/64" 20° Dia.	GPM	Nozzle 1/8" 20° Dia.	GPM	Nozzle 9/64" 20° Dia.	GPM
20	50	1.55	51	1.97	52	2.53
25	53	1.73	54	2.21	55	2.83
30	55	1.89	57	2.44	58	3.10
35	57	2.05	59	2.66	60	3.36
40	59	2.20	61	2.86	62	3.61
45	61	2.32	63	3.04	64	3.82
50	63	2.44	64	3.22	65	4.03

BRONZE ARM

P.S.I. @ Nozzle	†Nozzle 5/32" 20° Dia.	GPM	Nozzle 11/64" 20° Dia.	GPM	Nozzle 3/16" 20° Dia.	GPM	Nozzle 13/64" 20° Dia.	GPM	Nozzle 7/32" 20° Dia.	GPM
20	53	3.04	54	3.72	55	4.33	59	5.13	63	5.80
25	56	3.43	57	4.17	58	4.87	63	5.75	66	6.54
30	59	3.78	61	4.57	63	5.38	66	6.30	70	7.20
35	61	4.10	63	4.96	65	5.84	67	6.83	72	7.79
40	63	4.40	65	5.32	67	6.27	69	7.31	74	8.35
45	65	4.68	67	5.65	68	6.66	71	7.76	75	8.88
50	66	4.95	68	5.95	70	7.03	73	8.18	76	9.38

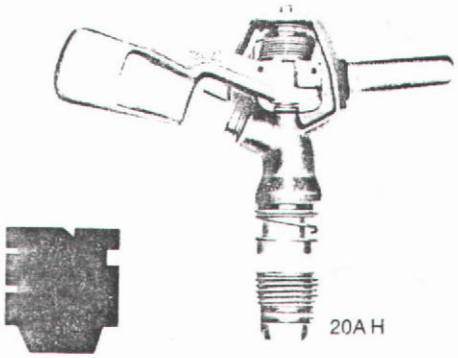
PERFORMANCE FOR 20A H 23° Highest point of stream is 5' above nozzle (aluminum arm model).*

ALUMINUM ARM

P.S.I. @ Nozzle	†Nozzle 7/64" 23° Dia.	GPM	Nozzle 1/8" 23° Dia.	GPM	Nozzle 9/64" 23° Dia.	GPM
20	62	1.55	63	1.97	64	2.53
25	64	1.73	65	2.21	66	2.83
30	66	1.89	67	2.44	68	3.10
35	68	2.05	69	2.66	70	3.36
40	70	2.20	71	2.86	72	3.61
45	72	2.32	73	3.04	74	3.82
50	74	2.44	75	3.22	76	4.03

BRONZE ARM

P.S.I. @ Nozzle	†Nozzle 5/32" 23° Dia.	GPM	Nozzle 11/64" 23° Dia.	GPM	Nozzle 3/16" 23° Dia.	GPM	Nozzle 13/64" 23° Dia.	GPM	Nozzle 7/32" 23° Dia.	GPM
20	65	3.04	68	3.72	71	4.33	73	5.13	74	5.80
25	67	3.43	70	4.17	73	4.87	75	5.75	76	6.54
30	69	3.78	72	4.57	75	5.38	77	6.30	78	7.20
35	71	4.10	74	4.96	77	5.84	79	6.83	80	7.79
40	73	4.40	76	5.32	79	6.27	81	7.31	82	8.35
45	75	4.68	78	5.65	81	6.66	83	7.76	84	8.88
50	77	4.95	80	5.95	83	7.03	85	8.18	86	9.38



20A H Series

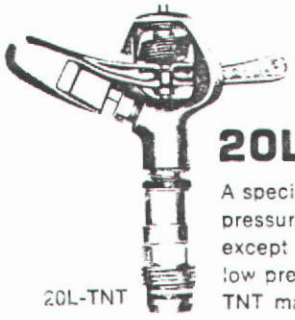
This versatile model has a wide range of nozzle sizes and angles. Widely used in undertree permanent and solid set systems. Anodized aluminum arm with a brass bushing and neoprene bumper is used for small nozzles; the bronze arm for large nozzles. Gives good water patterns and wetted diameters without interference with tree skirt. (where required) because of the special nozzle designs. This sprinkler has the all-new **"H" bearing.** ½" male bearing.

PERFORMANCE FOR 20A H 5°
Highest point of stream is 1.5' above nozzle.*

P.S.I. @ Nozzle	Nozzle 7/64"–5° Dia.	GPM	†Nozzle 1/8"–5° Dia.	GPM	Nozzle 9/64"–5° Dia.	GPM	Nozzle 5/32"–5° Dia.	GPM
15	—	—	46	1.62	47	2.08	48	3.56
20	46	1.43	47	1.86	48	2.41	49	2.97
25	47	1.60	48	2.10	49	2.71	50	3.33
30	48	1.78	49	2.31	50	2.98	51	3.66
35	49	1.95	50	2.49	51	3.23	52	3.97
40	50	2.12	51	2.67	52	3.46	53	4.25
45	51	2.29	52	2.83	53	3.68	54	4.52
50	52	2.46	53	2.99	54	3.89	55	4.77

APR 2 5 1995

RAIN BIRD

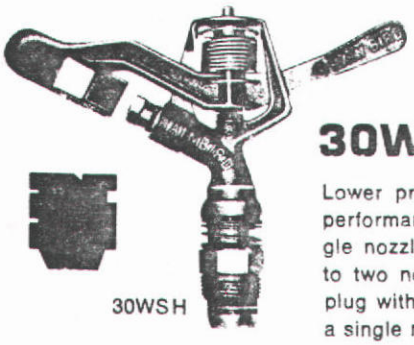

20L-TNT

20L-TNT

A special model for use where only very low water pressure is available. Similar features as model 20 except this model has better stream breakup at low pressures due to special fixed pin nozzle. ½" TNT male bearing.

PERFORMANCE FOR 20L-TNT

@ P.S.I. Nozzle	†Nozzle 11/64" Dia.	GPM	Nozzle 3/16" Dia.	GPM	Nozzle 13/64" Dia.	GPM	Nozzle 7/32" Dia.	GPM	Nozzle 1/4 Dia.	GPM
8	40	2.27	40	2.63	40	2.98	42	3.37	42	4.13
10	42	2.54	44	2.54	44	3.33	46	3.77	46	4.67
12	46	2.79	46	3.22	46	3.65	48	4.13	48	5.12
15	50	3.12	50	3.51	50	4.09	52	4.62	52	5.74
20	54	3.61	54	4.27	54	4.73	56	5.35	56	6.63


30WSH

30WH/30WSH

Lower precipitation rates and better performance in wind because of single nozzle. 30WH may be converted to two nozzle sprinkler by replacing plug with spreader nozzle. 30WSH is a single nozzle sprinkler only.

PERFORMANCE FOR 30WH/30WSH
Highest point of stream is 9' above nozzle.*

@ P.S.I. Nozzle	Nozzle 1/8" Dia.	GPM	Nozzle 9/64" Dia.	GPM	Nozzle 5/32" Dia.	GPM	†Nozzle 11/64" Dia.	GPM	Nozzle 3/16" Dia.	GPM
40	81	2.87	83	3.63	88	4.45	92	5.37		
45	82	3.05	84	3.84	89	4.72	93	5.70	98	6.81
50	83	3.22	85	4.04	90	4.98	95	6.01	100	7.18
55	84	3.39	86	4.22	91	5.22	96	6.30	101	7.51
60	85	3.55	87	4.38	92	5.44	97	6.56	102	7.82
65	86	3.72	88	4.65	93	5.73	98	6.83	103	8.19
70	86	3.84	89	4.80	94	5.93	99	7.08	104	8.48
75	87	3.98	90	5.00	95	6.16	100	7.34	105	8.78
80	87	4.09	91	5.18	96	6.32	101	7.58	106	9.09



30EWH/30EWSH

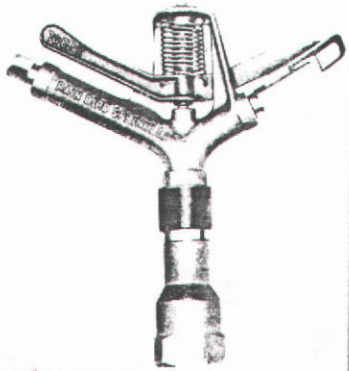
Lower precipitation rates and better performance in wind conditions because of single nozzle. 30EWH may be converted to two nozzle sprinkler by replacing plug with spreader nozzle. 30EWSH is single nozzle sprinkler only. Diameter of throw increased substantially under extremely windy conditions because this model has a non-clog vane.

PERFORMANCE FOR 30EWH/30EWSH
Highest point of stream is 10' above nozzle.*

@ P.S.I. Nozzle	Nozzle 1/8" Dia.	GPM	Nozzle 9/64" Dia.	GPM	Nozzle 5/32" Dia.	GPM	†Nozzle 11/64" Dia.	GPM	Nozzle 3/16" Dia.	GPM
55	89	3.39	94	4.22	100	5.22	102	6.30		
60	90	3.55	95	4.38	101	5.44	103	6.56	109	7.82
65	91	3.72	96	4.65	102	5.73	104	6.83	110	8.19
70	92	3.84	97	4.80	103	5.93	106	7.08	111	8.48
75	93	3.98	98	5.00	104	6.16	108	7.34	112	8.87
80	94	4.09	100	5.18	105	6.32	110	7.58	113	9.09

70E-TNT

For use on mechanical move systems, especially center pivot machines and in general field applications. Model has exceptional water pattern because the arm drives off spreader nozzle with fixed stainless steel pin that breaks up stream. Diameter of throw increased substantially under extremely windy conditions because this model has a non-clog vane. Wear life of this sprinkler extended significantly due to new plastic hood, top seal, Fluoroloy "G"® wear ring and hycar seal washer. Available with 1" male or female bearing.



PERFORMANCE FOR 70E-TNT Highest point of stream is 10' above nozzle.*

@ P.S.I. Nozzle	Nozzle 7/32" x 11/64" Dia.	GPM	Nozzle 1/4" x 11/64" Dia.	GPM	†Nozzle 1/4" x 3/16" Dia.	GPM	Nozzle 9/32" x 3/16" Dia.	GPM	Nozzle 9/32" x 7/32" Dia.	GPM	Nozzle 5/16" x 7/32" Dia.	GPM	Nozzle 11/32" x 7/32" Dia.	GPM	Nozzle 3/8" x 7/32" Dia.	GPM
50	125	16.0														
55	127	16.7	136	19.7	136	21.1										
60	129	17.5	139	20.6	139	22.0	144	25.2	144	28.0						
65	131	18.2	142	21.7	142	22.9	147	26.3	147	29.2	152	33.1				
70	134	19.0	145	22.6	145	23.8	150	27.4	150	30.4	155	34.5	164	38.6	173	42.2
75	137	19.7	148	23.3	148	24.7	153	28.3	153	31.5	158	35.8	168	40.0	177	43.8
80	140	20.3	151	24.0	151	25.5	156	29.2	156	32.6	161	37.0	172	41.3	181	45.4

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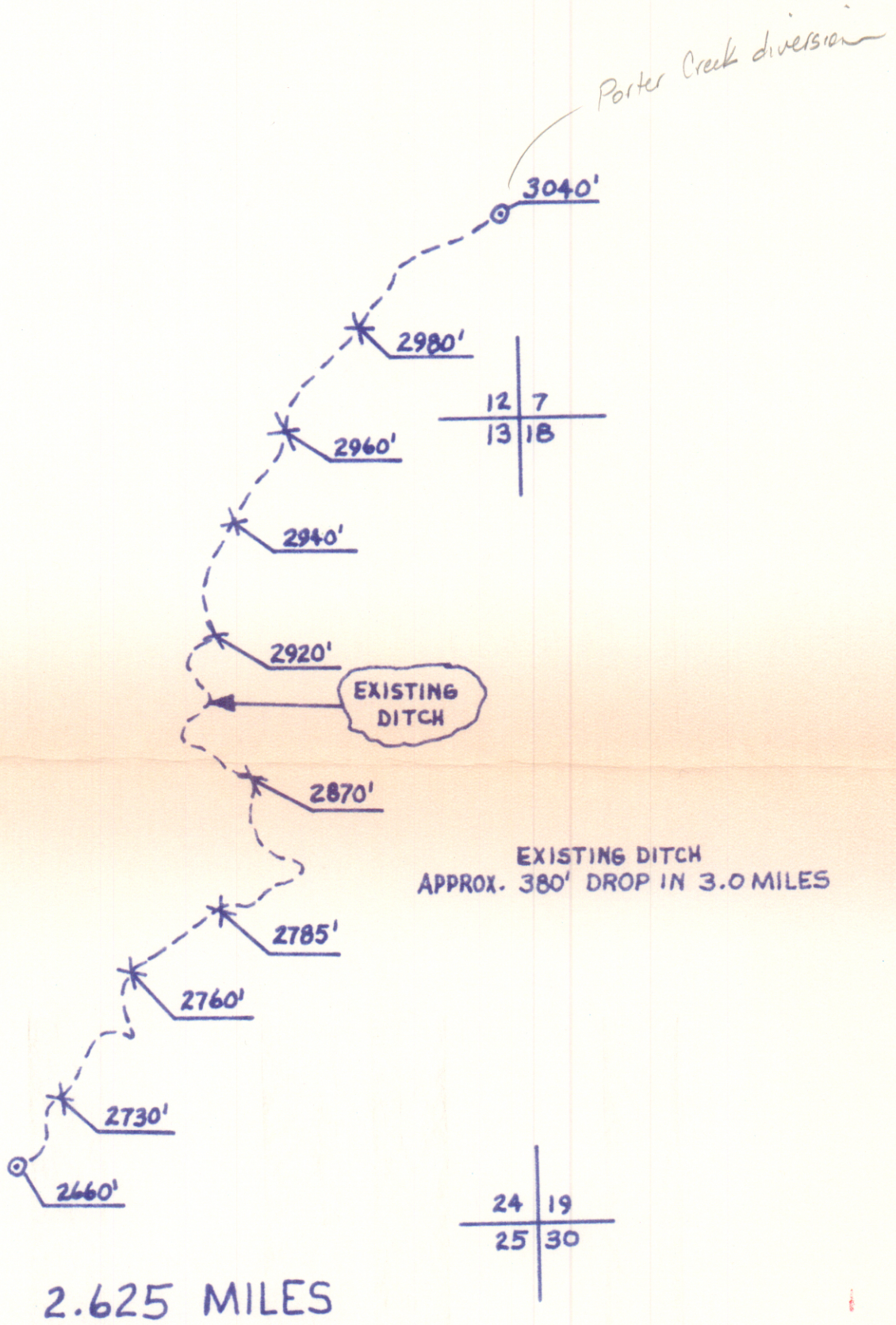


EXHIBIT
K



EXHIBIT
L
PENCAD-Bayonne, N. J.

Measured in 1978.
hea was not present - trying to put in
a hydropower plant



EXISTING DITCH
APPROX. 380' DROP IN 3.0 MILES

2.625 MILES
OPEN DITCH

DOUBLE DIAMOND

APR 2 5 1995



Protestants' BB

Protestants' C

APR 2 5 1995

Protestants' DP



Exhibit A

APR 2 5 1995

EXHIBIT
B
PENGAD-Bayonne, N. J.

PAYETTE RIVER

E174
T150

E176
T154

T112

D-2B

APR 2 5 1995

C-23

17N R2E

8
23.6

7
46.7

10.
18.3

9
31.6

E147
J112

20
35

26 25
35 36

11
25.0

12
2.6

14.
4.8

15.
12.2

16
28.3

18.
3.1

20.
5.9

19.
12.4

21.
27.9

35

35 36

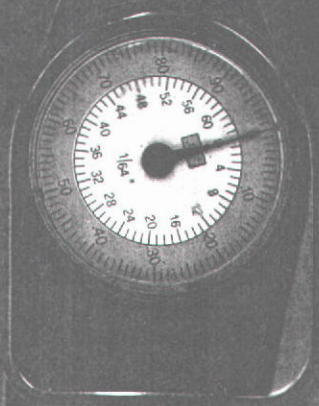
D-25

APR 25 1995

GENERAL® No. 142

6 inch DIAL CALIPER

DIRECT READING



EXCLUSIVE COLOR-CODED DIAL READING IN DECIMALS AND FRACTIONS

- SWISS MADE
- .01" AND 1/64" ON DIAL AND mm ON BAR SCALE
- FIBER GLASS REINFORCED NYLON
- THUMB ROLLER WITH FRICTION STOP
- ADJUSTABLE BEZEL
- 4 WAY MEASUREMENT
  - OUTSIDE
  - INSIDE
  - DEPTH
  - STEP
- FRACTIONAL CONVERSION TABLE

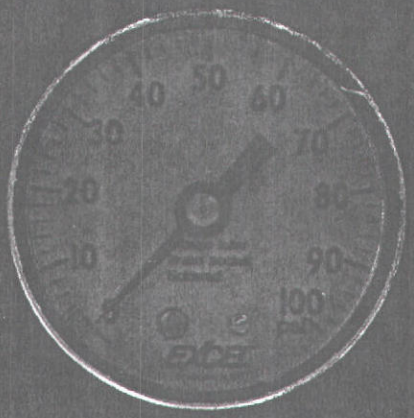






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PENGAD-Bayonne, N. J.
EXHIBIT
R
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EXHIBIT
5

PENGAD-Bayonne, N. J.

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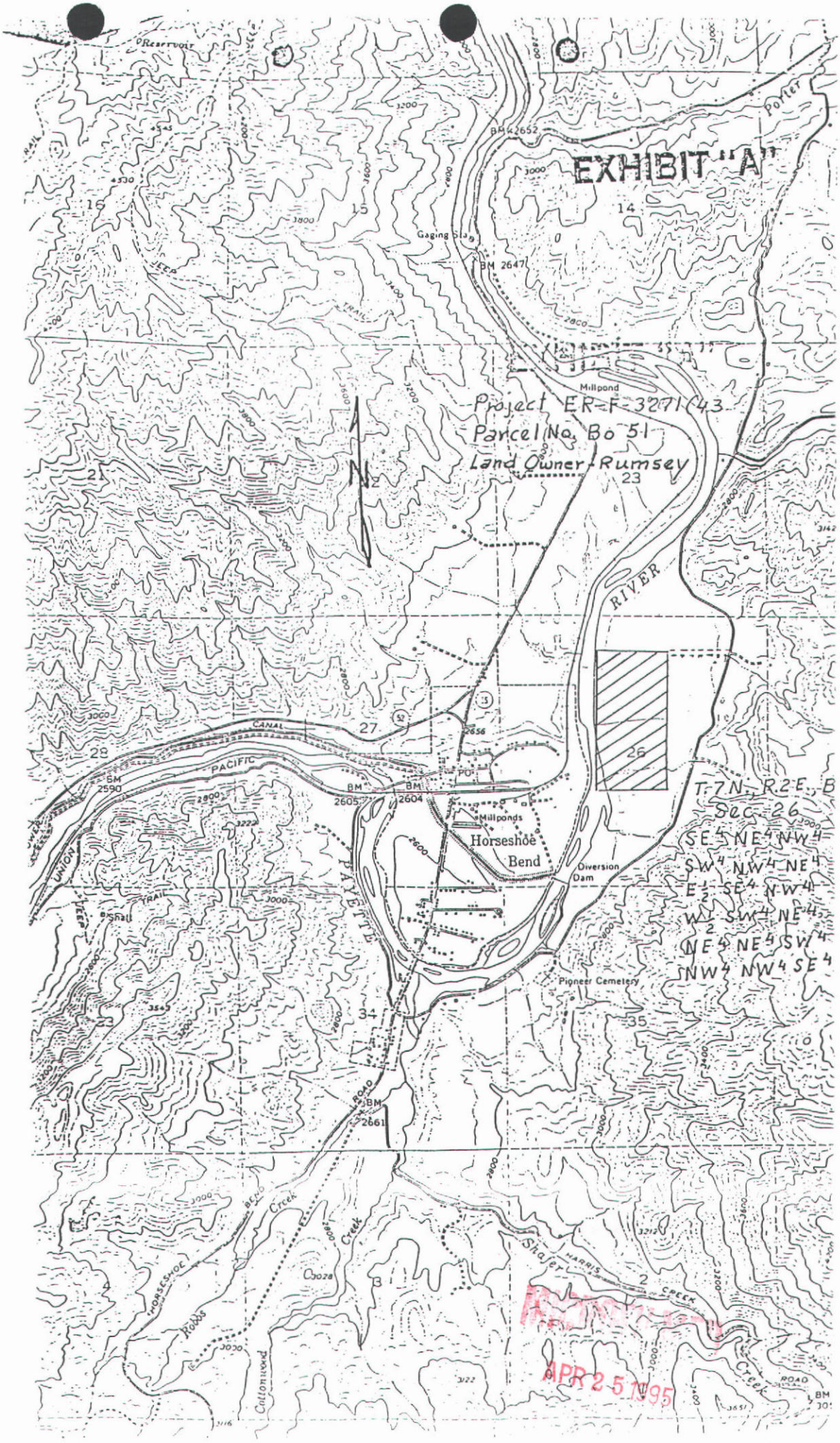
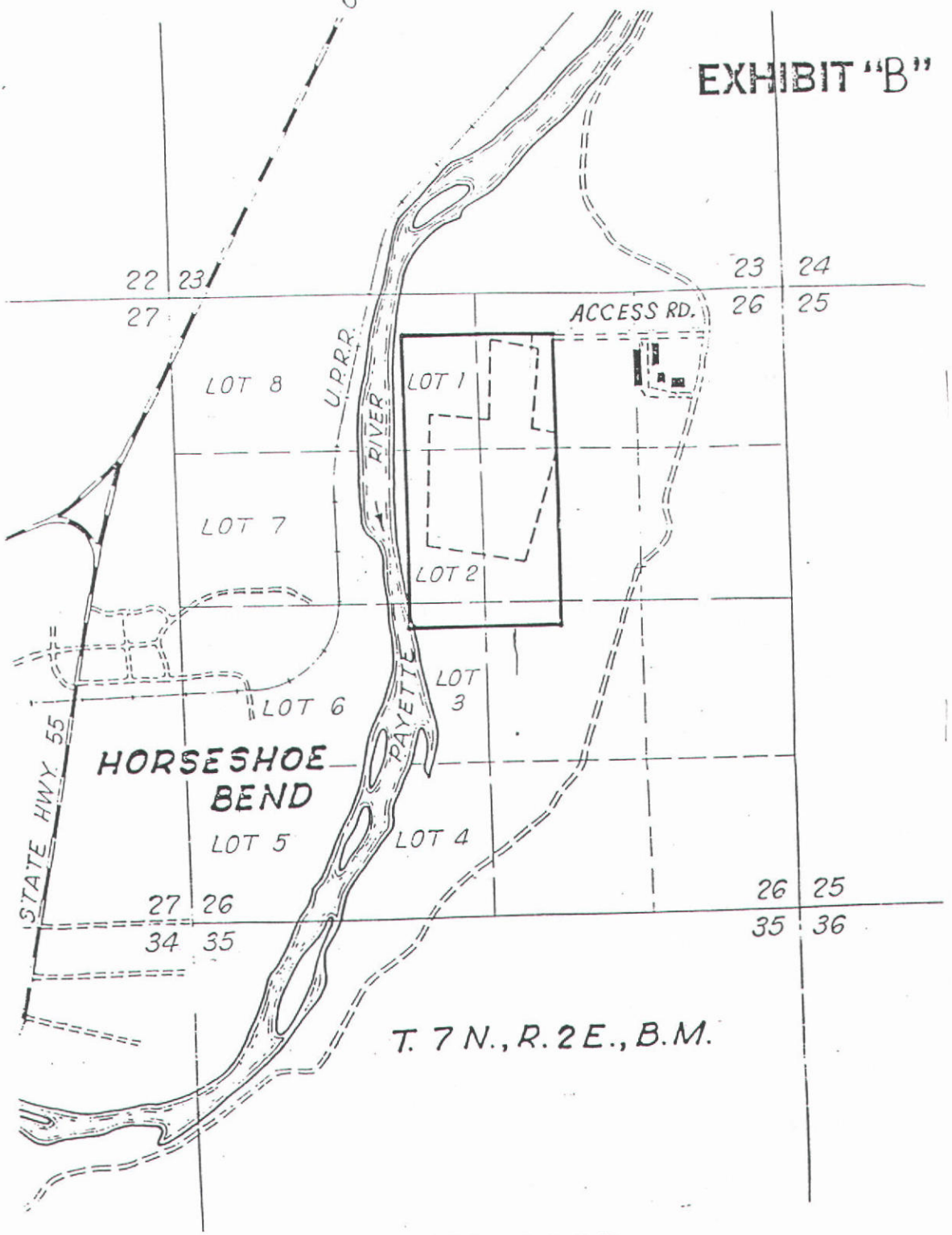

EXHIBIT "A"
Project ER-F-3271(43
Parcel No. Bo 51
Land Owner - Rumsey
T. 7 N. R. 2 E., B
Sec. 26
SE¼ NE¼ NW¼
SW¼ NW¼ NE¼
E½ SE¼ NW¼
W½ SW¼ NE¼
NE¼ NE¼ SW¼
NW¼ NW¼ SE¼
RIVER
PACIFIC
CANAL
UNION
PAYETTE
Horseshoe Bend
Millponds
Diversion Dam
Pioneer Cemetery
Millpond
Gaging Sta.
Reservoir
JEEP TRAIL
ROAD
Creek
APR 25 1995

EXHIBIT "B"



VICINITY MAP

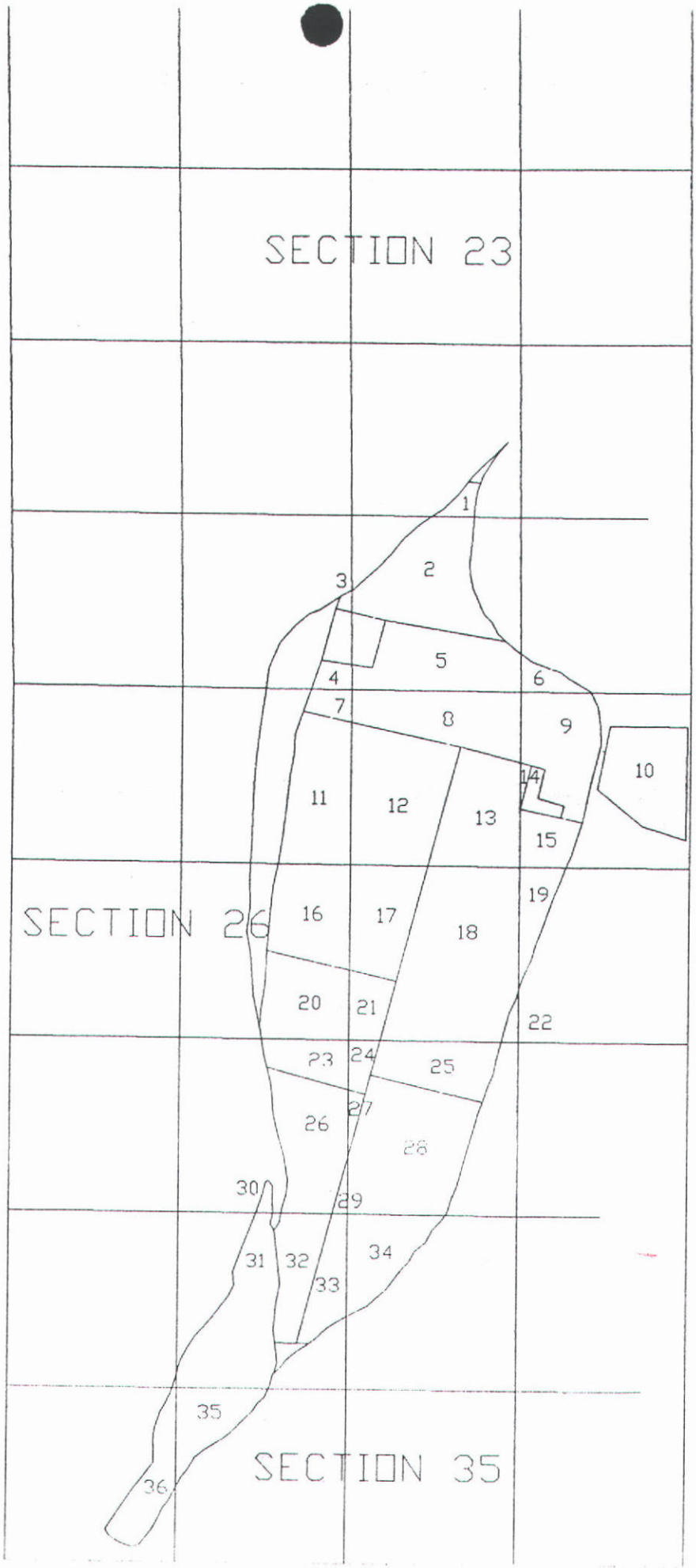
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Scale in Feet

APR 25 1995

EXHIBIT "C

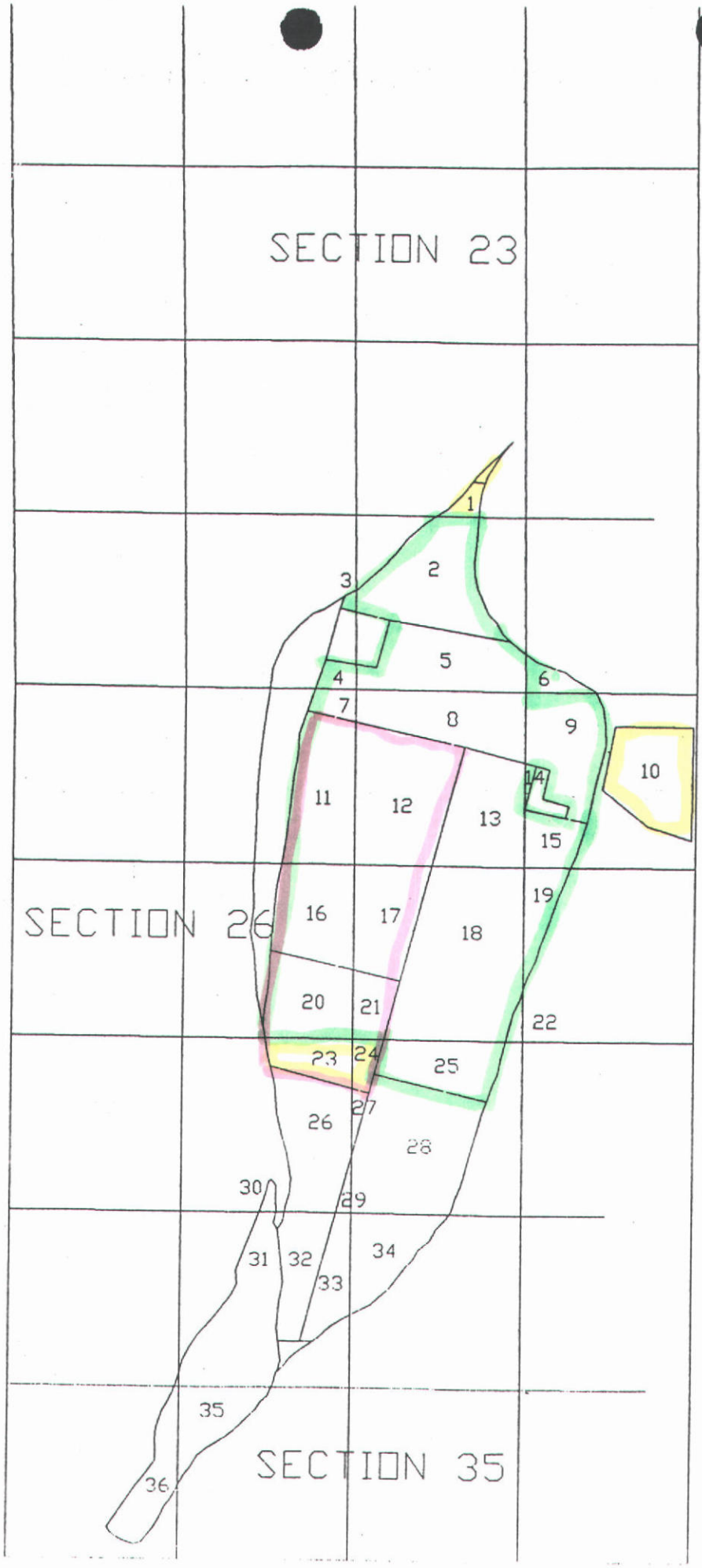
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1302.51'
A
A
OVERBURDEN
PAYETTE RIVER
N.0°38'50"W.
2316.93'
N.0°34'45"W.
327.53'
N.89°28'53"W.
1286.66'
S.0°17'51"E.
2306.78'
S.0°18'48"E.
327.07'
AREA TO BE WORKED
TEST HOLES
B
B
25
33
46
50
51
34
20
52
54
55
56
57
72
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APR 25 1995



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7-1.66 ACRES
8-11.38 ACRES
9-10.56 ACRES
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14-.34 ACRES
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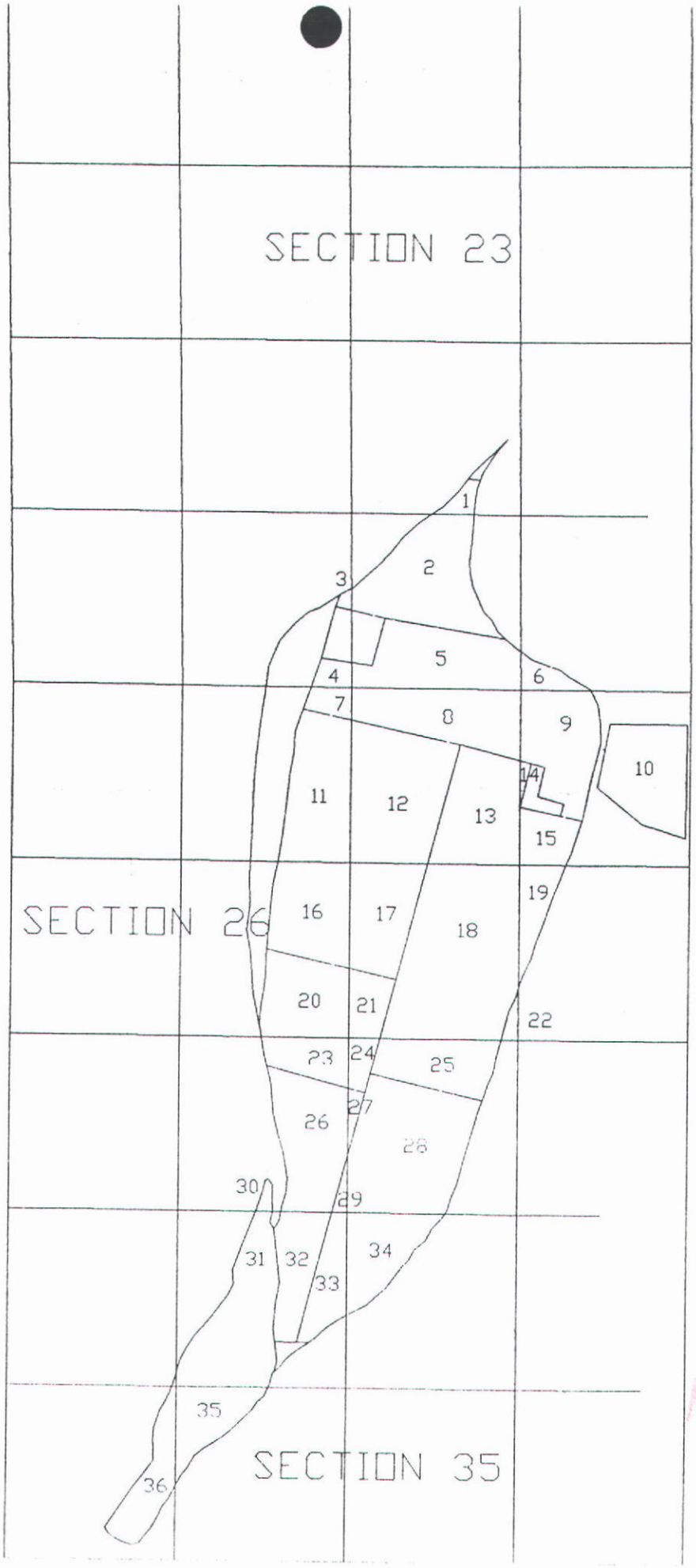
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Exhibit
V



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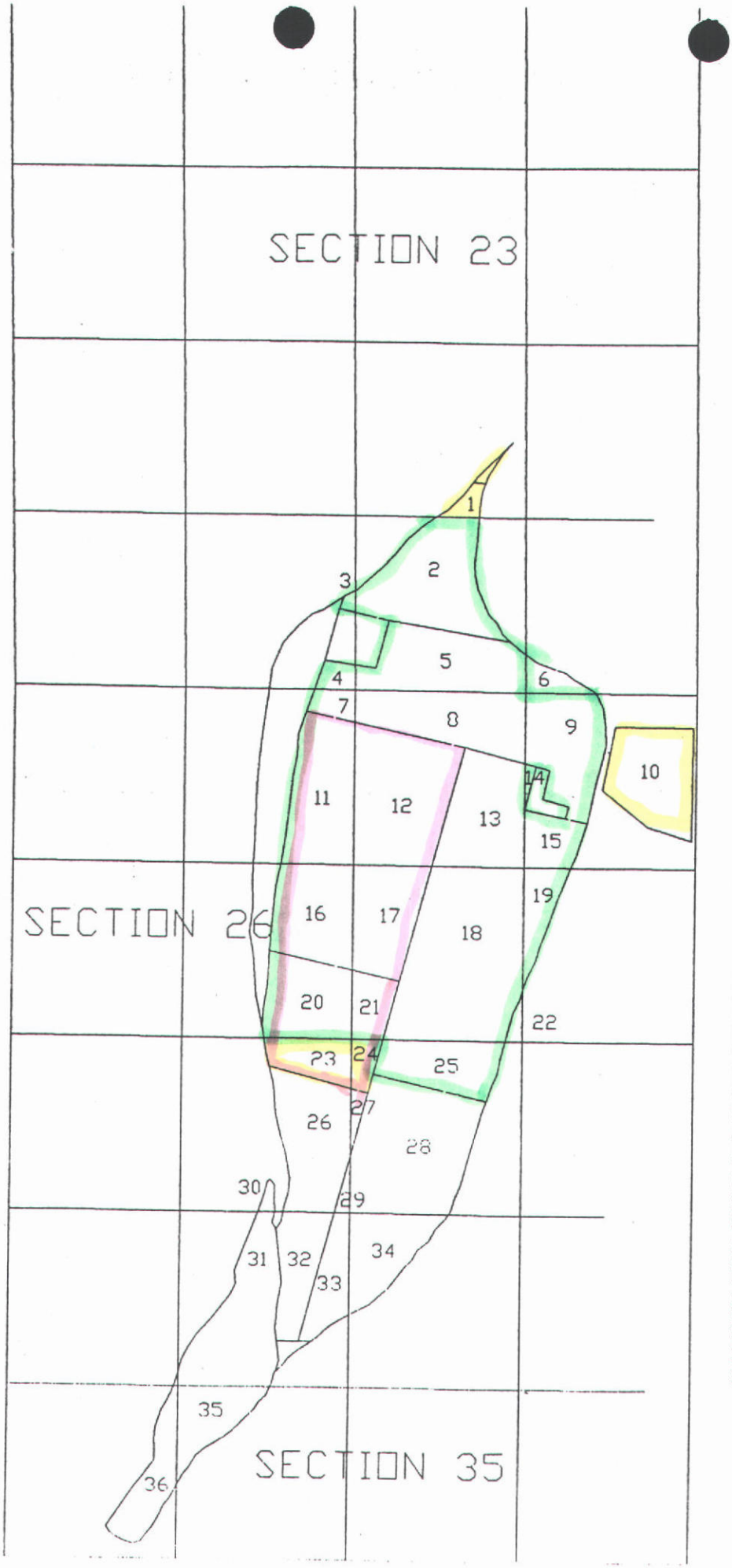


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APR 25 1995

EXHIBIT V

PENGAD-Bayonne, N. J.



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APR 25 1995

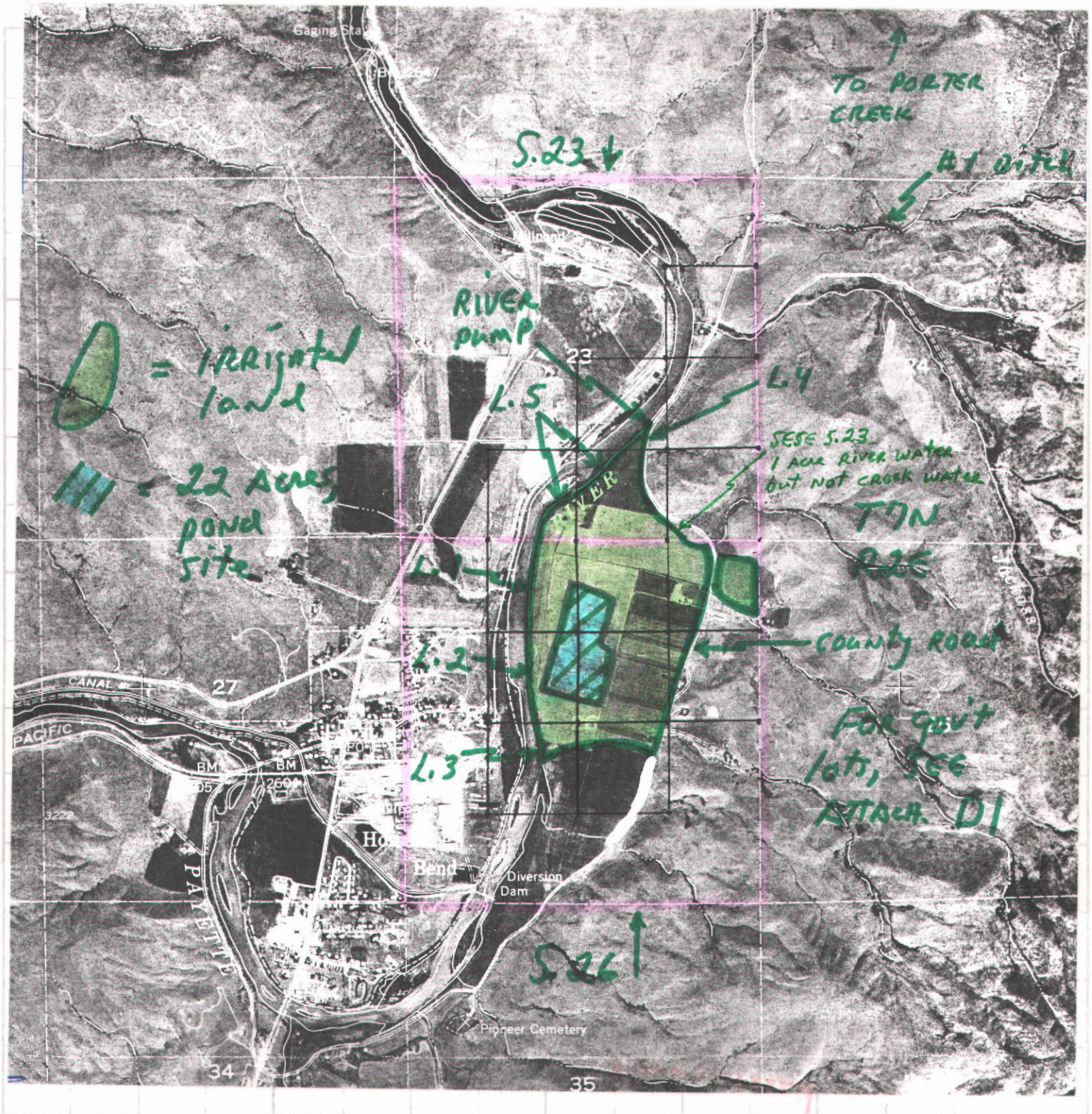
Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

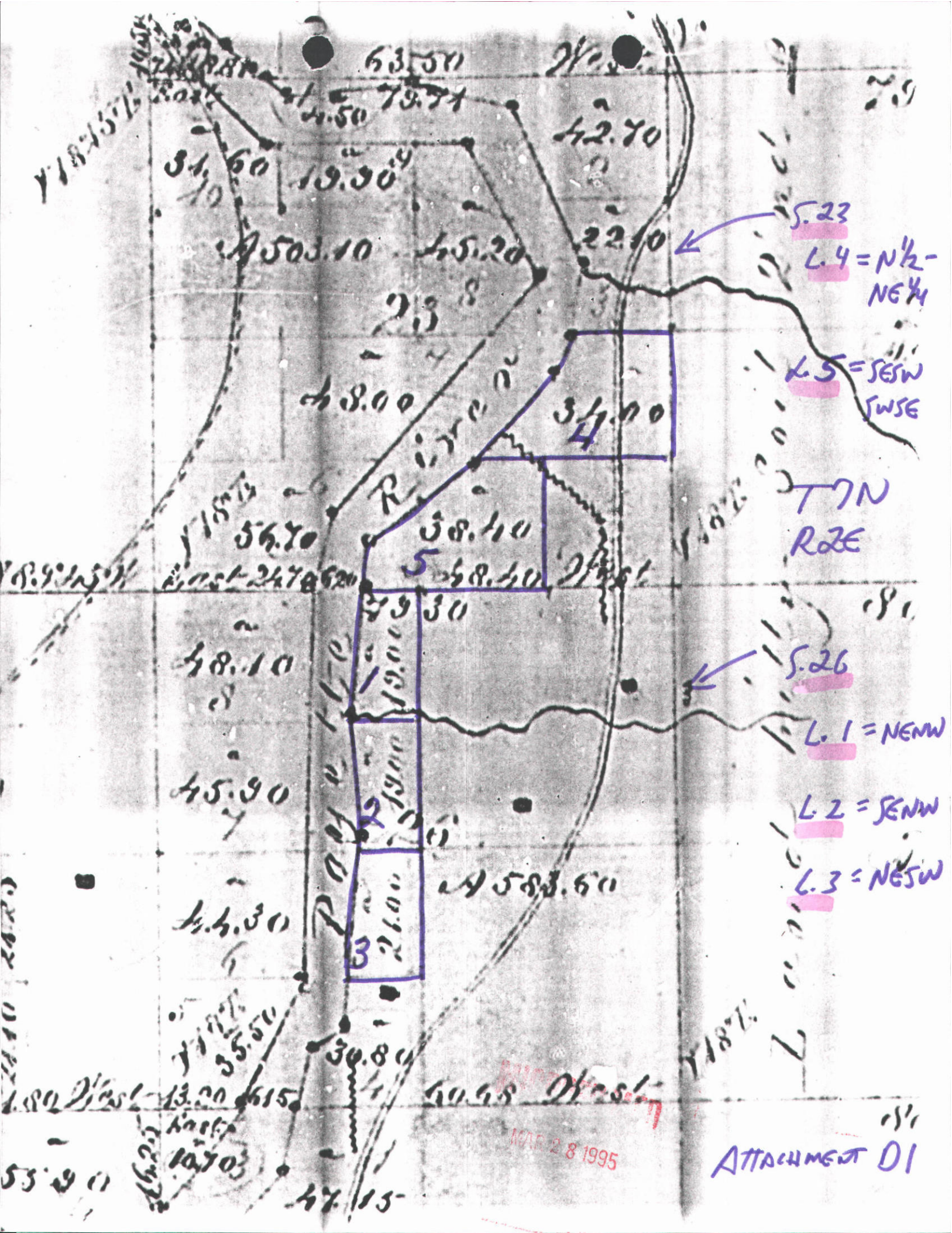
PART 3

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



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

MAR 2 8 1995


5.23
L.4 = N½-NE¼
L.5 = SESW SWSE
T7N
R2E
5.26
L.1 = NENW
L.2 = SENW
L.3 = NESW
5
2
3
23
ATTACHMENT D1

WR4001NP
(OD-21)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS MICROFICHE BY PLACE OF USE

DATE: 07/14/91
PAGE: 2474

TWP	RNG	SECT	TRACT 1/4	TRACT 1/4	LOT	ACRES	WATER-USE-CODE	WATER RIGHT NO.	LAST NAME	O C	STG	PRIORITY DATE	WATER SOURCE
07N	02E	23	SW	NW		7.0	01	65-07057	HASBROUCK	C	D	10/28/1968	PAYETTE RIVER
									HASBROUCK	C			
			SE	NW		11.0	01,43	65-02448	ROBERTS	C	D	04/27/1944	PAYETTE RIVER
									ROBERTS	C			
									ROBERTS	C			
			SE	NW		11.0	01	65-02604	WATSON	C	D	05/07/1955	PAYETTE RIVER
									ROBERTS	C			
									ROBERTS	C			
			SE	NW		10.0	01	65-07057	HASBROUCK	C	D	10/28/1968	PAYETTE RIVER
									HASBROUCK	C			
			SE	NW		2.0	01	65-07508	REAY	C	L	09/19/1974	PAYETTE RIVER
									REAY	C			
			SE	NW			43	65-10829	HOPKINS	C	D	06/01/1957	GROUNDWATER
									HOPKINS	C			
			NE	SW			43	65-07850	HANSEN	C	L	03/18/1977	GROUNDWATER
									HANSEN	C			
			NE	SW		7.0	01	65-07851	HANSEN	C	L	03/17/1977	GROUNDWATER
									HANSEN	C			
			NE	SW		1.0	43,01	65-12171	STEPHENSON	C	L	09/15/1978	GROUNDWATER
									MAKI	C			
			NW	SW		27.0	01	65-02728	JOHN A. FRY & SONS	C	D	03/20/1963	PAYETTE RIVER
			NW	SW			43,04	65-11009	JOHN A. FRY & SONS	C	D	06/01/1964	GROUNDWATER SPRING
			SW	SW		38.0	01	65-02728	JOHN A. FRY & SONS	C	D	03/20/1963	PAYETTE RIVER
			NE	SE	4	2.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			NE	SE	4	2.0	01	65-10746	DOUBLE DIAMOND INC	C	D	04/01/1960	PORTER CREEK
			NE	SE	4	2.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NW	SE			43	65-10647	SELF	C	D	06/01/1970	GROUNDWATER
			NW	SE			28	65-12708	DOUBLE DIAMOND INC	C	P	02/27/1984	PORTER CREEK
			NW	SE	7	2.0	01	65-07931	SELF	C	L	11/22/1977	PAYETTE RIVER
			NW	SE	7		43	65-07937	DANIZER	C	L	08/22/1977	PAYETTE RIVER
			NW	SE	7		43	65-10609	OLSON	C	D	06/01/1973	GROUNDWATER
									OLSON	C			
			SW	SE	5	39.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			SW	SE	5	39.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			SW	SE	5	39.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			SE	SE		1.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			SE	SE		1.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			SE	SE	4		04	65-10618	HAWKINS	C	D	11/01/1966	SPRING
									HAWKINS	C			
		24	SW	NE		13.0	01	65-10852	BRANCH	C	D	07/01/1893	JACKASS CREEK
									BRANCH	C			
			SE	NW		6.0	01	65-10852	BRANCH	C	D	07/01/1893	JACKASS CREEK
									BRANCH	C			
			NE	SE		12.0	01	65-10852	BRANCH	C	D	07/01/1893	JACKASS CREEK
									BRANCH	C			
			NW	SE		7.0	01	65-10852	BRANCH	C	D	07/01/1893	JACKASS CREEK
									BRANCH	C			
			SE	SE		1.0	01	65-10852	BRANCH	C	D	07/01/1893	JACKASS CREEK
									BRANCH	C			
		25	NW	NW		5.0	43,04,01	65-10616	HAWKINS	C	D	07/01/1911	SPRING
									HAWKINS	C			

actually NWSE 4+4

65-02540
65-10747
65-10749

H 04

WR4001NP
(OD-21)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS MICROFICHE BY PLACE OF USE

DATE: 07/14/91
PAGE: 2475

TWP	RNG	SECT	TRACT 1/4	TRACT 1/4	LOT	ACRES	WATER-USE-CODE	WATER RIGHT NO.	LAST NAME	O C	STG	PRIORITY DATE	WATER SOURCE
07N	02E	25	NW	NW			04	65-10619	HAWKINS	C	D	07/01/1942	SPRINGS
									HAWKINS	C			
			SW	NW			04	65-10617	HAWKINS	C	D	08/01/1966	SPRING
									HAWKINS	C			
			SE	NW			04	65-10876	TWILEGAR	C	D	06/01/1952	SPRING
									TWILEGAR	C			
			SW	SW			43	65-10875	TWILEGAR	C	D	06/01/1940	SPRING
									TWILEGAR	C			
		26			7		43	65-10958	JONES	C	D	06/01/1974	GROUNDWATER
					7		43	65-11097	KOLAR	C	D	01/01/1940	SPRING
			NE	NE		13.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			NE	NE		13.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			NE	NE		11.0	01	65-10746	DOUBLE DIAMOND INC	C	D	04/01/1960	PORTER CREEK
			NE	NE		13.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NE	NE		11.0	01	65-10749	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NW	NE		40.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			NW	NE		40.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			NW	NE		40.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			SW	NE		39.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			SW	NE		39.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			SW	NE		39.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			SE	NE		3.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			SE	NE		3.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			SE	NE			43	65-10681	CHRISTENSEN	C	D	07/01/1964	GROUNDWATER
			SE	NE		3.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NE	NW	1	23.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			NE	NW	1	23.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			NE	NW	1	23.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NW	NW	8	27.0	01	65-02728	JOHN A. FRY & SONS	C	D	03/20/1963	PAYETTE RIVER
			SW	NW		1.0	01,43	65-07644	BOWERS	C	L	08/02/1976	SPRING
									BOWERS	C			
			SW	NW		1.0	43,01	65-09527	BOWERS	C	D	09/01/1952	GROUNDWATER
									BOWERS	C			
			SW	NW			43	65-10813	HAWKINS	C	D	06/06/1961	GROUNDWATER
									HAWKINS	C			
			SW	NW			43	65-10814	HAWKINS	C	D	09/01/1950	GROUNDWATER
									HAWKINS	C			
			SW	NW	7	4.0	01	65-02663	DRAKE	C	D	10/21/1959	PAYETTE RIVER
			SE	NW	2	22.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			SE	NW	2	22.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			SE	NW	2	22.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NE	SW	3	10.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
			NE	SW	3	9.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			NE	SW	3	9.0	01	65-10746	DOUBLE DIAMOND INC	C	D	04/01/1960	PORTER CREEK
			NE	SW	3	9.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NE	SW	3	10.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
			NW	SW	6	6.0	01	65-02663	DRAKE	C	D	10/21/1959	PAYETTE RIVER
			NW	SW	6		43	65-11224	BOUNDS	C	D	06/01/1947	GROUNDWATER
									BOUNDS	C			
			SE	SW	4	25.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
			SE	SW	4	25.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
			NE	SE			43,04	65-11094	CRESS	C	D	06/01/1902	SPRING
									CRESS	C			

-02532 & -11393 are different areas than the 9 in NESW

I 04

WR4001NP
(OD-21)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS MICROFICHE BY PLACE OF USE

DATE: 07/14/91
PAGE: 2476

TWP	RNG	SECT	TRACT 1/4	TRACT 1/4	LOT	ACRES	WATER-USE-CODE	WATER RIGHT NO.	LAST NAME	O C	STG	PRIORITY DATE	WATER SOURCE
07N	02E	26	NW	SE		19.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
			NW	SE		14.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
			NW	SE		14.0	01	65-03103	DOUBLE DIAMOND INC	C	D	01/01/1872	PORTER CREEK
			NW	SE		14.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
			NW	SE		17.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
			SW	SE		15.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
			SW	SE		10.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
		27			2		43	65-11006	GREEN	C	D	06/01/1953	GROUNDWATER
									GREEN	C			
					3		43	65-10710	FOSS	C	D	06/01/1910	SPRING
									FOSS	C			
					4		04	65-08530	KENNEDY	C	D	04/01/1941	SPRING
									KENNEDY	C			
					7		43,04	65-11010	FRY	C	D	06/01/1935	GROUNDWATER SPRING
			NE	NE			43	65-10608	STONE	C	D	06/01/1965	GROUNDWATER
									STONE	C			

IDAHO DEPT OF WATER RESOURCES
MAR 28 1995

CONSUMPTIVE REQUIREMENTS and IRRIGATION SEASONS in the [illegible]AYETTE RIVER DRAINAGE BASIN

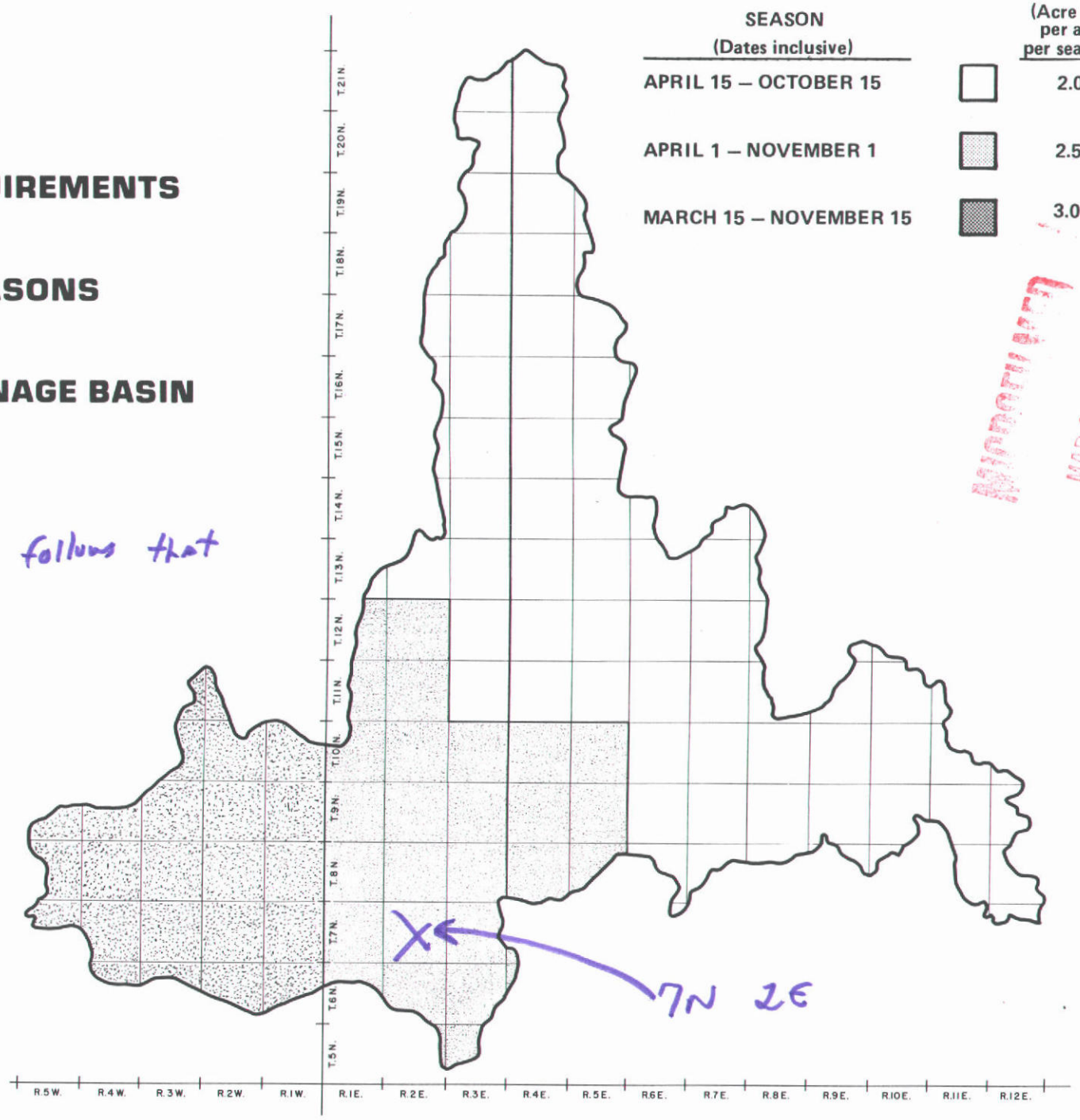


Figure 2.

if c.u. = 2.5, it follows that

div. vol. = 3.5

(3.5)(.7) ≈ 2.5

RECEIVED
MAR 28 1995

ATTACHMENT F1

EISMANN LAW OFFICES

Telephone (208) 467-3100
Facsimile (208) 466-4378

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

February 23, 1993

DELIVERED BY FACSIMILE

DAVID R. TUTHILL, JR., P.E.
MANAGER, WESTERN REGIONAL OFFICE
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751 in the name of Double Diamond, Inc.

Dear Mr. Tuthill:

The protest hearing in the above matters is now scheduled to be held on Monday, March 8, 1993, beginning at 1:00 o'clock p.m.

Pursuant to Rule 9.21 of the Idaho Department of Water Resources Practice and Procedure Rules and Regulations, my client, George Dovel, requests that a transcript of this hearing be made by a qualified court reporter and suggests that Dean Willis or any of the reporters from Capitol Reporters in Boise are qualified reporters.

If you should have questions, please contact me.

Thank you.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

RECEIVED
MAR 28 1995

CONSOLIDATED TAX NOTICE AND RECEIPT
BOISE COUNTY TAX COLLECTOR 1990
P. O. BOX 156
IDAHO CITY, ID 83631 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
163434	6-00	RP07N02E262450A	6211

T7N R2E SEC 26
NE LESS TAX 144, LOTS 1 & 2,
L 81806 TAX 31 & TAX 94
I 81628

217.093 TOT ACRES

DELINQUENT CERT.

RUMSEY, DONALD J. & BETTY E.
& RUMSEY, DALE
200 SUNRISE RIM
BOISE, ID 83705

TAXING DISTRICT	RATE	AMOUNT
STATE WTR POLL		
COUNTY	.003470	567.12
SCH DIST # 73	.004134	675.64
PIONEER CEM	.000087	14.22
HSB LIBRARY	.000599	97.90
SCH BND DIST 73	.004081	666.98
HSB HOSP DIST	.000478	78.12
SOLID WASTE		20.00
TOTAL	.012849	2,119.98

RECEIPT

FULL PAYMENT
TAX 2,119.98
PEN.
SUB TOT.
INT.
TOT.

1ST INSTALLMENT
TAX 1,059.99
PEN.
SUB TOT.
INT.
TOT.

2ND INSTALLMENT
TAX 1,059.99
PEN.
SUB TOT.
INT.
TOT.

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E262450A
RUMSEY, DONALD J. & BETTY E.
& RUMSEY, DALE 6211

SPECIAL CODE	TAX	CODE AREA TAX	2ND INSTALLMENT
93	10.00	1,049.99	1,059.99
			PEN.
			SUB TOT.
			INT.
			TOT.

6-00

2nd
6B

MAR 28 1995

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991
DATE PAID CHECK #
PAID BY CASH

CONSOLIDATED TAX NOTICE AND RECEIPT
BOISE COUNTY TAX COLLECTOR 1990
P. O. BOX 156
IDAHO CITY, ID 83631 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
32207	6-00	RP07N02E264851A	6213

T7N R2E SEC 26
L 32207 SOUTHERLY PORTION OF NWSE,
SOUTHERLY PORTION OF LOT 3,
LOT 4, SWSE

111.147 GARRETT, JOHN
TOT ACRES % DOUBLE DIAMOND INC.
200 SUNRISE RIM
BOISE, ID 83705

DELINQUENT CERT.

TAXING DISTRICT	RATE	AMOUNT
STATE WTR POLL		
COUNTY	.003470	111.76
SCH DIST # 73	.004134	133.14
PIONEER CEM	.000087	2.80
HSB LIBRARY	.000599	19.30
SCH BND DIST 73	.004081	131.44
HSB HOSP DIST	.000478	15.40
TOTAL	.012849	413.84

RECEIPT
FULL PAYMENT
TAX 413.84
PEN.
SUB TOT.
INT.
TOT.
1ST INSTALLMENT
TAX 206.92
PEN.
SUB TOT.
INT.
TOT.
2ND INSTALLMENT
TAX 206.92
PEN.
SUB TOT.
INT.
TOT.

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E264851A
GARRETT, JOHN
% DOUBLE DIAMOND INC. 6213

SPECIAL CODE	TAX	CODE AREA	TAX	2ND INSTALLMENT
		206.92		206.92
			PEN.	
			SUB TOT.	
			INT.	
			TOT.	

6-00
2nd
6B

MAR 28 1995

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156, ID.CITY, ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991

DATE PAID
PAID BY
CHECK #
CASH

CONSOLIDATED TAX NOTICE AND RECEIPT

BOISE COUNTY TAX COLLECTOR 1990

P. O. BOX 156

IDAHO CITY, ID 83631 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
5852	6-00	RP07N02E232450A	6187

T7N R2E SEC 23
W1/2 OF LOT 1

L 5852

2.250 TOT ACRES

DELINQUENT CERT.

KNIPE, WILLIAM
% RUMSEY, DONALD J & BETTY E
& DALE
200 SUNRISE RIM
BOISE, ID 83705

TAXING DISTRICT	RATE	AMOUNT
STATE WTR POLL		
COUNTY	.003470	20.32
SCH DIST # 73	.004134	24.20
PIONEER CEM	.000087	.52
HSB LIBRARY	.000599	3.52
SCH BND DIST 73	.004081	23.88
HSB HOSP DIST	.000478	2.80
SOLID WASTE		2.00
TOTAL	.012849	77.24

RECEIPT

FULL PAYMENT
TAX 77.24
PEN.
SUB TOT.
INT.
TOT.

1ST INSTALLMENT
TAX 38.62
PEN.
SUB TOT.
INT.
TOT.

2ND INSTALLMENT
TAX 38.62
PEN.
SUB TOT.
INT.
TOT.

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 28 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E232450A
KNIPE, WILLIAM
% RUMSEY, DONALD J & BETTY E 6187

SPECIAL CODE	TAX	CODE AREA	TAX	2ND INSTALLMENT
93	1.00		37.62	38.62
				PEN.
				SUB TOT.
				INT.
				TOT.

6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991

DATE PAID

PAID BY CHECK # CASH

CONSOLIDATED TAX NOTICE AND RECEIPT

BOISE COUNTY TAX COLLECTOR 1990

P. O. BOX 156

IDAHO CITY, ID 83631 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
15814	6-00	RP07N02E238450A	6202

T7N R2E SEC 23
LOT 5

L 15814

40.650 TOT ACRES

DELINQUENT CERT

RUMSEY, DONALD J. & BETTY E.
& RUMSEY, DALE
200 SUNRISE RIM
BOISE, ID 83705

TAXING DISTRICT	RATE	AMOUNT
STATE WTR POLL		
COUNTY	.003470	54.88
SCH DIST # 73	.004134	65.38
PIONEER CEM	.000087	1.38
HSB LIBRARY	.000599	9.48
SCH BND DIST 73	.004081	64.54
HSB HOSP DIST	.000478	7.56
TOTAL	.012849	203.22

RECEIPT

FULL PAYMENT
TAX 203.22
PEN.
SUB TOT.
INT.
TOT.

1ST INSTALLMENT
TAX 101.61
PEN.
SUB TOT.
INT.
TOT.

2ND INSTALLMENT
TAX 101.61
PEN.
SUB TOT.
INT.
TOT.

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 2 8 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E238450A
RUMSEY, DONALD J. & BETTY E.
& RUMSEY, DALE 6202

SPECIAL CODE	TAX CODE	AREA	TAX	2ND INSTALLMENT
			101.61	101.61
				PEN.
				SUB TOT.
				INT.
				TOT.

6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156, ID.CITY, ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991

DATE PAID CHECK #

PAID BY CASH

CONSOLIDATED TAX NOTICE AND RECEIPT

BOISE COUNTY TAX COLLECTOR 1990

P. O. BOX 156

IDAHO CITY, ID 83631 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
35303	6-00	RP07N02E121800A	6133

T7N R2E SEC 12
S1/2NE, N1/2SE LESS TAX 182

L 32076
I 3227

158.610 TOT ACRES

DELINQUENT CERT.

WOODS, ARLIE L.
% RUMSEY, DONALD J. ETAL
200 SUNRISE RIM
BOISE, ID 83705

TAXING DISTRICT	RATE	AMOUNT
STATE WTR POLL		
COUNTY	.003470	122.50
SCH DIST # 73	.004134	145.94
PIONEER CEM	.000087	3.08
HSB LIBRARY	.000599	21.16
SCH BND DIST 73	.004081	144.08
HSB HOSP DIST	.000478	16.88
SOLID WASTE		20.00
TOTAL	.012849	473.64

RECEIPT

FULL PAYMENT
TAX 473.64
PEN.
SUB TOT.
INT.
TOT.

1ST INSTALLMENT
TAX 236.82
PEN.
SUB TOT.
INT.
TOT.

2ND INSTALLMENT
TAX 236.82
PEN.
SUB TOT.
INT.
TOT.

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 28 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

READ PROPERTY 1990 RP07N02E121800A
WOODS, ARLIE L.
% RUMSEY, DONALD J. ETAL 6133

SPECIAL CODE	TAX	CODE AREA	TAX	2ND INSTALLMENT
73	10.00		226.82	236.82
				PEN.
				SUB TOT.
				INT.
				TOT.

6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991

DATE PAID

PAID BY CHECK #
CASH

Contract to buy land from Arlie - mostly paid for

CONSOLIDATED TAX NOTICE AND RECEIPT

BOISE COUNTY TAX COLLECTOR 1990

P. O. BOX 156

IDAHO CITY, ID 83631 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
10149	6-00	RP07N02E120050A	6132

T7N R2E SEC 12
NW1/4, N1/2NE
L 10149 INST.#128370

240.000 TOT ACRES

DELINQUENT CERT.

RUMSEY, DONALD J & DALE M
*
200 SUNRISE RIM RD
BOISE, ID 83705

TAXING DISTRICT	RATE	AMOUNT
STATE WTR POLL		
COUNTY	.003470	35.22
SCH DIST # 73	.004134	41.96
PIONEER CEM	.000087	.88
HSB LIBRARY	.000599	6.08
SCH BND DIST 73	.004081	41.42
HSB HOSP DIST	.000478	4.86
TOTAL	.012849	130.42

RECEIPT

FULL PAYMENT
TAX 130.42
PEN.
SUB TOT.
INT.
TOT.

1ST INSTALLMENT
TAX 65.21
PEN.
SUB TOT.
INT.
TOT.

2ND INSTALLMENT
TAX 65.21
PEN.
SUB TOT.
INT.
TOT.

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 28 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E120050A
RUMSEY, DONALD J & DALE M
*
6132

SPECIAL CODE	TAX CODE AREA	TAX	2ND INSTALLMENT
		65.21	65.21
			PEN
			SUB TOT
			INT.
			TOT

6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

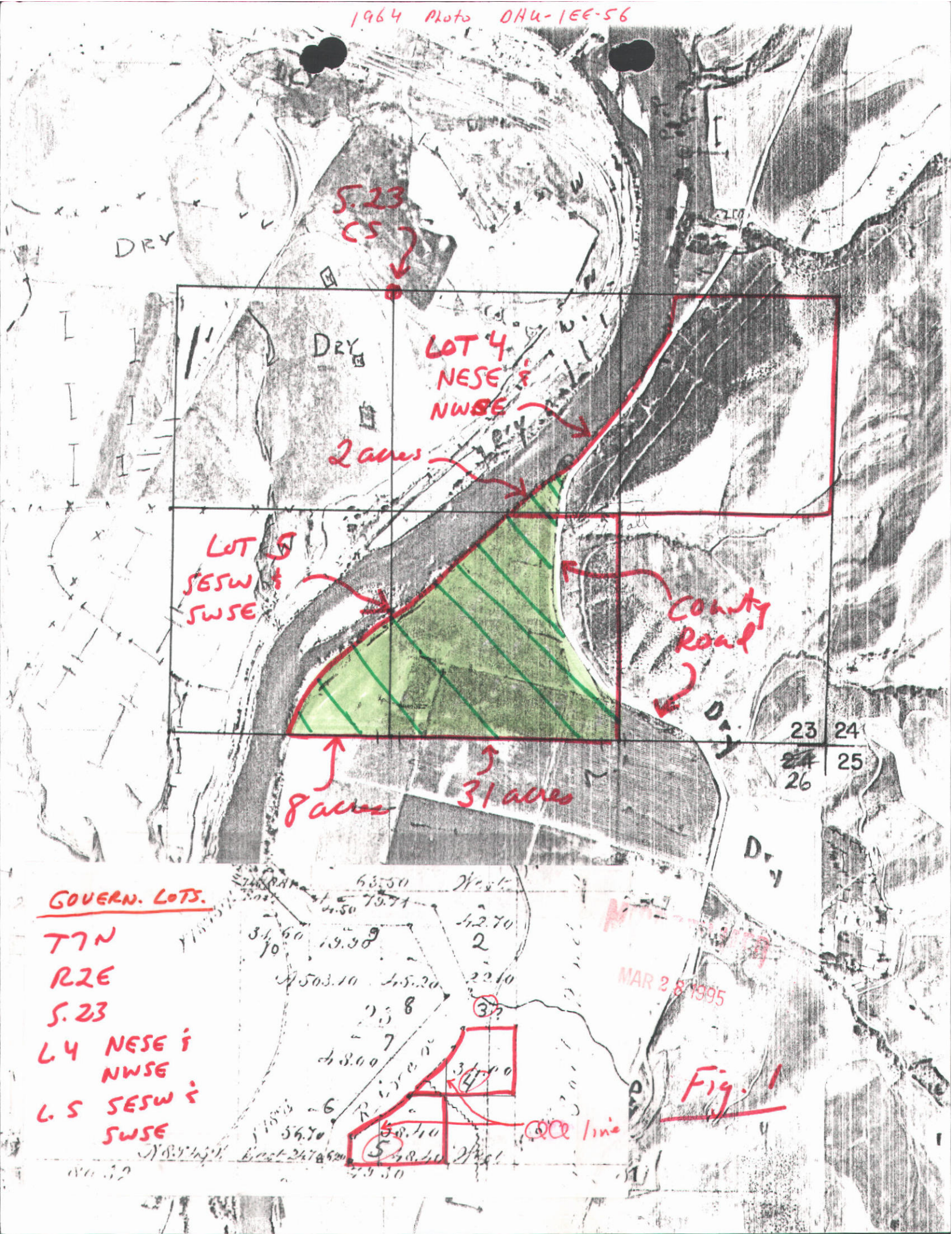
MAKE CHECKS PAYABLE TO

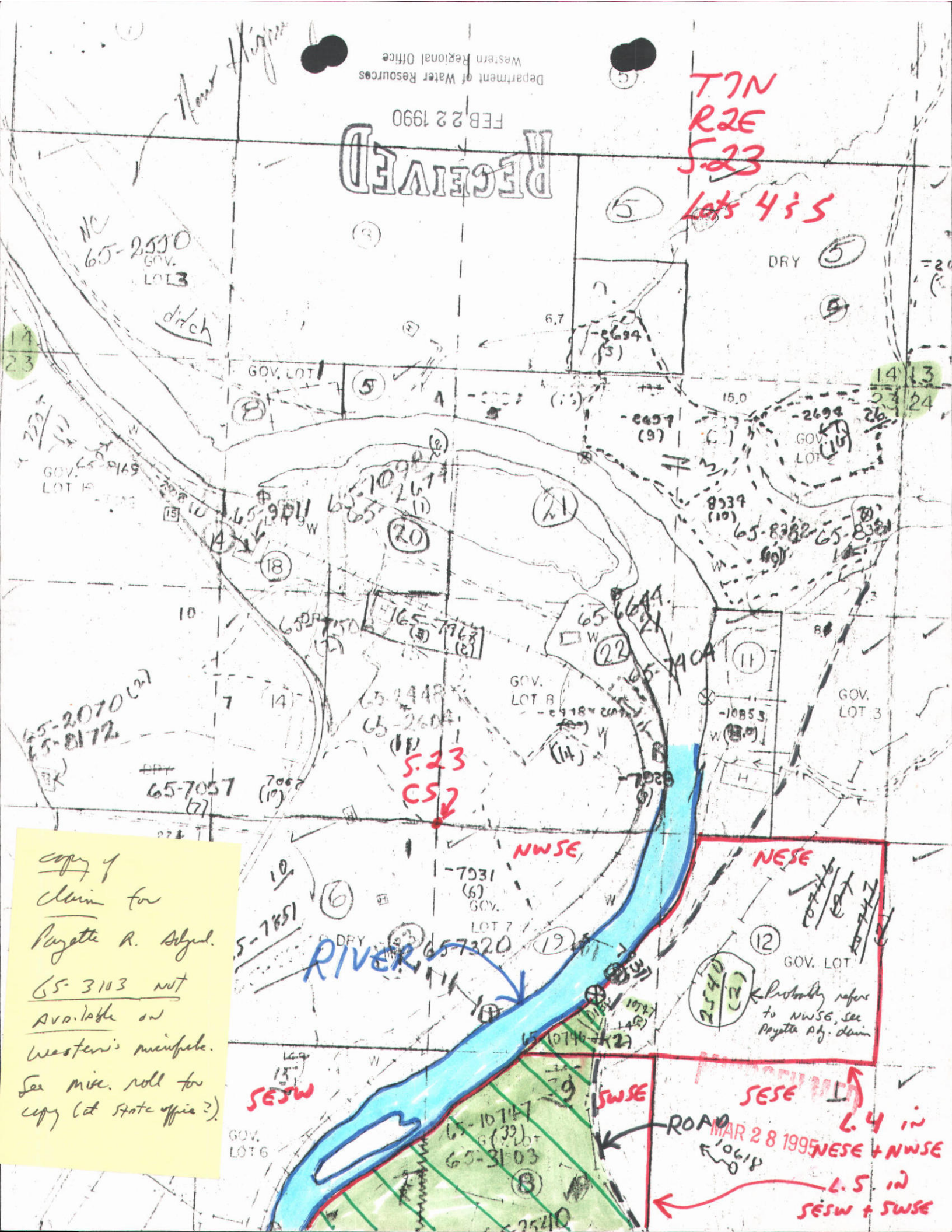
BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991

DATE PAID CHECK #

PAID BY CASH


1964 Photo OHu-1EE-56
5.23
CS
DRY
DRY
LOT 4
NESE ¼
NWSE
2 acres
LOT 5
SESW ¼
SWSE
County Road
23
24
25
26
8 acres
31 acres
GOVERN. LOTS.
T7N
R2E
S. 23
L 4 NESE ¼
NWSE
L 5 SESW ¼
SWSE
QQ line
MAR 2 8 1995
Fig. 1


RECEIVED
FEB 22 1990
Department of Water Resources
Western Regional Office
T7N
R2E
S.23
Lots 4 & 5
DRY
ditch
GOV. LOT 3
GOV. LOT 1
GOV. LOT 8
GOV. LOT 7
GOV. LOT 6
GOV. LOT 3
GOV. LOT
RIVER
ROAD
S.23
CS2
NWSE
NESE
SESW
SWSE
SESE
Probably refers to NWSE, see Poyette Adj. claim
MAR 28 1995
2.4 in NESE + NWSE
2.5 in SESW + SWSE
copy of claim for Poyette R. Sdgnd. 65-3103 not Avail. on Western's microfiche. See misc. roll for copy (at State office?).

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF PAYETTE RIVER DRAINAGE BASIN.

NOTICE OF CLAIM TO A WATER RIGHT

IDENT. NO. B 65-10746 MAP NO.

Notice is hereby given that Double Diamond Inc., c/o Don Rumsey (Name of Claimant)
Horseshoe Bend, ID 83629 (Mailing Address), claims a right to the diversion
and beneficial use of the surface or groundwater, of or tributary to

RECEIVED
AUG 12 1977
Department of Water Resources
Western Regional Office

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) April 1, 1960

(2) Describe the source of water: (Name of stream, lake, spring, etc., or groundwater) Porter Creek trib to Payette R

Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity .44 cfs (CFS. GPD. AF.) Use irrigation (Domestic, Irrigation, stock, etc.) Period of Use From Apr 1 (Mo., Day) To Nov 1 (Mo., Day) (Both Dates Inclusive)

Quantity _____ (CFS. GPD. AF.) Use _____ (Domestic, Irrigation, stock, etc.) Period of Use From _____ (Mo., Day) To _____ (Mo., Day) (Both Dates Inclusive)

Quantity _____ (CFS. GPD. AF.) Use _____ (Domestic, Irrigation, stock, etc.) Period of Use From _____ (Mo., Day) To _____ (Mo., Day) (Both Dates Inclusive)

.44 cfs (CFS. GPD. AF.) TOTAL QUANTITY CLAIMED.

A) Point of Diversion: Give location of point where water is diverted from its source NW ¼ SE ¼, Sec. 12, Twp. 7N, Rge. 2E, B.M.; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Porter Ditch

A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
N	2E	23														2			2
		26	11								9 (LOT 3)					(LOT 4)			20

Total No. of acres 22

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

) Effluent, sewage waste, or return water from this use is discharged into

) If you are claiming water as a member of an organization, list name of organization.

) Remarks This right is used on lands not mentioned in decreed right #65-3103. (This right when combined with rights 65-2540 and 65-10747 shall provide no more than .02 cfs/acre \3.5 AFA/acre) 65-10749 ← ADD

0) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use.

☐ B) Right decreed by court, cite title of case.

☐ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Administration.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Aug 9 1977 (Date)

Individual Donald Rumsey (Signature of Claimant)

(Signature of Spouse)

MAR 28 1995

Organization Double Diamond Inc (Signature of Authorized Agent)

KEYPUNCHED 12-16-77 CSA 6-7 5/31/78

State of California
County of Los Angeles ss.
Seal

On this 9 day of August, in the year 1977, before me, a notary public, personally appeared Donald Rumsey known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or) executed the same.

William R. Fecho
Notary Public residing at 3257 Overland Ave Los Angeles CA 90034

My commission expires 2/1/78

OFFICIAL SEAL
WILLIAM R. FECHO
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires FEB 25, 1980

DRT 11-18-77

Fig. 3-5

IN THE DI[S]T C[O]URT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF PAYETTE RIVER DRAINAGE BASIN.

NOTICE OF CLAIM TO A WATER RIGHT

IDENT. NO. 75-10747 MAP NO. 7-2-D,E

DECREED

Notice is hereby given that Double Diamond Inc., c/o Don Rumsey (Name of Claimant), Horseshoe Bend, ID 83629 (Mailing Address) claims a right to the diversion and beneficial use of the surface or groundwater, of or tributary to Snake River;

AUG 12 1977

Department of Water Resources
Western Regional Office

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) April 1, 1960

(2) Describe the source of water: (Name of stream, lake, spring, etc., or groundwater) Payette River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

881.3 AFA 382 AFA

Quantity .9 cfs (CFS. GPD. AF.) Use irrigation (Domestic, irrigation, stock, etc.) Period of Use From Apr 1 (Mo., Day) To Oct 31 (Mo., Day) (Both Dates Inclusive) (1-)

Quantity ____ (CFS. GPD. AF.) Use ____ (Domestic, irrigation, stock, etc.) Period of Use From ____ (Mo., Day) To ____ (Mo., Day) (Both Dates Inclusive)

Quantity ____ (CFS. GPD. AF.) Use ____ (Domestic, irrigation, stock, etc.) Period of Use From ____ (Mo., Day) To ____ (Mo., Day) (Both Dates Inclusive)

(4) .9 cfs (CFS. GPD. AF.) TOTAL QUANTITY CLAIMED.

(5) A) Point of Diversion: Give location of point where water is diverted from its source ___ ¼ LOT 4 ¼, Sec. 23, Twp. 7N, Rge. 2E, B.M.; additional points: ____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. PUMP, SPRINKLE. SYSTEM

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7N	2E	23													(Lt 4	2 (Lt5)	9	1	42
		26	13	40	39	3 (Lt 1)	23			22 (Lt 2)	9 (Lt 3)					14			163

39

Total No. of acres 205

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: ____

(7) Effluent, sewage waste, or return water from this use is discharged into ____

(8) If you are claiming water as a member of an organization, list name of organization: ____

(9) Remarks NOTE: NEW, LARGER PUMP INSTALLED AT THIS TIME (This right when combined with rights 65-3103 and 65-10246 and 65-2540 shall provide no more than .02 cfs/acre or 3.5 AFA/acre)

(10) Basis of claim (Check one)
- ☐ A) Right based on diversion and beneficial use.
- ☐ B) Right decreed by court, cite title of case. ____
- ☐ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Administration. ____

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Individual

Nov 9 1977 (Date) — Donald Rumsey (Signature of Claimant) — (Signature of Spouse)

Organization — Double Diamond Inc — (Signature of Authorized Agent)

R 12/15/77

KEYPUNCHED Org. Seal 5/31/78 OSH

MAR 28 1995

State of CALIFORNIA ss

County of LOS ANGELES

On this ____ day of November, in the year 1977, before me, a notary public, personally appeared ____, known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or ____) executed the same.

OFFICIAL SEAL
WILLIAM R. FECHO
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires FEB 25, 1980

Notary Public residing at ____

My commission expires 5/24/78

DRT 11-18-77

IN THE D[illegible] COURT OF THE THIRD JUDI[illegible] DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF PAYETTE RIVER DRAINAGE BASIN.	NOTICE OF CLAIM TO A WATER RIGHT	IDENT. NO. B 65-2540	MAP NO. 7-2-D,E

RECEIVED
AUG 12 1977
Department of Water Resources
Western Regional Office

Notice is hereby given that Double Diamond Inc., c/o Don Rumsey (Name of Claimant)
Horseshoe Bend, ID 83629 (Mailing Address) claims a right to the diversion and beneficial use of the surface or groundwater, of or tributary to ____;
The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) April 26, 1951

(2) Describe the source of water: (Name of stream, lake, spring, etc., or groundwater) Payette River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

718 AF

Quantity 3.2 cfs (CFS. GPD. AF.) Use irrigation (Domestic, irrigation, stock, etc.) Period of Use From Apr 1 (Mo., Day) To Nov 1 (Mo., Day) (Both Dates Inclusive)

Quantity ____ (CFS. GPD. AF.) Use ____ (Domestic, irrigation, stock, etc.) Period of Use From ____ (Mo., Day) To ____ (Mo., Day) (Both Dates Inclusive)

Quantity ____ (CFS. GPD. AF.) Use ____ (Domestic, irrigation, stock, etc.) Period of Use From ____ (Mo., Day) To ____ (Mo., Day) (Both Dates Inclusive)

(4) 3.2 cfs (CFS. GPD. AF.) TOTAL QUANTITY CLAIMED.

(5) A) Point of Diversion: Give location of point where water is diverted from its source ~~NW~~ LOT 4 ¼ ~~SE~~ ¼, Sec. 23, Twp. 7N, Rge. 2E, B.M.; additional points: ____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. pump and sprinkler system

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	L	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7N	2E	23												~~S~~		2	39	1	42
														~~Lt 3~~		(Lt 4)	(Lt 5)		
		26	13	40	39	3	23			22	9					14			163
							(Lt 1)			(Lt 2)	(Lt 3)								

Total No. of acres 205

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: ____

(7) Effluent, sewage waste, or return water from this use is discharged into ____

(8) If you are claiming water as a member of an organization, list name of organization. ____

(9) Remarks: (This right when combined with rights 65-10746, 65-10747 and 65-3103 shall provide no more than .02 cfs/acre nor 3.5 AFA/acre.)

(10) Basis of claim (Check one)
☐ A) Right based on diversion and beneficial use.
☐ B) Right decreed by court, cite title of case. ____
☒ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Administration. License

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Aug 9 1977 (Date)

Individual Donald Rumsey (Signature of Claimant)

(Signature of Claimant)

KEYPUNCHED 12/12/77

Organization Double Diamond Inc.

Donald Rumsey (Signature of Authorized Agent)

State of CALIFORNIA
County of LOS ANGELES ss.

Organization Seal

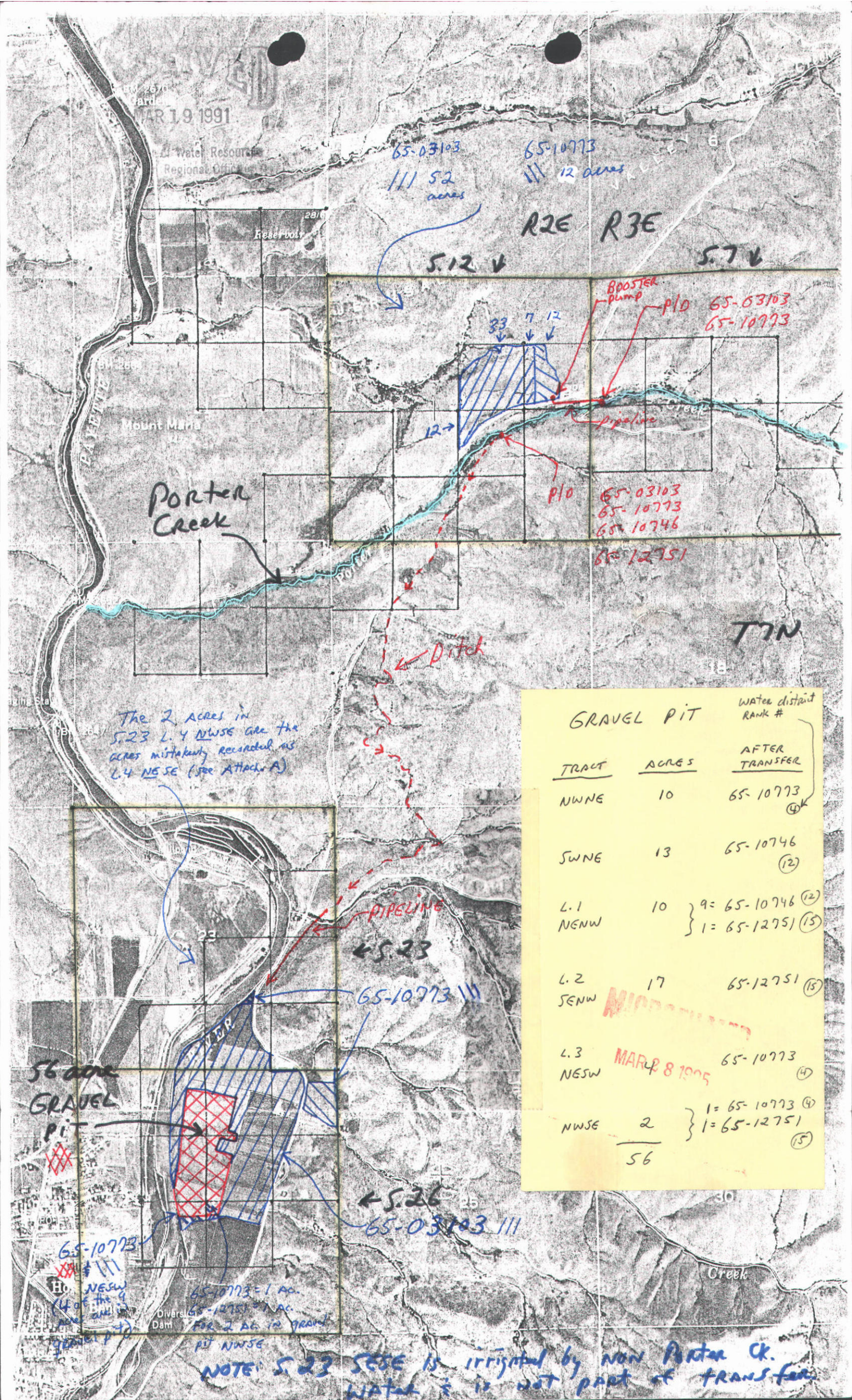
On this 9TH day of AUGUST, in the year 1977, before me, a notary public, personally appeared DONALD RUMSEY known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or ____) executed the same.

OFFICIAL SEAL
WILLIAM R. FECHO
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires FEB 23, 1980

William R. Fecho
Notary Public residing at 3757 WILSHIRE BLVD LOS ANGELES CA 90024

My commission expires 5/29/1980

DRT 11-18-77



GRAVEL PIT

TRACT	ACRES	WATER DISTRICT RANK # AFTER TRANSFER
NWNE	10	65-10773 (4)
SWNE	13	65-10746 (12)
L.1 NENW	10	9 = 65-10746 (12); 1 = 65-12751 (15)
L.2 SENW	17	65-12751 (15)
L.3 NESW		65-10773 (4)
NWSE	2	1 = 65-10773 (4); 1 = 65-12751 (15)
	56	

MAR 8 1995

HORSESHOE BEND HYDROELECTRIC COMPANY
180 South 300 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

May 4, 1992

VIA FACSIMILE

Idaho Dept. of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705
Attention: David Tuthill

RE: PROTEST TO NOTICE OF AMENDMENT OF PROPOSED CHANGE OF WATER RIGHT NOS. 65-03103, 65-10773, 65-10746, and 65-12751

Dear Mr. Tuthill:

Horseshoe Bend Hydroelectric Company, a Delaware corporation, hereby protests the proposed Amendment of Proposed Change of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751, applied for by Double Diamond Inc. c/o Donald Rumsey of Boise, Idaho, as published in the Idaho World, Wednesday, April 15, 1992.

The basis of this protest is Horseshoe Bend Hydroelectric Company's desire to determine the effect of this Amendment of Proposed Change on the water rights and diversion rights associated with the Permit to Appropriate Water No. 65-12563, held by Horseshoe Bend Hydroelectric Company in connection with the development of the Horseshoe Bend Hydroelectric Project in Boise County, Idaho.

It is my understanding, based upon our telephone conversation this date, that the Department will accept this protest by facsimile transmission with hard copy to follow by regular mail. Please contact me immediately should you have any questions or comments concerning this letter of protest.

Very truly yours,

David P. Hirschi
Executive Vice President
and General Counsel

DPH:dmy
H/corres

cc: Kenneth W. Bell
Orlin V. Clements, P.E.

MICROFILMED
MAR 2 8 1995

ORIGINAL

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

March 8, 1994
11:05 a.m.
3016 Caldwell Blvd.
Nampa, Idaho

DEPOSITION OF DONALD RUMSEY

Reported by:
M. DEAN WILLIS

Prepared for:
DEPARTMENT OF WATER RESOURCES
(Original)

CAPITOL REPORTERS
Certified Shorthand Reporters
P.O. Box 1645
Boise, Idaho 83701
(208) 344-8880

DEPOSITION OF DONALD RUMSEY taken at the instance of George Dovel at 3016 Caldwell Blvd., in the City of Nampa, State of Idaho, commencing at 11:05 a.m., Tuesday, March 8, 1994, before M. DEAN WILLIS, Certified Shorthand Reporter and Notary Public in and for the State of Idaho, pursuant to Notice, and in accordance with the Idaho Rules of Civil Procedure.

A P P E A R A N C E S

For Mr. Donald Rumsey:
Jack C. Riddlemoser
Attorney at Law
P.O. Box 37
Meridian, Idaho 83608

For Mr. George Dovel:
Richard B. Eismann
Eismann Law Office
3016 Caldwell Blvd.
Nampa, Idaho 83651

APR 25 1995

I N D E X

WITNESS	EXAMINATION	PAGE
MR. RUMSEY	MR. EISMANN	4

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
1	Blueprints	5
2	Total Head - Feet	34

5 1995

TUESDAY, MARCH 8, 1994, 11:05 A.M., NAMPA, IDAHO.

DONALD RUMSEY,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. EISMANN:

Q. Please state your name.

A. My name is Donald Rumsey.

Q. Your place of residence?

A. Place of residence is Horseshoe Bend, Idaho.

Q. Your connection with Double Diamond?

A. I'm a partner.

Q. And is Double Diamond a partnership?

A. It is a partnership.

Q. And how long have you been associated with Double Diamond ranches and so forth?

A. Since 1968.

Q. Have you prepared any kind of a diagram of the irrigation system of Double Diamond?

A. Uh-huh. Yes, I have.

25 1995

Q. Do you have that here?

A. Yeah. We have copies of it, yeah. Do you want me to give him --

MR. RIDDLEMOSER: Well, whichever one. It doesn't matter.

THE WITNESS: Now there is the open ditch right there and I have given you the distance of the open ditch. The diversion point. This is the box where the water is picked up at the ditch. It drops 115 feet.

BY MR. EISMANN:

Q. First let's just identify it then I will ask you questions on it.

A. Okay.

Q. Are these copies we can use?

A. You can keep those if you want.

(Deposition Exhibit 1 marked for identification.)

Q. Mr. Rumsey, I have -- the diagrams that you have handed me I have put together into one exhibit, Exhibit 1, and given page numbers to those four pages.

A. Okay.

Q. If you could get another set before you so that we can look at them at the same time it probably would expedite -- the first page is the one that has the open ditch.

A. Yeah. I need a pencil. This is number one.
Q. Correct.
MR. RIDDLEMOSER: No.
THE WITNESS: Oh, I'm sorry.
MR. EISMANN: The open ditch is the --
MR. RIDDLEMOSER: The open ditch is number one.
BY MR. EISMANN:
Q. Now who prepared page one of Deposition Exhibit 1?
A. This was done by an engineer in Boise and it's at -- it was done at Hill -- part of the name is Hill. It was an engineering firm that done it.
Q. And when was it done?
A. This was done in about 1978, I would say.
Q. And what does it depict?
A. Originally this was done for a hydroelectric plant that we were planning to put in, but it is actually the true diagram of the existing ditch.
Q. And when you say existing ditch, would you tell me where that originates and where it terminates?
A. Well, it originates on the -- what we call the Woods Ranch.
Q. On Porter Creek?
A. On Porter Creek.
Q. And that's the point of diversion?

5/1995

A. That's the point of diversion.
Q. That's represented by the figures 3040?
A. That's correct.
Q. And where does it terminate?
A. It terminates at the -- at Jackass Creek.
Q. And at the point where water enters a pipe at Jackass Creek?
A. That is correct.
Q. Is there -- the numbers appearing at various points along the open ditch, are those elevations?
A. Those are elevations, yes.
Q. Is there anything that shows the actual distance?
A. The actual distance we measured from the -- from this sketch that we have here and it checks to be two miles six -- well, it's 2.625 miles.
Q. And who measured that?
A. I did.
Q. And so you're taking the position that this is drawn to scale?
A. It is drawn to scale. That's correct.
Q. The second page is a page which shows box and then also refers to 40 horsepower.
A. Oh, that's -- okay. Sorry about that.
Q. Now what does the box refer to?

A. The box is the diversion point into the pipe at the end of the ditch above Jackass Creek.

Q. Okay. So then the ditch that is reflected on page one terminates at the box?

A. That's correct.

Q. And then there is a figure of ten inches. What does that refer to?

A. That's a ten-inch pipe.

Q. When was that installed?

A. Well, that's -- that pipe has been in there for at least -- I don't know. It was there in '68 and -- maybe 50 years.

Q. Are there any other pipes leading from that box?

A. There is an overflow pipe that leads from the box.

Q. It's not reflected on page two?

A. Well, I didn't -- it isn't on there, but it is on another page that we have. It follows the same line or comes right down with the other pipe.

Q. And what is the size of the overflow pipe?

A. Eight inch.

Q. And now this shows the ten-inch pipe going to a point where there is an enlarged section.

A. That's correct.

APR 25

Q. What does the enlarged section refer to?

A. That is a 12-inch PVC pipe that the ten inch goes into.

Q. When was that installed?

A. That was installed in '75, I believe.

Q. Now would you -- there is a figure of 1,584 feet.

A. That's 1,584 feet from Jackass Creek to the 65-horse pump and that's the river pump.

Q. Okay. The 65-horsepower pump is the Payette River pump?

A. That's correct. Back up just a minute, Jack. Or Dick. That's a 60-horsepower pump. I got the wrong number on there.

Q. Who prepared page two?

A. Well, I done it myself. Of course I have an engineer that made the drawing, but I give him all the numbers.

Q. Is it drawn to scale?

A. No, it isn't.

Q. And so the 65 H.P. refers to really a 60-horsepower pump?

A. It's a 60-horsepower pump.

Q. When was it installed?

A. The system itself has been in there for many

years before I came there, but the 60-horse pump -- it used to be a 50 and I replaced it with a 60 in about -- about six years ago. Be about '88, probably.

Q. And what is the discharge side of the 60-horsepower pump?

A. The discharge of that is 12 inch.

Q. And what is the intake?

A. And the intake is 12 inch.

Q. Now is that pump directed from the Payette River?

A. That pump pumps from a cistern. The water is pumped out of the Payette River with a primary pump, put into the cistern and then it goes -- then the 60 horse pumps it out into the field.

Q. Then what you're referring to as a primary pump does not appear on page two?

A. No. The primary pump doesn't appear on there. It looks like a really small pump, but it's an impeller pump and it produces lots of water.

Q. What is its intake size?

A. It sits right in the river, so it doesn't really have an intake. The impeller is down in the water. But I'm estimating it's probably an eight inch or maybe ten-inch pipe going up.

Q. What's the brand?

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A. I don't know.
Q. Did you install that pump?
A. No. That pump was there when I bought the ranch.
Q. And what you're describing to me is a bowl for some -- that sits into the river with a motor that drives a shaft to operate that impeller?
A. That's correct.
Q. And the water then is directed up the shaft into a cistern?
A. Into a cistern; correct.
Q. What is the discharge size of that pump?
A. The discharge is -- I believe that's ten inch.
Q. And that's been there since you initially --
A. Since I purchased the ranch.
Q. -- purchased the ranch?
A. Yes. That's correct.
Q. What horsepower is on that pump?
A. I think it's a five horse.
Q. And what is the lift?
A. And the lift is about a six foot lift.
Q. Have you measured it?
A. I haven't measured it. I will measure it for you, though.

APPEARS

Q. Now that pumps into a cistern. Is there an overflow in the cistern?

A. There is an overflow in the cistern.

Q. And it drains right back into the Payette River?

A. Back into the Payette River.

Q. What do you calculate that pump produces in inches?

A. You're talking about the 60 horse?

Q. No. The five horse.

A. Well, it produces more than the 60 horsepower can handle, so it's got to be over 2,000 gallons per minute.

Q. And you don't know the brand name of that pump?

A. No, I don't.

Q. And then the 65-horsepower pump or, excuse me, 60-horsepower pump pumps out of the cistern?

A. Pumps out of the cistern, yes.

Q. Now looking at page two in kind of the lower right-hand corner is a figure ten with a foot sign. What does that represent?

A. Ten inch or -- I'm sorry. Let me think about this. Oh, I know. It comes -- when it comes off of the -- from the box down to Jackass it's 115 feet. You have

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another ten feet of fall in the 1,584 feet. So when it gets to the pump there is 125 feet of fall when it gets to the 60-horsepower pump. There is an additional ten feet of fall after it gets to Jackass.

Q. On the north or south side of Jackass Creek?

A. The 115 feet is right at Jackass Creek. As it crosses Jackass it's 115 feet to the pipe.

Q. And where is the other ten feet?

A. Then the other ten feet would be at the end -- would be at this 60-horse pump. There is a ten foot of fall between this point and this point.

Q. And is that a level or is your pipe laid to that standard?

A. The pipe is laid to a certain depth, but when it gets to this diversion point down here, the 60 horse, there is an additional ten feet of fall from Jackass Creek.

Q. Okay. My question is does it raise and then lower to that point?

A. If it raises it doesn't go more than six inches or less. You know, I can't tell you for sure, because when they laid it in the ditch whether the ditch was perfectly flat or not I don't know, but it isn't a big amount.

Q. When you say the 115 feet to Jackass Creek,

are you talking to the water level in Jackass Creek?

A. No. I'm talking to the top of the pipe, just like I got it shown here. To the top of the ten-inch pipe that crosses Jackass Creek.

Q. And it is elevated above Jackass Creek?

A. It is above Jackass Creek.

Q. How high?

A. Three feet. Probably.

Q. Now you have a stretch of pipe from the 60-horsepower pump and basically -- as I recall the terrain basically is running south?

A. Running south.

Q. And then you show a ten-inch pipe and I assume that's a ten-inch pipe leading from the 12-inch pipe?

A. Leading from the 12 inch when you get to the -- after you pass the boost pump.

Q. And that leads to what you have marked as 40 H.P?

A. Well, it leads from that, yeah.

Q. What does 40 H.P. represent?

A. Horsepower.

Q. And what is at that location?

A. I didn't hear you.

Q. What is at the location?

A. The boost pump.

MR. RIDDLEMOSER: You better clarify one thing.

BY MR. EISMANN:

Q. So now we have -- up to that point we have three pumps, we have the primary pump out of the Payette River, we have the 60-horsepower pump and now we have a 40-horsepower pump.

A. That's correct.

Q. Now what is the brand of the 40-horsepower pump?

A. That one is a Peerless.

Q. And when was it installed?

A. It was installed in '75, I believe.

Q. Has it ever been replaced?

A. No. It's been out to be rebuilt once, but it -- as far as the complete unit being replaced, it never has.

Q. And what is the motor on the --

A. It's a 40 horse.

Q. What brand?

A. I don't know.

Q. Is it above ground?

A. It's above ground.

Q. And it pumps water from the 12-inch line into -- it receives water from the 12-inch line through a

ten-inch line and then discharges through an eight-inch line?

A. That's correct.

Q. Now with respect to the triangular markings and the words "shut-off valve," what is that?

A. That's a 12-inch shut-off valve that shuts the mainline off at that point.

Q. And the mainline is the line that is depicted as the 12-inch line from roughly Porter Creek to some point south of the 40-horsepower pump?

A. That's correct.

Q. How long is that line, the 12-inch line?

A. The 12-inch line -- you're talking from the 60 horse to -- or from where it --

Q. Its total length.

A. Yeah. Its total length is about 250 feet.

Q. Now the shut-off valve, when open, serves what purpose?

A. It lets the water go directly into the field and it doesn't have to pass through the boost pump.

Q. And which water is that?

A. That could be Porter Creek water, it could be river water, either one. Payette River water.

Q. Now in the area or pipe structures from the 60-horsepower pump to the end of the 12-inch line you have

identified one shut-off valve. Are there any other valves in that area?

A. There is a valve at the 60-horse pump to keep the water -- to keep the Porter Creek water from backing up and going into the river. When they are using Porter Creek water they shut that valve off and then the water can't get back to the river.

Q. So it's located on the discharge side of the 60-horsepower pump?

A. That's correct.

Q. Is it above ground or below ground?

A. It's above ground.

Q. Are there any other valves that are operated or in place, whether they are operated or not, relating to the 60-horsepower pump?

A. No, there is not.

Q. Are there any valves, whether they are in use or not, relating to the 40-horsepower pump depicted in the section on page two?

A. Not except for the -- just one valve is all.

Q. Just one valve at that location?

A. That's correct.

Q. Now what keeps Porter Creek water, when the shut-off valve is open, from going through the intake and discharge side of the pipes leading to and from the

40-horsepower pump?

A. I don't -- I don't understand what you're saying, Dick.

Q. When the shut-off valve on page two of Exhibit 1 is in the open position, what, if anything, prevents Porter Creek water from also going through the ten-inch intake and the eight-inch discharge side of the 40-horsepower pump?

A. If the valve is closed at the 60-horse pump, then the Porter Creek water can't go back through the system. It all goes down the 12-inch pipe into the ten inch and on into the field.

Q. And it can go through the 40-horsepower pump, as well as through the open shut-off valve?

A. That is correct.

Q. All right. To the -- what I would call the left side of page two there is a figure five with a sign for feet. What does that represent?

A. That's an additional five feet of fall we get from that boost pump down into the main field.

Q. At what point in the main field?

A. At the south end of it. As far south as you can go is where I have measured it.

Q. And this is a measurement you took?

A. That's a measurement I took.

Q. And how did you take the measurement?

A. All of those measurements were taken with a sensitive altimeter and they are pretty darn accurate.

Q. But on top of the ground then?

A. On top of the ground.

Q. And they don't represent, then, the actual fall in the pipeline itself?

A. They don't actually represent the pipeline at the buried depth.

Q. Yes.

A. Is that what --

Q. Yes.

A. Right.

Q. Directing your attention now to page three. Would you tell me what that depicts? Page three. Excuse me.

A. Okay. That is the design of the box at the top above Jackass Creek where the pipe, the ten-inch pipe, connects to that and falls down to Jackass.

Q. What view is it?

A. We are looking at a cross-section of the long part of the box. The box is sitting in the ditch. The water is flowing. That's the ditch there.

Q. Oh, the lines -- horizontal lines coming directly into the diagram represents the flow of water?

A. That's correct.

Q. And then there is a structure at the end of the flow of the water into an area where there is a circle marked ten inch. What does that represent?

A. The lines are -- they end at the screen. There is a screen that sits on top of that section and the clean water goes down there and out through the ten-inch pipe.

Q. Okay. And what happens to -- how does the eight-inch pipe function?

A. Whenever the box gets full and the water can't get out through the ten inch, it overflows and spills through the eight-inch pipe and that's where the overthrow goes.

Q. So if you have more Porter Creek water than a ten-inch pipe will carry, it then overflows into the section of the box where the eight-inch pipe is?

A. That is correct.

Q. Now if the area where the screen is, if they are plugged, then the same thing happens?

A. The same thing would happen. If you get moss on the screen and they don't pay attention to it, why it will overflow.

Q. How long have you utilized that structure?

A. It's been there ever since I owned the land.

Q. In the same shape?
A. In the same shape.
Q. Have you made any changes to it at all?
A. I have made no changes to that. Built some new screens for it is all.
Q. Replaced screens?
A. Replaced screens.
Q. Because they had rusted out or broken or something?
A. Right. That's correct.
Q. What's the mesh size of the screens?
A. I don't know. It's probably less than a 16th, because we want it smaller than the nozzles.
Q. But you don't know?
A. I don't know.
Q. And what does page four represent?
A. That's the outline of the total area that we are talking about.
Q. So this is not to scale, first?
A. It's not to scale.
Q. And there are some broad lines with a half inch between them at the top of page four. Do those represent roadways?
A. That's correct. It does represent roadways.
Q. And then there is a circle on the left-hand

side. Does that represent the 60-horsepower pump?

A. That is the 60-horsepower pump.

Q. Or does that represent out of the river?

A. No. That's the 60-horse pump.

Q. Okay. And then there is roughly a square box to the right of the 60-horsepower pump. What does that represent?

A. That represents the boost pump, 40-horse boost pump.

Q. Okay. Then the pump out of the river is not displayed on page four?

A. No, it is not.

Q. The figures relating to 12 inch, does that represent the pipe size from the 60-horsepower pump to the booster pump?

A. That's correct.

Q. And then this doesn't show the Porter Creek water entering the system at any place, does it?

A. The Porter Creek water -- the reason I -- I mean I could have done that, but it enters --

Q. It doesn't show it, though?

A. It doesn't show it.

Q. And then after the booster pump, the 40-horsepower booster pump, the ten inch represents mainline?

A. Mainline.

Q. Buried?

A. Buried.

Q. And then the eight inch represents mainline buried?

A. That's correct.

Q. And then there is a circle towards the very right-hand side. What does that represent?

A. That is the shut-off valve that separates the Porter Creek and the Payette River water from the Harris Creek water.

Q. Does your Payette water right extend beyond that bound?

A. No, it does not.

Q. Why do you have a valve there?

A. When we -- when I put the line in, which was years ago, I was -- my thought was was to boost the pressure in this system by the Harris Creek water, because it had a lot more pressure than this did, so all I had to do is open that valve and then I could boost pressure -- get the pressure up here and I didn't need a boost pump or anything, but that was -- that was before George. We locked it after that.

Q. Does it remain locked at all times?

A. To my knowledge it does. The water master

has the authority on that and as far as I know it's locked.

Q. Now I'm looking at a figure running north -- a line running north and south with the numbers six and a sign for inches on it at two points on it. What does that represent?

A. I don't believe it's running north and south. It's running east and west.

Q. Okay. That's east and west at that point?

A. Yeah. That's a six-inch mainline that takes off from the -- at that point ten inch.

Q. And then there are numbers next to straight lines. As an example, 20 in the upper part of the left side of page four. What does that represent?

A. All of those are lines with the number of heads represented.

Q. So those represent sprinkler lines?

A. They represent sprinkler lines.

Q. And the number of head in each -- heads?

A. And the number of head in each line.

Q. And what is the -- what is the sprinkler head nozzle size?

A. It's 5/32nds.

Q. Throughout?

A. Throughout. All the same.

Q. Now there is a figure 44 --
A. Uh-huh.
Q. -- in about the middle and the bottom of page four. What does that represent?
A. That represents heads.
Q. And that's a sprinkler line?
A. That's a hand line. The majority of the rest of them are wheel lines, but that is a hand line, because that's a narrow section that has came up after the gravel pit and that's the way they irrigate it is with a hand line.
Q. Then there is an area which is a rectangle with a portion cut out of it or deleted from it in the upper left-hand corner just towards the top of the page from the figure 44. What does that line represent? That's this.
A. Okay. That's the gravel pit. That's the outline of the gravel pit.
Q. And how many acres are in that outline?
A. There is 22 acres in the pit.
Q. Within the boundaries that we see here?
A. Yes.
Q. Who prepared page four?
A. I prepared page four.
Q. So essentially, if I understand it, you

prepared all of these pages, except page one?

A. Well, I made all the layout, but the draftsman put it on the paper. I didn't do all the figures and that stuff, he put that on there, but I give him the numbers and laid the lines out for him.

Q. Okay. How do you know the sprinkler nozzle sizes are all the same?

A. I measured them.

Q. Every one?

A. Yes, sir.

Q. You measured a hundred and some sprinklers?

A. You go to -- each line is -- incidentally, they are all pressure-controlled nozzles and each line -- I didn't measure every one, but I went to all the lines and checked two or three in the line to be sure that --

Q. You sampled them?

A. Right. Sample inspected them, but I did check every line that was out there.

Q. When you say pressure-controlled lines, what are you referring to?

A. Well, it controls the flow of the nozzle regardless of the pressure -- not regardless. If you get too low of pressure they won't work, but it controls the flow of the nozzle at the high pressures, keeps it down to -- I think these are five-gallon-a-minute nozzles.

Q. What brand nozzle are they?
A. I don't know.
Q. What brand sprinkler heads are they?
A. I think they are Rain Birds, but I wouldn't want to make that a for sure.
Q. Have you measured the output of any of the sprinkler heads?
A. No, I haven't. They are not operating now, because we are shut down for the winter.
Q. Have you ever measured them?
A. I did. I did years ago, Dick, but I can't recall when I done it.
Q. Did you make any record of it?
A. No.
Q. Have you taken any pressure measurements, when the system is operating, at the sprinkler heads?
A. I have not.
Q. Now taking as a group Exhibit 1, which is these pages one, two, three, and four --
A. Okay.
Q. -- is that the way the system exists today?
A. That is the way the system exists today. That's correct.
Q. Have there been any changes in what is depicted on Exhibit 1 since 1985?

A. The only change is the gravel pit itself. You know that.

Q. Well, that's the land. I'm talking about the --

A. Oh, to the system?

Q. Yes.

A. No. There has been no change.

Q. Are there any valves in the system that are not depicted on pages two, three -- two and four, I guess are the ones that depict the valves.

A. There is four valves at the intersection of the main lines here.

Q. And what are you calling intersection of the main lines?

A. Where the two six-inch lines take off from the ten-inch line.

Q. All right. And are you telling us, then, there is a valve in each -- on the intake side of the -- how should I phrase it?

A. On the ten-inch valve it would be on the out-going side.

Q. Okay.

A. The eight inch would be on the intake and the six -- the two sixes would both be on the intake. We can shut off any of these lines at any time.

Q. Including the ten inch?

A. Including -- well, the ten inch you shut off at the pump. We can shut if off up here at the --

Q. Is there a valve in the ten-inch line at the juncture of the six-inch line, the ten-inch line, and the eight-inch line?

A. There is a valve on the ten-inch line, there is a valve on the eight-inch line, there is a valve on both six-inch lines.

Q. Well, what is the purpose of the valve on the ten-inch line at the juncture of the six-inch line, ten-inch line, and eight-inch line?

A. When I put the system in we could shut the system off here and it would stop the flow in any direction that we wanted to go. At that time -- I don't know whether -- I don't believe we have ever used it, but at that time I thought it was necessary to put the valve in, because then I could bring the water in from Harris Creek and it would shut it off and keep it from going back into that system up there.

Q. So then in the valve or valves in the system that are depicted on pages two and four, plus the four valves you have just identified, are all of the valves in the system?

A. That's the only valves I can think of that's

in the system. I think that's all of them.

Q. Going a page two. Is there anything that obstructs the flow from the box into the 60-horsepower pump of Porter Creek water?

A. No, there isn't anything which -- would you repeat that question again, Dick?

Q. You're looking at page two?

A. Wait a minute. Got it.

Q. Okay. I'm talking about from the box to the 60-horsepower pump, which is labeled 65 on page two, is there anything that restricts or prohibits Porter Creek water from flowing into the 60-horsepower pump?

A. There is a valve in front of the 60-horsepower pump that shuts that system completely off.

Q. Okay. So there is one more valve there then?

A. Well, we talked about that awhile ago. I didn't know that you --

Q. Well --

A. Yeah.

Q. When I asked the other question I didn't mention that. I wanted to clarify.

A. Okay.

Q. There is a valve there?

A. There is a valve there.

Q. Do you mix Payette River water and Porter

Creek water?

A. If Porter Creek water is short, we mix.

Q. And how do you obtain the mix?

A. We take the maximum we can get from Porter Creek and when we turn on the big pump we can regulate the amount of water that goes in the system by the valve at the 60-horsepower pump.

Q. And how do you make that adjustment? What do you do? Do you simply close the --

A. Close the valve. Close it halfway or -- it's a centrifugal pump and it doesn't --

Q. What do you do then to determine when you have got the maximum Payette River water that you can inject at that point?

A. Whenever the sprinkler heads come up to pressure. We are starting out with Porter Creek water and we don't have enough water to run the system, so we cut in the main pump and then you open the valve up until you're -- until you get the pressure on your heads.

Q. And that's a visual thing?

A. It's a visual thing. That's correct.

Q. It's not something that is measured pressure?

A. It's not measured.

Q. Do you keep any record of the quantity of water you actually apply from Porter Creek?

A. No, I don't.

Q. Do you keep any record of the water that actually overflows at Jackass Creek?

A. No, I do not. I believe we have got a weir on there now, so they can check that pretty close.

Q. Taking the year 1993, last year, was any Porter Creek water used on the area you refer to as the gravel pit?

A. Yes, it was.

Q. And when was it used?

A. He had barley in there and it was sometime in probably early July, but I'm not sure of that date. I think he watered it twice.

Q. Was the crop harvested?

A. The crop was harvested.

Q. All of it?

A. To my knowledge all of it was.

Q. And it was all barley?

A. Well, there was some barley and alfalfa mixed on one section.

Q. And when you refer to he irrigated it twice, who are you referring to?

A. Cleo. The fellow that used to be my farmer. He's not there any more.

Q. You and he have terminated relationships?

A. We have terminated relationships.

Q. What was the cause of that?

MR. RIDDLEMOSER: You don't have to answer that, to my knowledge. I will instruct you there that you don't have to answer that question. That's irrelevant to -- whatever the answer is is irrelevant to the proceeding here.

MR. EISMANN: Well, things that relate to the credibility of witnesses is always relevant. If you instruct him not to answer we will ask him to answer it tomorrow.

MR. RIDDLEMOSER: You can answer one way or the other. I don't care.

THE WITNESS: He said that he wanted to retire. They did buy a house in Boise and I don't think he's worked since he left. That was the answer that he gave me.

BY MR. EISMANN:

Q. Well, did he cease to farm the property or oversee the farming of it because he wanted to quit or you wanted him to quit?

A. No. He wanted to quit.

Q. Do you have any -- you have produced here another item.

(Deposition Exhibit 2 marked for

identification.)

I have had it marked as Deposition Exhibit 2.

A. Yes.

Q. What is Deposition Exhibit 2?

A. That's the specs on the pump, the Peerless boost pump that's in the system.

Q. And that's the 60 horsepower or the 40?

A. That's the 40 horsepower.

Q. Do you have the specs on the 60 horsepower?

A. I don't have the specs on the 60 horse. I'm sorry that copy's not any better than it is, but that's the best one I could get, so --

Q. And how long has that pump been in service?

A. '75 I believe is when I put it in.

Q. Have you ever measured the output of that pump?

A. No. I have never measured it.

Q. Have you ever measured the output of the 60-horsepower pump?

A. I have never measured it. I don't know how you would measure it, frankly.

Q. The area that you reclaimed in what we have referred to as the gravel pit, is it depicted on page four?

A. Yeah. I will show it to you in just a

second. It's this area to the south of the pit and to the -- and the area west of the pit. That's where the 44 -- the number 44 is and then to the south of the pit number 24 and it goes all the way down to the -- even with the shut-off valve at the end of the field.

Q. And how many acres in the portion of the field marked with the 24 -- where the 24 number appears?

A. That area I don't know, Dick, exactly what it is.

Q. What's your best estimate?

A. It's probably 25 acres, maybe. That's an estimate now, not --

Q. And what is the area where the 44 appears?

A. Probably 15.

Q. And what is the area of what is marked gravel pit?

A. There is 22 acres in that.

Q. And how was that determined?

A. That was -- the gravel pit was determined by measurement. Wheel -- I used a wheel to measure it.

Q. You did it yourself?

A. I done it myself.

Q. Did you make a record of that?

A. Yep.

Q. When was that done?

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A. It was -- I have done it twice. The last time I done it was about a month ago.

Q. And I assume what you did was take your wheel, run it on the edge of what you determined to be the gravel pit area --

A. That is correct.

Q. -- and recorded the feet of each dimension and then calculated the square foot or area within those dimensions?

A. Calculated into acres.

Q. First I assume in square feet?

A. Square feet.

Q. And then to acres?

A. Then to acres.

Q. And what unit did you use in square feet to go to acres?

A. You'll have to say that again. I don't know what you're talking about.

Q. To convert square feet to acres what do you do?

A. There is 4,000 -- is it 4,400 and some acres or feet in an acre -- I'm sorry. 40,000 -- 44,000 -- I don't recall the exact footage, but I got it in a book over there. If you want me to bring you the book I'll bring it to you. I can't remember all that stuff, Dick.

Q. 4,560?

A. Yeah. Okay. I couldn't remember what the numbers were.

Q. Now directing your attention to the fields that we are designating as 24 --

A. Yeah.

Q. -- and 44 and then the gravel pit. Which of those fields was irrigated in 1993?

A. Both of these were irrigated in 1993.

Q. The 24 and the 44?

A. Yes, they were.

Q. But the gravel pit was not?

A. The gravel pit was not irrigated.

Q. In 1992 which of those fields was irrigated?

A. In 1992 -- I don't believe either one of them was irrigated in '92.

Q. So the 44 was not and the 24 was not and the gravel pit was not?

A. That's correct.

Q. In 1991 which of those fields was irrigated?

A. In '91 -- I think part of the one -- the 24 was irrigated in '91, but I'm not sure of that.

Q. So it may have been?

A. It may have been.

Q. And only part of it?

A. And only part of it.
Q. Do you know which part?
A. It would be the south end, the lower end.
Q. How many acres?
A. Probably 15 acres.
Q. In 1990 which of those fields was irrigated?
A. Probably the same fields, but there would have been more of it irrigated in 1990, because they hadn't cut into the field as far.
Q. They -- who is they?
A. The construction people that were hauling the gravel out.
Q. So what you're saying is 24 was irrigated --
A. 44 -- the upper end of 44 there was some irrigation in that.
Q. In 1990?
A. In 1990, but it was -- I don't recall -- I know across this end was irrigated.
Q. Describe the end you're referring to.
A. At the end of the gravel pit. The north end of the gravel pit.
Q. Okay. Between the six-inch line and the gravel pit?
A. Right. That's correct. And then they did do some work -- some irrigating down in here, but I don't

know how far they went down.

Q. Are you telling me what you personally observed or what you --

A. What I personally observed.

Q. Okay. How many acres of what we are referring to as field 44 were irrigated?

A. I would say that there was probably ten acres, possibly.

Q. And it would be at the north end of the field?

A. Be the north end of the field.

Q. And we are still talking 1990. In field 24 there would have been something more than 15 acres?

A. It would have been something more than 15 acres.

Q. How many?

A. Approximately maybe 20 acres in that field.

Q. And none of the gravel pit?

A. And none of the gravel pit.

Q. In 1989 which of these fields was irrigated?

A. In '89 I'm sure that he irrigated the lower end of all of this.

Q. All of what?

A. All of the 24.

Q. Okay. Field 24?

A. 24. And possibly -- now this -- I hate to do it by memory here, because I'm sure the gravel pit wasn't completely opened up then, because they started up on this end, so I'm sure that there is some of this in here was farmed, possibly.

Q. Part of 44?

A. Part of 44.

Q. And how many acres in 44?

A. I give you that number awhile ago. I can't remember what it was. How many acres was farmed? Probably half of that, whatever that number that I gave you was.

Q. How many acres are there in 44?

A. What did I tell you? I have told you that I hate to go by memory. I don't really know.

Q. You've given us an answer and what you're saying is you don't remember what answer you gave?

A. Well, I believe that I told you that there was 20 acres in 44, but I'm not sure. But I -- no, I think there was more than that. Let's see. There is 25 down here. About 25 here. No, there is about 15 up there. I think it's 15 that's up there.

MR. RIDDLEMOSER: 15 in which one, just so we are clear?

THE WITNESS: In the 44.

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MR. RIDDLEMOSER: In 44. That's 44.

BY MR. EISMANN:

Q. That was irrigated in '89?

A. That was -- yes. That was irrigated in '89. And part of the gravel pit was irrigated in '89.

Q. In 1988 which of these fields was irrigated?

A. There was everything irrigated but about ten acres. They went in and opened the pit up in '88 and they started out at the -- up here on this end.

Q. The north end?

A. At the north end.

Q. What of those three fields was irrigated in 1987?

A. They were all irrigated in '87. The gravel pit and all -- everything was covered.

Q. What is the present condition with respect to rocks in field 44?

A. There is a lot of rocks in it.

Q. And what size?

A. Well, they are from pebble size up to maybe six inch.

Q. And how about field 24?

A. Field 24 there is rocks in that, too.

Q. Same size?

A. About the same size.

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Q. Have you picked any rock out of --

A. We have. The 44 side was all picked and that was in '80 -- oh, I'm sorry -- in '92. They picked the rocks on 44. This side they did -- they didn't get them picked, but we now have a rock picker and we are going to clean them all up this spring.

Q. So in field 44 then it's all cleaned up at this time?

A. It was cleaned up at that time. Of course they keep coming out of the ground, you know, until you get them out of --

Q. When you say cleaned up, are you talking about picking them off the surface?

A. Taking them all off the surface.

Q. What witnesses do you intend to have at the hearing tomorrow?

A. Gene Hess will be the only witness.

Q. Gene Hess?

A. Yes, sir.

Q. Who is he?

A. He is the ranch manager. Been there for 20 years.

Q. Has he been in charge of the farming?

A. He hasn't been in charge of it, but he was present all the time and he did -- and he did have the

authority to make decisions on the farming.

Q. Did he, in fact, make decisions?

A. He okayed all the wage for the hay. He okayed -- or he took care of all the plastering after the crops were off and reported to me on the condition of the ranch -- of the farm.

Q. How many acres do you actually irrigate with Porter Creek water?

A. You mean now or -- right at the present time?

Q. In 1993.

A. In 1993? We irrigated the full 191 acres, less the gravel pit. The gravel pit is 22 acres.

Q. So what would that be then that you irrigated?

A. Just let me get a pencil out here.

A. 179 acres.

MR. RIDDLEMOSER: No.

THE WITNESS: No. 169 acres. I'm sorry.

BY MR. EISMANN:

Q. Have you made any changes on your point of diversion, the box or the way that you divert at Porter Creek?

A. No, we haven't.

Q. When was the last time you made any changes at that point?

A. It should have been in -- when we put the weir in and I believe that was back in maybe '86.

Q. So it's in basically the same condition as it was in 1986?

A. Yes, it is. The diversion point is exactly the same.

MR. EISMANN: Okay. Give me a minute to talk to George.

(A recess was had.)

BY MR. EISMANN:

Q. When your sprinklers are operating in a manner in which you consider to be appropriate or efficient, how much pressure are you -- do you have at the sprinkler head?

A. Well, you're asking me the question and I answered awhile ago and said that I don't measure it, I go by -- the sprinkler heads are regulated by the nozzle for pressure. We know that we don't have -- if we go through the boost pump we know that we don't have more than 55 pounds on sprinkler head. That's what it produces.

Q. And how did you determine that?

A. How did I determine what the -- that's what the spec says that the pump produces. With the head that we put in it, with the amount of water we put in it, it produces 55 pounds. The head operates at the proper --

the pressure-regulated head handles 55 pounds of pressure. It can go up to 65 and still give you the same volumes, supposedly.

Q. But my understanding is, first, you have never measured that.

A. I have never measured it.

Q. So my question is how did you determine you have 55 pounds at the sprinkler head?

A. All I do is visual, see how the head operates and you can tell whether you have got enough pressure on it. We are not sophisticated enough that we got pressure gauges to check all these nozzles out there in the field.

Q. Now when you use neither booster pump -- neither the 60-horsepower booster pump or the 40-horsepower booster pump, what pressure do you have at the sprinkler head?

A. At the diversion point you got about 50 pounds of pressure.

Q. When you say diversion point --

A. That's where the pipe enters the 12-inch pipe that goes into the field.

Q. And how did you determine that?

A. I measured that.

Q. And --

A. It's been along time ago, but I measured it.

Q. And how did you measure it?
A. I put a gauge on it.
Q. And how did you do that?
A. I took a crescent wrench and screwed the gauge in a piece of pipe that was inserted into the mainline.
Q. You just explained to me you're not sophisticated enough --
A. Well, that isn't sophisticated. That's just plain old common sense there.
Q. Well, what is it that is sophisticated about measuring the pressure of a sprinkler head?
A. I don't have an instrument to do it.
Q. So your position is that at the upstream side of the ten-inch pipe you have 50 pounds of pressure?
A. Without any pump running.
Q. With no pumps running?
A. That's correct.
Q. And how many sprinkler heads will that operate?
A. That will operate -- I don't know. We turn the lines on until they start loosing pressure and then we know that we have got all the lines operating that we can with that.
Q. So that will not operate all the lines then?

A. It would not operate all the lines.
Q. How many lines would it operate?
A. Probably seven lines. I think they have had as many as nine on it, but the pressure would drop some.
Q. And how many sprinkler heads would that seven lines represent, approximately?
A. Well, seven times 25 is how many?
Q. I don't have to do math for you.
A. 175. No. That isn't right. That isn't right, is it?
MR. RIDDLEMOSER: Yeah, it is.
BY MR. EISMANN:
Q. Now when you run the -- well, when do you decide you're going to use the 40-horse booster pump?
A. Whenever we need the extra water. Whenever we need -- we have more than the seven lines or more than the natural pressure will handle or when the Porter Creek water is down and we got to mix. When we mix most of the time we use the boost pump.
Q. That's the 40 horse?
A. That's the 40 horse.
Q. And you used that in 1993?
A. I don't know.
Q. 1992?
A. I don't know.

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Q. 1991?

A. I think there was two years that I have been questioned about. In 1991 I'm sure that it was used.

Q. And in 1990?

A. In 1990 it's -- I'm sure it was used that year, too.

Q. How do you determine -- when you say you're sure it was used, how --

A. Well, from the conversations that I have had with Cleo.

Q. Okay. This is not something you --

A. It's not something that I went down and turned the pump on and witnessed it operating, that's correct.

Q. So then your testimony is that Cleo used the 40-horse booster pump in 1993, '92 -- well, you don't know in '93 or '92, but he did use it in '91 and '90; is that correct?

A. I would say that's correct. Yes.

Q. And 1989 did he use it?

A. In '89 -- I'm sure he used it in '89.

Q. And how about 1988?

A. In 1988 he would have used it.

Q. And if I understand it correctly, you have used the 60-horse booster pump or Payette booster pump in

every year?

A. I believe that it's been used in every year, because it's normally used whenever the Payette River water dries up.

Q. When the Payette River water dries up?

A. I'm sorry. The Porter Creek river.

Q. Now when you run the 40-horsepower booster pump what pressure do you claim you --

A. The spec says that the 40-horsepower pump puts out -- with a 50 pound head puts out 65 P.S.I.

Q. What's P.S.I?

A. Pounds per square inch.

Q. And how many sprinkler heads will that operate?

A. That will operate 250.

Q. And how many gallons will that represent?

A. 1,250.

Q. And how did you calculate that?

A. I took the five gallon per head --

Q. Times what?

A. Times 250.

Q. So your method of computing that is to figure backwards, that is make the assumption that you're putting on five gallons per minute at the sprinkler head; is that correct?

A. That's correct.
Q. And then make the assumption that you'd run 250 heads?
A. It would be correct, yes.
Q. And my question is how do you know you're running 250 head?
A. You mean every day? I don't have any idea.
Q. Okay.
A. We have more than that in the field. It depends on how many the person's operating.
Q. Okay. How do you know that -- where do you get the 250 head -- sprinkler head?
A. I counted all the heads. I know what --
Q. Well, I know in the calculation you have just given me, five gallons per head times 250 head, why did you select 250 heads?
A. I selected it because I believe that's about the amount of heads that we have out there in the field.
Q. Okay. So you run everything in the head then with the 40-horsepower booster -- everything in the field with the 40-horsepower booster pump?
A. That's correct.
Q. That's your position?
A. That's my position.
Q. If you just used the Payette 60-horsepower

booster pump how many sprinkler heads can you operate?

A. We could use them -- we could use all the heads we have.

Q. And how many is that?

A. I just gave you a number. 250 heads. If we are talking about the same situation here.

Q. What do you mean if -- what's the qualification on that? Is the 250 heads on the page that you -- you're identifying as page four --

A. I show down there 231 heads.

Q. All right.

A. So I'm 19 heads -- there is 19 head difference. Now we have got some hand lines here that I didn't show. There is a section down on this end. Anything that's below that we use hand lines on it, so that's additional heads that we have to put down there.

Q. And below that refers to the booster pump?

A. Between the booster pump --

Q. And the river?

A. -- and the river.

Q. How do you control the waste of water at the Jackass Creek diversion box?

A. How do we control it?

Q. Yes.

A. The people that are operating the system,

APPEARANCE

they are instructed to go up every day and clean the moss off. They got to climb up 115 feet to clean the moss off of it. If they are changing lines it may take as much as three hours to change the lines, so they shut a line down and it's going to run over at Jackass Creek. Until they get them all turned back on you're going to have an overflow there and that sometimes takes three to four hours to change the whole system.

Q. These are wheel lines?

A. Some of them are wheel lines and some are hand lines.

Q. The bulk of them are wheel lines?

A. There is seven wheel lines.

Q. So it would be correct most of your sprinkler heads are on --

A. The majority are on wheel lines.

Q. Is there any other way you utilize to control the waste of water at Jackass Creek?

A. No. That's the only way I can think of that we do it.

Q. When you're operating the Payette booster pump, 60-horse booster pump, does that create -- and you're using Jackass creek -- or your other water right on -- does that create a waste at the Jackass Creek box?

A. It doesn't create a waste at the Jackass

Creek box.

Q. So my understanding of what you're telling me is that if you have Porter Creek water that you're using and you turn on the Payette River booster pump and you use Payette River water so that you're mixing water, there is no condition where it creates a waste at Jackass Creek; is that what you're telling me?

A. That's what I'm telling you.

Q. Now why is that so?

A. Why is it so?

Q. Yes.

A. Because they can regulate the amount of Payette River water they put in the system so that doesn't overflow at Jackass Creek.

Q. And how do they determine that?

A. They -- all they have to do is go up to Jackass Creek and see if there is any overflow coming down.

Q. And then what do they do?

A. Then they can close the valve -- or not close it, but regulate the valve at the 60-horsepower pump that controls the additional flow that's going into the system.

Q. So when there is a waste at Jackass Creek that's not created by moss obstructing the screens and is not created by too much diversion of water from Porter

Creek to exceed the capacity of the ten-inch line, then the waste is created by failure to adjust the valve at the 60-horsepower booster -- Payette River booster pump?

A. That could be it. If they are running the booster pump that could have.

Q. And who is they that you're referring to?

A. The person that's running the -- that's running the farm.

Q. Who are you saying was running the farm?

A. Cleo. Cleo Cochran.

Q. So he was the one that was designated to check that out and adjust that valve?

A. That is correct.

Q. And is he the one that was designated to clean the screens?

A. He's the one that was designated to clean the screens; that's correct.

Q. He's the one that was designated to adjust the amount of Porter Creek water being diverted to avoid wasting Porter Creek water?

A. That is correct.

Q. In 1993 was there water wasted at Porter Creek?

A. I have no idea. I don't know.

Q. How about 1992?

A. I don't know.

Q. 1991?

A. I don't know.

Q. You don't know whether -- in any year whether there was water wasted at Porter Creek?

A. I don't know whether there was or not. I don't spend my time there.

Q. Has anyone reported to you that water was being wasted at Porter Creek?

A. I believe George reported to the board that we were wasting water, but nobody has personally came to me and said you're wasting water in Jackass Creek.

MR. EISMANN: I think that's all the questions I have. Do you have any?

MR. RIDDLEMOSER: I don't think I have any.

(Whereupon the deposition ended at 12:35 p.m.)

* * * * * * * * * * * * * * *

VERIFICATION

STATE OF IDAHO)
) ss.
County of_____)

I, DONALD RUMSEY, being first duly sworn on my oath, depose and say:

That I am the witness named in the foregoing deposition, consisting of pages numbered 1 to 55, inclusive; that I have read the said deposition and know the contents thereof; that the questions contained therein were propounded to me; that the answers to said questions were given by me, and that the answers as contained therein (or as corrected by me therein) are true and correct.

_____
DONALD RUMSEY

Subscribed and sworn to before me this_____day of _____, 19___, at_____, Idaho.

_____
Notary Public for Idaho Residing At_____, Idaho.

My commission expires:_____

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
County of Ada)

I, M. DEAN WILLIS, Certified Shorthand Reporter and Notary Public in and for the state of Idaho, DO HEREBY CERTIFY:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting by myself, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of this action.

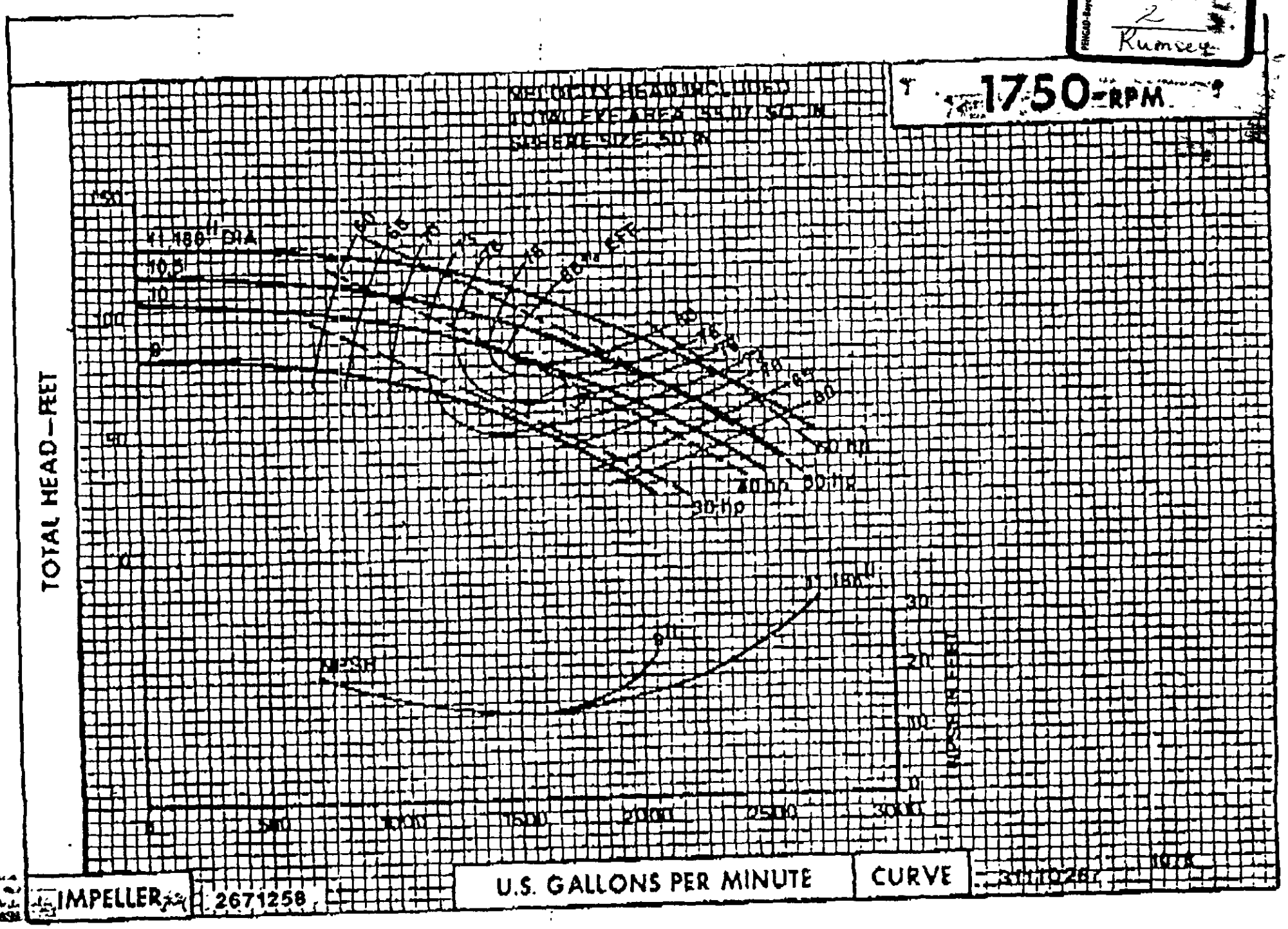
WITNESS my hand and seal this 8 day of March, 1994.

M. DEAN WILLIS, CSR and
Notary Public, State of Idaho.

My Commission expires: 9-12-98

28/395

DEPOSITION EXHIBIT 2 Rumsey



CUSTOMER _____ JOB NAME _____

S.O. NO. _____ SERIAL NO. _____

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-010747, AND 65-02540, IN THE NAME OF DOUBLE DIAMOND, INC.

TRANSCRIPT OF HEARING

VOLUME 2
PAGES 129 - 330

March 11, 1993
1301 N. Orchard St.
Boise, Idaho

Reported by:
M. DEAN WILLIS

Prepared for:
RICHARD B. EISMANN
(COPY)

CAPITOL REPORTERS
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Exhibit only
APR 25 1995

BE IT REMEMBERED that the above-entitled matter came on for hearing before the Department of Water Resources of the State of Idaho, at 1410 N. Hilton, the City of Boise, State of Idaho, commencing at 1:25 p.m., Thursday, March 11, 1993, before before GARY SPACKMAN, Hearing Officer.

A P P E A R A N C E S

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For the Protestant:	Richard B. Eismann, Esq. Eismann Law Offices 3016 Caldwell Blvd. Nampa, Idaho 83651

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THURSDAY, MARCH 11, 1993, 1:25 P.M., BOISE, IDAHO.

MR. SPACKMAN: This is a continuation of the hearing for an application for transfer filed by Double Diamond, Inc., and we were, on Monday, March 8th, in the middle of testimony by Ms. Shirley, but Mr. Eismann has asked and opposing counsel has consented to interrupt her testimony and allow Mr. Nottingham, who works for the Idaho Department of Transportation, to testify. He's been subpoenaed here today with some records and so we will interrupt her testimony, then come back to it at a later time.

So at this juncture Mr. Nottingham has come forward and needs to be sworn in.

KEITH NOTTINGHAM,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISMANN:

Q. Please state your name.

A. Keith Nottingham.
Q. And your business address?
A. District Three headquarters of Idaho Transportation Department.
Q. In Garden City?
A. Yes.
Q. And you're employed by?
A. State of Idaho Transportation Department.
Q. And what position do you hold?
A. I'm the District Three geologist.
Q. What's your -- what degrees do you hold?
A. Bachelor's of science in geological engineering and I'm a registered professional geologist in the state of Idaho.
Q. Are you familiar or did you have some association with the Horseshoe Bend highway project that was completed, to my recollection, maybe in 1992 or late 1991?
A. Not directly. I'm in charge of the records and that's why I assume I'm here.
Q. And you were subpoenaed to produce certain records; is that correct?
A. That's correct. What is your question?
Q. Okay. I have marked a document Exhibit W. Is that a copy of a document from your records on the

Horsebend Bend highway project?

A. It's a copy from our records, but I'm not sure it's -- it's a source plat. Yes, it is.

Q. And what does that document Exhibit W depict?

A. The boundaries of the source and the plan of operation and the reclamation plan.

Q. For the gravel lease at that location?

A. Yes.

Q. And was that gravel lease or site lease from Double Diamond?

A. No.

Q. Who was it from?

A. Rumsey Brothers, I believe.

Q. Rumsey Brothers?

A. Yes.

Q. Do you have a copy of the lease?

A. Yes, I do.

Q. Double-check that for us, if you would, please.

A. The lease is between Dale Rumsey and Donald Rumsey, as tenants in common, address Sunrise Rim in Boise, Idaho.

Q. With respect to -- does the Exhibit W relate to the lease that you're referring to? Are those the same properties, in other words?

A. Yes.

MR. EISMANN: And could -- I think -- Mr. Hearing Officer, I believe you have Exhibit U, the lease.

MR. SPACKMAN: It's here, Mr. Eismann.

MR. EISMANN: Okay.

MR. SPACKMAN: Did you want me to hand it to the witness?

BY MR. EISMANN:

Q. Please. If you would. And is that a copy of the lease -- the Material Lease that relates to Exhibit W?

A. Yes, it is.

MR. EISMANN: We would offer Exhibit W.

MR. SPACKMAN: Mr. Riddlemoser, have you looked at the map -- site plan?

MR. RIDDLEMOSER: If I might right quick. We will have no objection to the admission of Exhibit W.

MR. SPACKMAN: The document marked as Exhibit W is received.

MR. RIDDLEMOSER: I mean Exhibit U. Excuse me. I'm sorry. It is Exhibit U.

MR. SPACKMAN: Okay. I think Mr. Eismann requested the admission of W.

MR. EISMANN: Correct.

MR. RIDDLEMOSER: Was it W?

MR. EISMANN: Yeah.

MR. SPACKMAN: Which is this larger --

MR. RIDDLEMOSER: Excuse me. U is already been in. I'm sorry here, Mr. Eismann. We will have no objection to admitting Exhibit W.

MR. SPACKMAN: Okay. I think our records were unclear as to the admission of U. Do your records show that it's been admitted, Mr. Lester?

MR. LESTER: No. I think it's still unclear.

MR. SPACKMAN: Well, okay. Well, let's state it for the record. The document marked as Exhibit U is received into evidence and also the document marked as --

MR. RIDDLEMOSER: U and W have not been admitted.

MR. SPACKMAN: -- received into evidence as well.

(Protestant's Exhibits U and W admitted.)

BY MR. EISMANN:

Q. When did operations begin for -- under the site material lease on the property which is depicted in Exhibit W? Can you give us a date or approximate date?

A. Well, I have the laboratory tests showing material tested in stockpile June 20th, 1988. Therefore, material would have had to have been -- operations had to start sometime before then. The particular lab test I have here is a drain rock in stockpile.

Q. What functions would be performed before a lab test was taken?

A. They would have stripped the overburden from at least a small -- at least an area to start operations and set up some screening operations.

Q. Set up the crusher?

A. Not necessarily the crusher at that point in time. The drain rock is just a screen product.

Q. Okay. So they would have stripped the overburden and then began a screening process?

A. Right.

Q. And they would have had some material in stockpile?

A. Yes, they did. At this time this tested material was taken from the stockpile.

Q. Do your records show what the size of the stockpile was at that point in time?

A. It says one and a half inch drain rock.

Q. And does it show what quantity is in the stockpile?

A. No.

Q. Okay. Did operations of removing the materials, stockpiling it, and crushing it, whatever was done there, when did they then cease as far as your records show?

A. I have a copy of a release from the reclamation plan by Double Diamond, parenthesis, Rumsey

Ranches, Route 1, Box 63, Horseshoe Bend, Idaho, and Idaho Sand and Gravel, that the contractor had satisfactorily completed reclamation of the borrow pit, title B.O. 51, and the access road to it and that is signed by Idaho Sand and Gravel and Double Diamond Ranches on 4-27-92.

Q. Was the full restoration plan carried out? Can you tell from your file?

A. I know that it was not, at their request.

Q. What portion was not completed?

A. Seeding.

Q. So then the excavated area or a lot of it was replaced with topsoil?

A. I'm not sure.

Q. Okay. But at least the seeding was not done; is that correct?

A. Yes. But it was at their request. They wanted to change the reclamation plan.

Q. Do you know what changes they wanted to make?

A. No, but Mike Musetti, who is with me here, from the Idaho Transportation Department might.

MR. EISMANN: That completes my direct examination at this time.

MR. SPACKMAN: Thank you. Mr. Riddlemoser?

MR. RIDDLEMOSER: I have no questions.

MR. SPACKMAN: Thank you, Mr. Nottingham.

MR. EISMANN: May Mr. Nottingham be excused from further attendance?

MR. RIDDLEMOSER: We have no objection.

MR. SPACKMAN: Yes. Thank you for coming, Mr. Nottingham.

Are you ready to resume Ms. Shirley's testimony now?

MR. EISMANN: Yes. Yes.

MR. SPACKMAN: Mr. Willis, what is standard procedure when we have gone this long?

MR. EISMANN: Just remind them that they are under oath and that they should tell the truth.

MR. SPACKMAN: For those of lesser veracity I suppose we'd swear them in again, but I think that's sufficient for my purposes.

You're still under oath, Ms. Shirley.

MS. SHIRLEY: Yes, sir.

MR. EISMANN: The Exhibit G from which she was testifying at the last hearing -- or when it concluded, had some pages that were difficult to read and I have rephotostated that so that -- we just turned up the copier to get it dark enough so that it's more legible and, in addition, we wrote page numbers in the bottom right-hand corner, so that people can get to the page numbers more easily, at least on the official exhibit.

I have here the one that she was testifying from. I have put an X through the G. We can either leave it with you for whatever purposes, if somebody wants to make a comparison at any time. We also have the original documents here also or we can substitute it entirely and with my explanation and proceed with the better copy.

MR. SPACKMAN: Well, I have no objection to its substitution. Mr. Riddlemoser?

MR. RIDDLEMOSER: No. I don't have any -- as long as we are looking at the same document. I mean if you cleared it up in some respects, we have no problem with proceeding with the better copy.

MR. EISMANN: Jack, you can see what we have done. We had it darkened so it's more legible.

MR. SPACKMAN: It has been marked as Exhibit G as well, I suppose?

MR. EISMANN: Yes, it has.

MR. SPACKMAN: May I just interject, Mr. Eismann, Mr. Nottingham you're welcome to stay.

MR. NOTTINGHAM: We thought we'd just stay a few minutes.

MR. SPACKMAN: Okay. You're welcome to go as well. I didn't know whether you understood that and wanted to stay, so you're welcome to stay or leave, whichever you want.

CHRISTIE SHIRLEY,

called as a witness herein, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (CONT.)

BY MR. EISMANN:

Q. Ms. Christie, when we had recessed from the last hearing you had made some explanation relating to part one, page one and page eight, and part two, page one, page six, and page 12, and you have called to my attention what you feel is an error on part one, page five. Would you look at part one, page five, and address the error that you feel exists?

A. Yes, sir. It's an entry at 8:50 p.m. on the Oliver Dobson weir. I have .6. It should be .06 from my reading.

Q. And that's right at the bottcm of the page, is it not?

A. Right at the bottom of the page. Yes, sir.

Q. Now I would like you to identify for me, in part one, the calculations that Mr. Dovel or Dovel made that appear on your diary. Just to save some time, you have told me page one was one of those pages. Would you tell us what you're referring to?

A. I'm referring to the 36 PSI at the top of the page under -- where it says number one, in parenthesis, Shafer Creek not irrigating. There is a handline of seven north of the boundary at 36 PSI. Mr. Dovel done the calculations on that.

Q. Took the measurements you mean?

A. Yes, he did. Also down towards the middle of the page where it says Double Diamond .65 gauge under water and dirt, one line on 20 acres, 19 PSI, Mr. Dovel also done that.

Q. And another page number you have given me in part one was page 13.

A. Yes, sir. It started with -- in south temporary 18 inch cipolletti weir in Oliver Dobson ditch above Dovel-Wallace field number one. I was with Mr. Dovel. We done that together. All of the calculations on this page are Mr. Dovel's calculations.

Q. Would you state specifically what you're referring to?

A. Okay. 8:35 a.m. temporary Oliver Dobson weir, field number one, .19 feet of crest on an 18 inch weir at .41 -- yeah .417 CFS equals almost 21 inches.

At 9:05 a.m. Oliver Dobson two foot weir, .21 feet.

Under that is .644 CFS equals 32 inches.

Down below we have a total of .644 CFS, minus .414 CFS and come up with .227 CFS equals 35 percent ditch loss before field number one.

Q. Does that refer to the -- is there any reference in what you just read to Double Diamond?

A. Only at the 7:05 a.m. entry, the Double Diamond weir was .37 and aside from that, no, sir.

Q. And O. D. refers to Oliver Dobson?

A. Yes, sir.

Q. Okay. And with respect to -- in part two you directed my attention to page five as being some entries or calculations made by Mr. Dovel. Can you identify on page five what those entries are?

A. Yes, sir. Right below 9:26 a.m., the Oliver Dobson weir reading was .25. It states D.D, Double Diamond, diverting .20 crest or .898 CFS or 404 gallons per minute, but beneficially using only number three wheel line with 24 nozzles, times 3.4 gallons per minute, equals 87 gallons per minute, versus 4,049 gallons per minute diverted, so 75 percent is being wasted or four gallons --

Q. Is that 75 or 79?

A. 79. I'm sorry.

Q. Go ahead.

A. 79 percent is being wasted or four gallons out of each five diverted.

O.D, Oliver Dobson, diverting .25 crest or .836 --

Q. Let me interrupt you. The rest of that after O.D, does that refer to Oliver Dobson?

A. Oliver Dobson.

Q. So it's not really relating to Double Diamond?

A. No, sir.

Q. That entry relating to Oliver Dobson, if I understand your testimony, was, in fact, calculated by Mr. Dovel?

A. Yes. This was all calculated by Mr. Dovel.

Q. Okay. And the next page number you gave me is page seven. Would you tell me which portions of the entries, if any, were Mr. Dovel's?

A. Okay. At the bottom of the page my last entry was at 7:05 a.m. Mr. Dovel is in parenthesis behind that, Double Diamond .26 at 11:30 and Oliver Dobson .14 at 11:30.

Q. Okay. So those two entries are Mr. Dovel's?

A. Yes, sir.

Q. And the next page number you gave me was page 14 in part two?

A. Okay.

MR. RIDDLEMOSER: May I -- I don't want to

interrupt, but if she would just say what is the date at the top of the page, my pages aren't numbered here.

THE WITNESS: I'm sorry. It's August 9th.

MR. RIDDLEMOSER: August 9th.

MR. EISMANN: That's it, Jack.

MR. RIDDLEMOSER: Middle of the page.

THE WITNESS: Top of the page. 11:56 a.m.

MR. RIDDLEMOSER: Okay.

BY MR. EISMANN:

Q. Okay. Now the question is what entry is a calculation by Mr. Dovel on that page?

A. Okay. .10 Oliver Dobson weir above field number one equals .16 CFS or eight inches.

Q. And that's his entry?

A. That is his calculation. He quoted it to me and I entered it in the diary.

Q. And the next page number you gave me was page 27 of part two.

Just a minute, Jack, I will give you a date. It's September 9th.

And with respect to that, what appearing on that page is Mr. Dovel's calculations?

A. His calculations began at 10:50 a.m, estimated five inches of water by Dovel-Wallace house, Arlie Wood's weir .156 feet of crest equals six inches.

11:25 a.m, Oliver Dobson weir, .105 equals approximately 12 inches.

11:38 a.m, Double Diamond weir, .19 equals 42 inches.

Total water wasted, approximately 65 inches.

Q. Now as best you can tell from your examination going through your diary, do those that you have just mentioned represent the entries or calculations, that is, that Mr. Dovel made that appear in your diary?

A. Yes, sir. As far as I can recollect. Excuse me. On September 10th there is an entry here that Mr. Dovel did in the diary. I was not present on this day. That is all totally Mr. Dovel's.

Q. Okay. So we add, then, to that page 28?

A. Page 28. Yes, sir.

MR. EISMANN: That completes our direct examination of Ms. Shirley.

MR. SPACKMAN: Okay. Mr. Riddlemoser?

CROSS-EXAMINATION

BY MR. RIDDLEMOSER:

Q. Ms. Shirley, just so that I understand here, this was all -- all these entries are 1991, with the dates specified, but it's all the year 1991?

A. Yes, sir, it is.

Q. And you stated that you were employed by Mr. Dovel to be his water master?

A. Yes, sir.

Q. And he paid you for this work?

A. Yes, he did.

Q. Had you ever worked as a water master before?

A. I never had, but I did apply for the position of water master in I believe it was 1990. Mr. Lester gave me the application. I filled out the application. I was notified that myself and one or two others were being considered for the position. We then had the hearing with the Oliver Dobson situation. I was notified then by Mr. Lester, because I was subpoenaed as a witness in this proceedings that I was no longer qualified for the position, because it would be a conflict of interest.

Q. But as I understand it, you were hired by Mr. Dovel to make certain inspections of the Double Diamond property and the Oliver Dobson property during the period of time contained in your diary; is that correct?

A. I was not hired to make inspections, no, sir. I was hired to take the weir readings. Any inspections I made were in the company of Mr. Dovel.

Q. You say the weir readings were taken in his company?

A. No. I was hired to take the weir readings by

Mr. Dovel at Mr. Eismann's suggestion.

Q. Oh. And the purpose of your making these inspections was what?

A. The purpose in my making these measurements at the weir at Mr. Eismann's instructions were because there were some discrepancies in what was being diverted -- or what was claimed to be -- being diverted and being used as to what actually was being diverted and being used. We ran these measurements, we done photographs, we took the video movies, all at Mr. Eismann's suggestion. This is to prove who was telling the truth and who was misleading the Department of Water Resources.

Q. Well, now what do you mean "is to determine who was misleading"?

A. Somebody was misleading. That's why this whole thing is happening here. So Mr. Eismann suggested to Mr. Dovel that he hire somebody privately, not associated with the Department of Water Resources, to make their own diary and their own calculation -- or their own entries on this.

Q. Well, were they saying that the Department of Water Resources wasn't properly supervising it?

A. No, sir. That's not what they said.

Q. And while you were making these inspections or whatever, you were certainly advised that the water

that was being diverted was controlled by the water master; were you not?

A. Yes. I met with the water master on a few occasions down there, Mr. Hank Bernstein, and we compared our readings and they always come out the same.

Q. And he was the one there that was regulating the water?

A. Yes, sir.

Q. And he was the one that was being paid by the people that were on the ditch?

A. Yes, he is.

Q. And, of course, you're well aware that Mr. Rumsey paid a very substantial part of compensation to him for being the water master, are you not?

A. Yes, sir. And so did Mr. Dovel.

Q. I understand. And Oliver Dobson paid?

A. Yes, sir, they did.

MR. RIDDLEMOSER: I have nothing further.

MR. SPACKMAN: Mr. Eismann?

REDIRECT EXAMINATION

BY MR. EISMANN:

Q. Yes. You mentioned that your inspections consisted of reading the weir.

A. Yes, sir.

Q. However, the observations that you made of the number of sprinkler lines operating, the number of sprinklers on those lines operating, and the times that they were operating, your observations in Jack's Creek, those were all your observations, are they not?

A. Yes. Jackass Creek. And the wheel lines, yes, sir, those were all my observations.

Q. To your knowledge was the water master recording any of that information?

A. To my knowledge I don't believe he was recording which wheel lines were running and how many sprinklers were in the wheel line. As Mr. Cockrum himself testified, he did not even know how many sprinklers were on those wheel lines.

Q. Are the entries you made, in fact, the honest readings that you took at the time and the observations that you made at the time?

A. Yes, sir, they are. I had no reason to make any of this up.

Q. To your knowledge, when you were viewing the sprinkler operation, did you see any representatives of the Department of Water Resources looking at the same operations you were looking at, sprinkler lines operating, number of sprinklers operating, so forth?

A. No, sir.

Q. Did you at any time see a representative of the Department of Water Resources at Jack's Creek where the overflow is?

A. On one occasion I did meet with Mr. Bernstein and he had measured the overflow on Jackass Creek and he told me what his measurement was and I recorded it in my diary.

Q. That was on one occasion throughout the whole season?

A. As far as I can remember, yes, sir.

Q. Do you have a recollection as to how often the water master was actually in the Porter Creek area during the time he was measuring and allotting water?

A. There was approximately two or three times when I encountered him. I couldn't tell you exact days or times on that.

MR. EISMANN: Okay. That's all the redirect I have.

MR. SPACKMAN: Mr. Riddlemoser?

RECROSS-EXAMINATION

BY MR. RIDDLEMOSER:

Q. Just a question or two here. Were not the weirs locked?

A. You can't lock a weir.

Q. Was the diversion point locked? Once they turned it in did they -- were they not locked?

A. The water master put a lock on them, yes.

Q. Yes. So that he determined how much water was to go and then locked them?

A. Yes.

Q. Okay. But the very nature of this is that you were hired by Mr. Dovel to checkup and keep track, snoop, spy on, whatever, Mr. Rumsey and his operation or Oliver and Dovel -- Oliver and Dobson or both of them?

MR. EISMANN: We object to the form of the question and the question's been asked and answered. He's asked in his first cross-examination if she was hired by Mr. Dovel and she responded yes.

MR. RIDDLEMOSER: I will withdraw the question.

MR. SPACKMAN: Thank you, Mr. Riddlemoser.

MR. EISMANN: I have nothing further. Have you completed your --

MR. RIDDLEMOSER: Yes, I have completed mine. I have nothing further.

MR. SPACKMAN: Thank you, Ms. Shirley.

By the way, I think my notes reflect that a document marked as Exhibit G has not yet been admitted into evidence.

MR. EISMANN: We have Mr. Watts present who is an

engineer who has done some calculating in this matter. We would like to put him on, but there would be some material that is not -- has not yet been admitted in evidence and that he would utilize in calculations and those items basically would be pressures on sprinkler lines. Jack, the pressures are noted in Exhibit G, but that testimony will come in through Mr. Dovel. Would there be an objection if we had him do calculations assuming certain pressure on sprinklers so we can, again, get him on and get him off, so that he doesn't have to sit here?

MR. RIDDLEMOSER: Well, I think the basis there, as I'm looking at this, is that I don't -- there has not been any foundation for any relevancy to any part of this as to where we stand at this time.

Granted, as I say right here, I -- there has been -- while it hasn't been admitted -- again, I'm talking about G right now -- while it hasn't been offered again here for admission as an exhibit, there hasn't -- there hasn't been any relevancy shown to any part of this.

MR. EISMANN: Well, obviously, Mr. Hearing Officer and Jack, this is a building process. You don't have one witness who completes all of the information necessary and the actual water usage made by Double Diamond is obviously very relevant as to what the status of their water right is, so the relevancy we will tie up in, I think, good

fashion.

MR. SPACKMAN: Okay. Well, I guess at this juncture it's a good time for me to express some concern on my part. As I told you when I started this hearing, I was assigned this matter probably because I know less about it than anybody else in the department and that's by design and I hope that helps in the appointment of a hearing officer that's detached and is not -- is not predisposed in one way or another.

It also -- when evidence is presented, I also may not have an idea of what's happening where other people might have an idea. I guess I have a sense so far as to where we are headed with this evidence and I guess now would be a good time, perhaps, to ask you for some opening statement, even though we are mid way through testimony, Mr. Eismann.

It's my understanding of the law that I need to look at this application for transfer and determine whether it will result in an enlargement of use, whether it will injure other water right holders, whether it's in the public interest, and whether it's consistent with conservation of the water in the state of Idaho. I think that criteria is there now. There is one about changing agricultural base of the economy, which I don't think is at issue here, but I also have a duty to look at issues,

such as forfeiture, to determine whether the right has been forfeited, because if it has been forfeited, then approving the application for transfer would be inappropriate.

From the information that's been presented so far I sort of get a sense that there may have been some waste of water at times and I recognize that there is always some degree of waste or inefficiency of use of water in any operation and I don't think that rises to the level of forfeiture.

Now if the evidence that will be presented here today will be evidence that waste of water or inefficient use of water, my position is, at least initially, that those kinds of issues are probably not appropriate in an application for transfer request or hearing before the department, but are matters to take up in the administration of those rights within the water district and enforcing more efficient use of the water itself. I don't think it rises to the level forfeiture, simply because that water is being used less efficiently than others think it should.

Now with that introduction, I will give you an opportunity, maybe, to explain where you're headed and then let's go forward, but I will look at this information on the basis of relevancy and if we are going at it from

the point of -- or from the position of waste of water somehow, unless that waste is so egregious or has gone on for such a long period of time that it does result in some forfeiture of a portion of that right, I will -- I may attempt to limit the testimony that comes in, so with that, Mr. Eismann, you may respond.

MR. EISMANN: Well, first off, it's our position that the law is that the effective waste on the continuation of a water right depends on degree and to some extent have addressed it in that sense, but I think the authority establishes that there is a point at which waste of water simply results in a reduction of the water right, because you're not permitted to, just as a crude example, claim 200 inches, withdraw 200 inches from the source that you're receiving the water, apply 100 inches, and let 100 inches go unused or waste it. That affects the water right. And my recollection is we have Idaho cases to that effect. That's point one.

Point two is when we are involved in transfers, we can only -- the water right now is up to see what it really is and if, in fact, the application -- beneficial application of that water right is and in the example I gave, 100 inches, even though there is no waste in the sense that it's leaking out here and leaking out there, but they just don't use more than that, their

system will not apply more than that, then they have 100 inches of water, not 200 inches of water, so we are not taking about minor degrees of five or say ten percent, we are -- what we are talking about is major degrees and the reason Mr. Watt's testimony -- the area he will be testifying in is, first, a fairly simple calculation at how many pounds pressure a given nozzle will produce, about so many gallons a minute, and then if you multiply the number of nozzles times that factor or those gallons a minute, you're going to find what is being beneficially used at the sprinkler head and, of course, that is a necessary and relevant ingredient to the principles I have just discussed.

Likewise, if you have or claim to have in making beneficial use of water on 200 acres, in fact, when it is 100, then you don't have a water rate to service 200 acres, you have a water right to service 100 acres and so the area -- the actual acreage involved becomes important.

MR. SPACKMAN: Well, and I agree. If there is a showing and it's clearly established by clear and convincing evidence, because that the standard, that the -- that the water right has been either fully forfeited or partially forfeited, then that's a proper matter before the department today. I want to -- Mr. Riddlemoser.

MR. RIDDLEMOSER: Well, let me say a word here

before --

MR. SPACKMAN: Yes. Sure.

MR. RIDDLEMOSER: -- you -- I don't mean to interrupt you there, but I --

MR. SPACKMAN: That's all right.

MR. RIDDLEMOSER: -- I take a different position there.

MR. SPACKMAN: Okay.

MR. RIDDLEMOSER: I think the issue there has to do with this water right transfer and the issues which are set out in the department's manual and the code as to what is to be determined here and when we get into this issue right here, if they are going to claim waste of water or whatever, that's not a matter to be taken up in this hearing right here.

We are looking at 22 acres transferred number one water to 22 acres of number 15 water situated right next to it, coming right out of the same point of diversion, coming right down to the same ditch, doesn't change one thing and I think right here that the only issues that are involved in this proceeding are the -- are the ones that are set out in your original letters, will the transfer, if approved, injure other water rights, will the proposed transfer, if approved, constitute an enlargement in use, and is it in the public interest and I

think that is the issue that is here.

Now if they are going to claim there that for whatever their basis is, that there is a loss of water rights, then that is outside the scope of this thing. That gets into the whole element of the number one water right, which it comes up to 193 acres. The issue before this hearing at this time is the transfer of those 22 acres from number one to number 12 and back.

MR. SPACKMAN: Are you arguing, Mr. Riddlemoser, that the Department of Water Resources doesn't have the authority to look at the issue of forfeiture when considering a transfer?

MR. RIDDLEMOSER: Well, this forfeiture, that's not what is involved there with this, because the issue here is the 22 -- the transfer. How does the transfer fit into it. I'm not saying that the department can't look into a forfeiture. You can look into abandonment, you can look into wasting, but not in this type of a proceeding.

MR. SPACKMAN: Well --

MR. RIDDLEMOSER: That's where you get into the relevancy of it.

MR. SPACKMAN: Okay. Well, I know that the Idaho Supreme Court has held that in reviewing an application for transfer -- and this is -- I can't give you a citation, but I know the name, it's Jenkins versus Dunn or

Dunn versus Jenkins, and the Court held the very issue was can the department consider forfeiture in -- when an application for transfer is filed with the department. The Court held the department can consider the issue of transfer in determining whether it should approve or reject the proposal and so I think it's an appropriate issue for the department to look at.

Now you may be questioning whether the department can look at the entire water right, the entire 193 acres and the amount of water which is appurtenant to those acres, whether the department can look at the right as a whole or whether it only can look at 22 acres which are sought to be changed.

MR. RIDDLEMOSER: That's my -- that's my position right there.

MR. SPACKMAN: Okay. I have a hard time pulling a portion of the water right out and not considering the rest of the water right and one of the reasons for that is we are, by the transfer, in my opinion, reconfirming what the right is. In other words, the records will reflect that there are 193 acres irrigated by a certain quantity of water when this transfer is approved and although the argument may be made by counsel at this point in time that only 22 acres were transferred, the reverse argument often made to the department is that once there is a question

down the road about the use on the remaining acres that the department sanctioned that use in approving a transfer before it and so -- and we have seen that as well.

I will take the position that I am looking at the entire right itself and not just the 22 acres. I don't know how I can severe the two. But I will also take the position that mere waste of water does not rise to the level of forfeiture.

MR. RIDDLEMOSER: Okay.

MR. SPACKMAN: And as Mr. Eismann said, there is a possibility that through a long period of time, through five years of nonuse -- and those five years need to be consecutive nonuse of that water and five years of consecutive nonirrigation of a number of acres out there, that -- and if it is established by clear and convincing evidence that a portion of that right may be forfeited, but that is the standard and periodic waste doesn't rise to the level of forfeiture in my opinion.

So with this brief discussion at this point, Mr. Eismann, if you want to add something more, you may, or you may go forward.

MR. EISMANN: In this case what you have is these -- the principles you announce are not clear cut.

MR. SPACKMAN: Oh, sure.

MR. EISMANN: They flow into each other and my

suggestion is a method of resolving it is let's get our evidence in, let's submit our briefs, let you make your ruling, because the evidence that comes in with respect -- on the one hand you call it waste, on the other hand you call it simply not applying it, because they can't use it, and so it's a portion that was never used.

MR. SPACKMAN: If it's not applied and show by clear and convincing evidence that it's not applied for a continuous period of five years or more and that the land is not irrigated for a continuous period of five years or more, than that's clear and convincing evidence and that's forfeiture under the law.

Let's cut it short a little bit. Unless you have other things to add, I will, on my own -- because there is a question pending before me to admit this document -- the only question I have is relevancy.

MR. RIDDLEMOSER: Which one are you looking at there, sir?

MR. SPACKMAN: This is Number G. These are the notes of Ms. Shirley. I don't know what the relevance is yet, but she's testified that she was the person who recorded in the diaries and she's identified calculations of Mr. Dovel -- in fact, those calculations have been described in detail and they are in evidence now anyway, so I will admit this document into evidence.

(Protestant's Exhibit G admitted.)

Let's go forward, Mr. Eismann.

MR. RIDDLEMOSER: Subject to my objection.

MR. SPACKMAN: Sure. Sure. Yeah.

MR. RIDDLEMOSER: Okay. All right.

MR. EISMANN: Well, and subject to this, Jack: Though that's a photostat, as I have told you, we have the original here and you're welcome to examine it at any time.

MR. SPACKMAN: Maybe I have wasted more time in this discussion than it was worth, but --

MR. EISMANN: Now get back to my request. With Exhibit W -- or, excuse me, Exhibit G in evidence, then, we do have in evidence these readings of pressure and that's the only missing ingredient that we need to really get Mr. Watt's on and off and I would now call Mr. Watts.

MR. RIDDLEMOSER: Well, if that's it, then, I'm going to renew my objection to Exhibit G, because this is only for the season, at the most, or the dates in 1991 that it purports to cover, from June 20th -- September 16, 17, 18, and with that it's not foundation to take any action of forfeiture or abandonment or wasting. It does not supply the foundation to go forward with that line of testimony.

MR. SPACKMAN: Okay. I will recognize your

objection for the record, Mr. Riddlemoser.

Exhibit G will still come in. I recognize that it only covers one year and it's a limitation in the evidence and so --

MR. RIDDLEMOSER: That's correct.

MR. SPACKMAN: -- so go ahead, Mr. Eismann, you may bring your witness forward.

DON WATTS,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISMANN:

Q. Mr. Hearing Officer, I am handing Mr. Watts a document marked Exhibit V, as in Victor. I have a copy for your convenience for making notes on if you like and I have a copy for Mr. Riddlemoser.

Please state your name.

A. My name is Don Watts.

Q. And your business address?

A. It's 836 La Cassia.

Q. And your profession or occupation?

A. I'm a licensed civil engineer and land surveyor and structural engineer.

Q. How long have you been licensed?
A. Since 1968.
MR. RIDDLEMOSER: '58 or '68?
THE WITNESS: '68.
MR. RIDDLEMOSER: '68?
BY MR. EISMANN:
Q. What is your formal education?
A. I have a bachelor's degree in civil engineering from the University of Idaho and some odds and ends of other courses.
Q. Do you have any other degrees?
A. No.
Q. Are you affiliated with any firm?
A. I own A & B Engineering.
Q. Do you have any other pursuits, other than as a civil engineer?
A. I teach some classes at Boise State.
Q. Would you describe generally your experience in the civil engineering field?
A. Well, I started out as soon as I graduated and went to work for the Northside Canal Company and since -- that was in 1963 and most of the time since I have been in water resources.
Q. And does that include determining or calculating areas --

A. Yes.

Q. -- within given confines? Does that include determining water flow?

A. Yes.

Q. You have before you an Exhibit V and you have brought a larger --

A. It's essentially the same. There is a minor difference or two in there. There was a numbered area on the small copy, number 22, that didn't really represent anything and it's been changed and there is some indications and some clarifications on the larger one.

MR. EISMANN: Let's have that maybe marked as V-1, just so that we have the two of them in the record. So we would have V and a V-1. Would that be --

MR. SPACKMAN: What is V?

MR. EISMANN: V is the small one.

MR. SPACKMAN: Okay.

MR. RIDDLEMOSER: And it has other material that we will be testifying to besides what Mr. Watts testified to.

MR. SPACKMAN: And then V-1 is the larger --

MR. EISMANN: Is the larger and apparently there has been a change or something that he feels is appropriate to refer to; is that correct, Mr. Watts?

THE WITNESS: That's correct.

MR. EISMANN: Do you have exhibit stickers?

MR. SPACKMAN: Pardon me?

MR. EISMANN: Do you have exhibit stickers by chance?

MR. SPACKMAN: I do not.

MR. EISMANN: Can I mark this, then, just with a pen?

MR. SPACKMAN: Yes.

BY MR. EISMANN:

Q. First, I think it would be appropriate to have you take V and V-1 and indicate what changes should be made on V to make it correspond to V-1.

A. Okay. The area indicated as number 22 on V doesn't appear on V-1.

MR. RIDDLEMOSER: Excuse me, sir. Does not appear on V-1?

THE WITNESS: Does not appear on V-1.

BY MR. EISMANN:

Q. Would you explain that, please?

A. Those were to be areas within various 40 acre parcels and fields that were to be compared with Soil Conservation Service -- or ASCS, I guess, field areas which they refuse, always, routinely to testify about, so we just did these to confirm the areas that showed on their maps and that little number 22 area is not an irrigated acre and that 22 was put on there inadvertently.

Q. What other changes need to be made?

A. Then from there on the areas have been renumbered so that there is a 22 on the V-1 that's a significant area and it is where 23 was before and numerically each one of them changes by one. The highest number on V is 36, the highest number on V-1 is 35.

Q. Any other changes that need to be noted?

A. Only in the mode of designation. There have been some arrows that point into the areas to clarify the identity of them, rather than have some numbers that overlap the small spaces, and a couple of nonirrigated areas have been cross-hatched.

Q. Okay. Now would you tell us how you arrived at or how you made your calculations that appear on V-1 and V?

A. We used aerial photography and an overlay of the sections so that we could scale it to the aerial photography and then we cross-checked it with the copies of aerial photography that came from the ASCS office in Emmett.

Q. And are the acreages corresponding to the numbers on V and V-1 accurate, to the best of your knowledge?

A. To the best of my knowledge, they are as accurate as we could get with what we had to work with.

They correspond within about two percent of the acreages set forth by the ASCS.

Q. And I assume in any calculations such as this there is a margin of error. What would be your best opinion as to the margin of error?

A. I would expect it not to exceed five percent.

Q. Would that be plus or minus five percent?

A. Probably plus or minus five percent. Probably less than that, but as a maximum number probably five percent either way. Typically it will go one way or the other, because the scale will be off a little bit one way or the other on the aerial photos.

Q. You won't get mixed results, you won't have --

A. Typically you won't get a mixture of some of them high, some of them low, they may all be a little high or a little low. On these ours came out more often about two percent higher than the ASCS office.

Q. Now to determine the number of acres in any composite group which has a number, would you simply take a total of those numbers to arrive at the total acreage of the plot that you wanted to determine?

A. That's correct. And on this V-1, one other thing I might point out, it's in color and the parameters of the fields are marked in red and the boundaries of 40

acres sub parcels are -- in some instances are government lots, not 40 acre divisions. The Payette River isn't shown on either one of them, but those are bounded in black squares, sections lines are in green, so that we find the area of a portion of the field within a certain 40 acre parcel would be maybe bounded by two boundaries of a 40 and a red line for the line of a field.

Q. Looking at V, we had a notation of section 23, section 26, and section 35. Does Exhibit V-1 show the center or corners of these sections, so that you can tell --

A. Yes. Section -- or V-1 shows each section corner more clearly than this -- than Exhibit V does.

Q. And to the best of your knowledge are those correct section corners?

A. They are the best that we could come up with from the aerial photos as they were marked. They matched with the locations of the section corners that were described on the ASCS aerial photo quads and the Soil Conservation -- or ASCS aerial photos.

Q. And what acreage is comprised in each large square on Exhibit V-1?

A. Normally they are 40-acre parcels.

Q. Okay. And that would also be true on Exhibit V, would it not?

A. That's correct.

Q. And it would appear to me, then, that we are showing all of section 26 and all of section --

A. We have all of section 23, all of 26, and a little bit in 35.

Q. What factors do you need to have as a given to determine the output of a sprinkler head?

A. We need the size of it and the pressure and a rating on the nozzle.

Q. And is that from a manufacturer's specification?

A. Yes.

MR. EISMANN: Have we handed to you Exhibit F, Mr. Hearing Officer, or did we keep that?

MR. SPACKMAN: I don't think I have it.

BY MR. EISMANN:

Q. Handing you what has been marked as Exhibit F -- and I'm using a copy that I have and we will hopefully try to substitute, because I don't find the one with the big blue sticker right away. Is that the type of material that you would utilize from the manufacturer to predict the size -- or the output of a sprinkler head?

A. Yes.

Q. And Exhibit F covers what type of sprinklers?

A. It covers several series of Nelson and Rain

Bird sprinklers.

MR. EISMANN: I'd like to have you tell us, by reference to -- well, first, we would offer Exhibit F.

MR. SPACKMAN: Have you looked at that, Mr. Riddlemoser?

MR. RIDDLEMOSER: I'm trying to find my copy here. Some of mine got mixed up a little bit here, but I'm not finding Exhibit F, if one was presented here.

MR. SPACKMAN: It was never presented to us, so you may not have received a copy.

MR. RIDDLEMOSER: Oh, I haven't seen it, then, if you haven't presented one.

MR. SPACKMAN: Now you have got two.

MR. RIDDLEMOSER: Just one question or two. Mr. Watts, you are familiar with the information in that exhibit?

THE WITNESS: Yes.

MR. RIDDLEMOSER: And where do those figures and so forth come from?

THE WITNESS: They are done by the factory. They run them within each one of the configurations of their sprinklers. They vary a little bit, depending on what kind of a -- internal passages and so forth and efficiency of the sprinklers, so they rate them. You will find that, for instance, Nelson and Rain Bird may have the same

nozzle sizes, but a little bit different flow, so they are individually rated by the factories.

MR. RIDDLEMOSER: But this is engineering data supplied by the manufacturer of the sprinkler?

THE WITNESS: That's correct.

MR. RIDDLEMOSER: Okay. I have no objection -- I object to it, except on the element of relevancy.

MR. SPACKMAN: Okay. Exhibit F is received into evidence as a text that the engineer would use anyway in his evaluation.

(Protestant's Exhibit F admitted.)

By the way, we don't have a copy of that yet, Mr. Eismann.

MR. EISMANN: I'm going to leave that copy that we have produced. It's actually my copy. I got ready in that long and I think I walked off and left one that was for you, but we will see that that's corrected before the close of the hearing.

MR. SPACKMAN: Thank you.

BY MR. EISMANN:

Q. Do you still have Exhibit F before you?

A. Yes.

Q. I want you to assume a nozzle of 9/64ths opening with a Nelson sprinkler head and a pressure of 30 pounds. What would be, according to the manufacturer, the

output of that sprinkler in gallons per minute?

A. Okay. The Nelson series F-33, which is the one we are looking at here with a 30 pound per square inch nozzle pressure in 9/64ths diameter, would give us 3.15 gallons per minute per nozzle.

Q. And what would that be at 35 pounds?

A. 3.40 gallons per minute.

Q. And at 40 pounds?

A. 3.64.

Q. Now to interpolate between any of those, would you simply divide roughly the -- for instance, if you were going to -- if you have 32 and a half pounds, you would take half the difference between the 30 pounds and the 35 pounds to obtain a presentable result?

A. Yes.

Q. Now there is another sprinkler size, 5/32nds, on the Nelson. At 30 pounds pressure, what would be the gallons per minute output on the 5/32nds be?

A. 3.85 gallons per minute.

Q. And 35 pounds?

A. 4.16.

Q. And 40 pounds?

A. 4.45.

Q. And let's assume a flow control nozzle of 5.0.

A. The flow control nozzles are supposed to put out pretty close to a constant rate and the flow control nozzles are shown on the second page of this exhibit in the range from 20 to 40, the five gallon per minute ones will range from just barely over five down to just barely under four and a half, so flow control works a lot better in mid ranges than it does at those lower pressures.

Q. What would it be at 30 pounds?

A. At 30 it would be very close to five.

Q. And what would it be at 35 pounds?

A. It would be just a little over five.

Q. Five plus?

A. Yeah. Just barely. Yeah.

Q. And what --

A. With what we have got here to look at, these flow control nozzles are -- we don't have a -- or at least on that I see on this one we don't have a rating that goes below 40 PSI, because they are normally not run below 40 PSI.

Q. What are they at 40 PSI?

A. At 40 PSI the five gallon per minute one runs 5.1 gallons per minute.

Q. So they are pretty consistent through the pressure range then?

A. Yes. From 40 to 80 it varies only from 5.1

to 5.3. Below 40 it drops off.

Q. Now let's turn to Rain Bird and a 9/64ths sprinkler opening at 30 pounds would produce what?

A. 3.10.

Q. And 35 pounds?

A. 3.36.

Q. And 40?

A. 3.61.

Q. And a 5/32nd head on the Rain Bird?

A. At 30 it would give us 3.78, 35, 4.10, and at 40, 4.40.

Q. And the 5.0 head -- does Rain Bird make such a head?

A. I don't see anything in this one that refers to Rain Bird's flow controls.

Q. How would I apply the information that you have just developed from Exhibit F to determine the water output of a sprinkler line with 40 heads being operated?

A. We would multiply the 40 heads times the number of gallons per minute that each one put out, presuming that we have the pressure for each individual head, we may have -- we may have to take into account some variation in individual pressures, but if we take an average and streams not too far apart, if we take an average, then we can usually just multiply the average

pressure rating by the number of heads.

Q. In taking the pressure at the sprinkler head on a sprinkler line, if you take it at the first sprinkler and the last sprinkler, is that a fair average of what that sprinkler line will develop?

A. Not in all cases. It usually is. If it goes up over a hill or down through a gully it wouldn't be.

Q. If it was fairly consistent --

A. If we have a uniform slope or if it's flat ground then it is.

Q. Can you calculate for us what area is in the gravel pit area on Exhibit V and V-1?

A. The gravel pit area isn't differentiated on V and V-1, because the aerial photography that we had that showed the gravel pit had no reference for scale that was good enough to get it as accurately as we have these. We did a rough approximation of it and it came out 21 and a fraction, as I recall, within the confines of the gravel pit and what I guess were a couple gravel piles. The actual pit was substantially smaller.

Q. And the pond?

A. The pond and what appeared to be in the aerial photo some excavation that is above the water level.

Q. Are you looking -- can you look at -- behind

you and can you designate or describe what area you're referring to?

A. Well, the area that we took as the actual gravel pit was this -- pretty much the area within this red boundary that's got an X on it. I guess that's an X. There is some area in here which apparently still has vegetation over it and in this gross area in here, judging from some -- looks like a trench or something had been dug -- was taken as being a part of the gravel pit.

Q. Did you make a -- or can you make a determination as to the area in the road leading to the gravel pit?

A. From the entrance road down to the gravel pit the width of it is so narrow that it's kind of a -- it would be subject to larger errors, but we checked as closely as we could and it come out just under -- oh, I think like 9/10ths of an acre or something like that but there again, it's not to the same degree of accuracy that the larger areas would be.

MR. EISMANN: That completes our direct examination of Mr. Watts.

CROSS-EXAMINATION

BY MR. RIDDLEMOSER:

Q. Mr. Watts, I missed hearing part. What did

you say you had determined the gravel pit area to be? 21 something?

A. Now that's not just the pit area, it includes some gravel pile area and so forth. The pit area itself -- I'm going from recollection here, because it wasn't something that we worked it, necessarily, to determine it as a major thing. It seemed to me like it was somewhere in the neighborhood of 16, but with adding in the areas to include -- I guess those are gravel piles. It was -- it took those in addition to get it up over 20 acres, so the are actually included in here to my recollection was --

Q. Now is that -- what has been marked there as X, that is a pretty close scale to what the gravel pit and the pond area is, as you recall?

A. Now I have never been there. I'm looking from aerial photos only, so that was what we interpreted as being the gravel pit area.

Q. Is roughly what is marked there as X outlined in red?

A. Yes.

Q. Okay. And that totaled how much?

A. About 16 acres.

Q. And where is the additional that -- you say the gravel piles or whatever?

A. We interpret these to be gravel stockpiles in

here.

Q. You have never been up there?

A. That's correct.

Q. Okay.

A. Well, I have never on this site. I have been up there.

Q. All right. I assumed that. I appreciate that. Not on this particular site here?

A. No. The only thing that I have been involved in in this is to review and confirm these calculations and to confirm the aerial photo maps from the Soil -- or I guess Agricultural Stabilization and Conservation people as far as confirm the areas that show on those as being reasonably accurate.

There is one thing I might add in here. On these acreage determinations here on Exhibit V and V-1, these things are put down here to two decimal places. They are not that accurate. When you have an error or a possible error in there of five percent, that last decimal place, five percent disappears somewhere in the second decimal place, so we, for instance, don't represent that area 25 is exactly 11.71 acres, it's somewhere around 11.7. Probably within a couple of tenths one way or the other.

Q. Mr. Watts, I'm not quite sure I'm

understanding the purpose of this, but -- of this exhibit, but how did you determine the size of these various parcels and so forth and give them numbers and arrive then at the size?

A. What we did is we took the aerial photos that had ground reference points on them that represented the section corners, so we could establish a reasonably accurate scale, and then they were placed on a digitizing tablet that we have connected to a computer and the field boundaries that show in the aerial photos and the breakdowns of the section were over laid on that and then the areas were calculated using the digitizer and the computer in each one of those individual portions that's outlined.

Q. If I look at that cover page or -- well, here is one that's in color. What are we saying that that within -- that shows on there, what does that contain?

A. I'm not sure -- I'm not looking at the same thing you are.

Q. What's the green contain? What does the different colors contain and -- well, what if I looked at that, what are you telling me that that represents? Take the whole thing that's shown all outlined there on that cover page. What does that consist of?

A. I didn't prepare it. I can't tell you what

it represents. I didn't prepare the colored part that you're looking at there, Mr. Riddlemoser.

Q. Did you prepare it without color?

A. Yes.

Q. Well, forget the colors.

A. Well, I can't tell what the boundaries are that you're defining there.

Q. Well, I'm looking at the one right here that goes out and around. Not the section corners, but --

A. Give me the parcel, a piece, or numbers or whatever.

Q. Well, as I say, it's all got numbers. All I'm saying is that take your map there that you have got outlined in red.

A. Okay.

Q. And that's V-1.

A. That's V-1.

Q. What's that show? What's that a survey of or a drawing of or whatever it is?

A. Oh, it's the areas that were or represented on your aerial photo here that I presume must be Double Diamond properties at Horseshoe Bend. Are we still not getting our --

Q. Oh, I'm just wondering. That hasn't been testified to there as to what that was there. I was just

wondering what it -- did you make any other calculations inside or do you just cover that outside that you're talking about, the cover sheet? Is that what you did?

A. This is what we did.

Q. Okay. Did you check any water -- water department decrees or anything in arriving at that?

A. From the acreages?

Q. Yes.

A. No.

MR. RIDDLEMOSER: I have nothing further of this witness.

MR. SPACKMAN: Mr. Eismann.

MR. EISMANN: We would offer the first page of Exhibit V and all of V-1.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: Well, we will object to that, Your Honor. There hasn't been any foundation for relevancy shown at all on it. It isn't relevant to any of the issues in this proceeding.

MR. SPACKMAN: Okay. Regardless of the objection, the number of acres irrigated -- and I think that's what this purports to show -- I think is relevant. It's relevant to determine what the traditional practice of irrigation has been and I will receive the documents into evidence.

(Protestant's Exhibit V-1 admitted.)

Mr. Eismann, do you propose that we detach the front page from --

MR. EISMANN: No. We would offer and request admission of the first page, because this hearing here has laid the foundation for it. We will offer additional foundation for pages two, three, and four of Exhibit V. If we are unable to do that, of course, we can separate them so that the record's clear as to what the offer really is.

MR. SPACKMAN: Okay. Any further questions, Mr. Eismann?

MR. EISMANN: I have no further questions.

EXAMINATION

BY MR. SPACKMAN:

Q. I want to ask a couple of questions of Mr. Watts. Looking at this particular document there are some segments or parcels shown without numbers within them and I refer specifically to the drawing, here the number three --

A. Near the square area there?

Q. Yes.

A. It's not irrigated.

Q. So any of those parcels without numbers within them, those are not irrigated parcels and as a

result you did not -- you did not assign those parcels a number?

A. That's correct.

Q. And how did you determine they were not irrigated?

A. From the aerial photo.

Q. How did you determine that from the aerial photo?

A. Just from the appearance of the ground. That square area there that you're referring to is this little area in here. It doesn't show characteristic lines from the irrigation. Again, it's a determination from the aerial photo.

Q. You didn't -- you didn't determine whether it was irrigable or irrigated or not irrigated by discussing the matter with ASCS or consulting their information or other sources?

A. They showed no acreage on that parcel, so we presumed that it wasn't irrigated and it didn't look like it was irrigated from the aerial photos.

Q. Okay. So if I look at this map, the parcel labeled as number three is the parcel outside of the boundaries that I'm looking at then?

A. I'd have to have you look at this V-1. It's a little clearer. The arrow there points to parcel number

three. That's that small piece in the corner just above that square area that's interpreted as not being irrigated.

Q. I see. And then another small parcel, 14 is also --

A. Is also delineated more clearly on that V-1 exhibit. Another one is 26 and another is 28 that were smaller parcels where the numerals wouldn't fit within the parcels and those also carry slightly different numbers, because 22 was an identified parcel originally that wasn't irrigated.

MR. SPACKMAN: Okay. I have no further questions. Have I raised any --

MR. RIDDLEMOSER: Yes, you certainly have.

MR. SPACKMAN: -- on part of the parties? Mr. Riddlemoser, then we will come back to Mr. Eismann.

RECROSS-EXAMINATION

BY MR. RIDDLEMOSER:

Q. Now you stated there that you had determined these areas and by the aerial photograph. If you will look there -- I want to be sure that I'm understanding what this portion is right here that starts up at three and goes down to almost the edge of what is marked on the front here as 20.

A. Okay. That's the strip by the -- that's this area by the landing strip here -- the landing strip and the ground between the landing strip and the river. At least it looks a lot like a landing strip to me.

MR. RIDDLEMOSER: No further questions.

MR. SPACKMAN: Mr. Eismann?

REDIRECT EXAMINATION

BY MR. EISMANN:

Q. Which line on V or V-1 would represent the easterly boundary of the landing strip?

A. Well, the line common to parcels -- or the numbered parcels that we call three, one with no number, four, seven, 11, 16, and 20, and that would be the -- roughly the easterly boundary of that landing strip.

MR. EISMANN: Thank you. That's all I have.

MR. SPACKMAN: Thank you, Mr. Watts. Mr. Lester?

MR. LESTER: Mr. Spackman, I wonder if it would be acceptable for me to ask a question of the witness in the lines that you were in clarifying what he was testify to?

MR. SPACKMAN: I think that's fine.

MR. EISMANN: I think we would object to that. We -- this gentleman is not a party to the hearing, he's not introducing evidence, as except testimony he's sought to give on behalf of the proponent of the transfer.

MR. SPACKMAN: Okay. I will withhold ruling on that particular question. I think that -- I think that question could be funneled through the hearing officer anyway, you know, I -- so, Mr. Lester -- well, let's take a recess just for a moment.

MR. LESTER: Shall we go off the record?

MR. SPACKMAN: Yeah.

(An off-the-record discussion ensued.)

EXAMINATION

BY MR. SPACKMAN:

Q. Go back on. We are back on the record again After discussing the appropriateness of Mr. Lester asking a question. We have discussed the nature of the question. I think it's an appropriate one and the question is, Mr. Watts, the aerial photograph from which you determined acreages was produced in what year?

A. Neither one of them had a date. One of them was prior to the development of the gravel pit. The one that we used for the gravel pit reference, we correlated the one that's on this photo that you have got up here, whenever it was taken, we correlated the dimensions on it with the dimensions on the earlier one from clearly identifiable landmarks like the beginning and ends of road sections and intersections.

Q. So there were two aerial photographs which you used?

A. Yes.

Q. One predated the development and one --

A. That's correct.

Q. -- post was after development had -- or construction of the gravel pit began?

A. That's correct.

Q. And you correlated the two together?

A. So that we used the same scale factors, right, then we cross-checked to make sure that our areas were consistent on it.

Q. Okay. And which map did you use to calculate your areas?

A. The one that predated the gravel pit development.

Q. Why would you not use the map that postdated the gravel pit development?

A. Because we didn't have a complete enough aerial photo. It didn't cover all of what we wanted to get and weren't sure of the source of it, weren't sure whether it was an oblique or a direct photo, so we didn't want to use extensive areas on it. The delineation of the fields and so forth didn't show any characteristic difference, except in the area of the gravel pit and

access road.

MR. SPACKMAN: Okay. That's all I intend to ask about those aerial photographs. Anything more, Mr. Riddlemoser?

MR. RIDDLEMOSER: Nothing from me.

MR. SPACKMAN: Mr. Eismann?

MR. EISMANN: No.

MR. SPACKMAN: Okay. Thank you, Mr. Watts. I think we should recess now for about ten minutes and come back.

(A recess was had.)

MR. SPACKMAN: We are back recording. Mr. Eismann.

MR. EISMANN: I promised that we would get you the original of Exhibit F and we retrieved the copy that was used.

MR. SPACKMAN: Well, that was fast. You either have someone who is very efficient in your office or you found it in your materials, one or the other or both.

MR. EISMANN: Well, I'm not going to fess up.

Our next witness would be Mr. Dovel.

MR. SPACKMAN: Mr. Dovel, if you will come forward, please.

GEORGE DOVEL,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISMANN:

Q. Please state your name.

A. My name is George Dovel.

Q. And your address?

A. Route 1, Box 61, Horseshoe Bend. 83629.

Q. And you own property that is -- holds a water right for Porter Creek?

A. Yes, I do. In conjunction with my sister.

Q. And what right, prioritywise, do you hold on your ranch?

A. The rights by established priorities of two irrigation rights, I have the adjudicated priority of number six and number seven.

Q. Where do you divert your water? At what point on Porter Creek in relationship to Double Diamond diversion do you divert your water?

A. It is a joint diversion with Double Diamond, but it is upstream approximately a half mile or more from the Double Diamond number one and number 12 priority diversion.

Q. Would you explain that to me? Your point of diversion is a half a mile above the Double Diamond number one priority diversion?

A. That is correct. Yes.

Q. Then any water that you let go by to Double Diamond that they let go by their dam you never can reclaim or have access to again; is that correct?

A. That is correct. Yes.

Q. Would you describe briefly the Double Diamond irrigation system?

A. In reference to these fields, is that --

Q. From Porter Creek to the fields that are shown on Exhibit A.

A. Yes. It's conveyed through an earthen ditch for in excess of two miles until it -- the ditch empties into a concrete collection box just to the north of Jackass Creek up on the mountain side and water is then diverted through a pipeline, the mainline that Mr. Cockrum described and drew up here on the map, from that collection box onto their -- the lands in section 23 and 26.

Q. And then how do they apply the water to their fields?

A. It's applied on the number one priority fields, in these past several years at least, through six

wheel lines and a number of handlines and that is to say it's applied through sprinkler irrigation under pressure.

Q. Okay. And with respect to the sprinkler irrigation system, we have had Mr. Cockrum draw in irrigation lines up there, handlines and wheel lines on Exhibit A. Have you had opportunity to look at Exhibit A?

A. Yes, I have.

Q. And do you agree or disagree with the positioning of the lines, handlines and wheel lines, that he's placed on there?

A. I agree with it, yes.

Q. Now he has identified a number seven line. Have you had an opportunity to observe the number seven wheel line?

A. I did three days ago, yes, but I have not observed it functioning for sometime.

Q. Do you know how long it's been since you saw it functioning?

A. Approximately five years.

Q. With what frequency in the past -- well, let's start January 1, 1988. Have you examined or been by or viewed the Double Diamond fields depicted in Exhibit A?

A. Outside of the irrigation season I would judge probably every other day. During irrigation season, perhaps with a greater frequency, possibly an average of

twice a day.

Q. Could you hand Mr. Dovel Exhibit G?

State if you know what Exhibit G is.

A. Yes, I do.

Q. What is it?

A. That's the diary that was kept by my employee Christie Shirley during the 1991 irrigation season and consisting of two notebooks.

Q. I would like to direct your attention to page one of part one. Ms. Christie has identified an entry made by you. One of those was the reading of 36 PSI at the top of page one. Do you find that?

A. Yes. Yes, I see it.

Q. And do you recall taking that reading?

A. I do, yes. Ms. Shirley was present, but I took the reading with a Peto gauge.

Q. And what instrument did you use?

A. I used the Peto gauge.

Q. And is that like the instrument that we -- a picture of it is Exhibit S, which was introduced at the last session of this hearing?

A. Yes, it is. Either like one or that specific one.

Q. And whose Peto gauge was it that was used?

A. It was mine. I have two gauges that I keep

in current condition.

Q. Do you calculate those before using them?

A. To the degree that I calibrate them and I fairly frequently purchase a new pressure gauge and replace one. They have a habit of getting dropped or damaged and it's usually about as cheap to replace it, the entire gauge.

Q. And what were you -- what did you do, if anything, to check the accuracy of the gauge that you used on June 20th, 1991?

A. I checked it against -- let's see. It's difficult for me to remember which gauge I used, but each time I purchased a new gauge I checked the accuracy of the old gauge against the new one, compared them. First, I would calibrate them to zero and then --

Q. How do you calibrate those?

A. By removing the cover and using a small screwdriver and simply zeroing the needle to the zero position. It's affected by atmospheric changes and other things.

Q. Is it your practice to keep both of the Peto gauges that you use to check the one against the other?

A. Always. That -- and by always I should clarify that's one a season or when I make a new purchase.

Q. Directing your attention to the second

portion on page one of part one relating or referring to 19 PSI. Was that a reading that was taken by you?

A. I'm sorry. I don't see it or -- yes, I do. Down here. Yes, I do. Yes. That is correct. Ms. Shirley was also present at that time. This was not in this area, this was on some other Double Diamond field.

Q. But it's a measurement that you took?

A. That is correct. Yes.

Q. Directing your attention to part two of Exhibit G, page five. Ms. Shirley directed our attention to the last what I would call three paragraphs on page five as your information that -- information that you had that you -- calculations that you made that you provided to her and she recorded. Can you tell us what occurred in that regard?

A. Yes. I'm sure that she was present at this time, because I wouldn't have had her make the entries if she were not, but, in any event, we checked the Double Diamond weir reading, I believe photographed it, and it had two tenths of a foot of crest and I then pick up the booklet that the department provided me, possibly written by Mr. Darryl Larson, concerning water measurement and checked the scale for the three foot weir, compared it to .20 feet of crest and determined that they were diverting at that time .898 cubic feet per second and I have

simplified conversions that I use, I converted it to -- I'm wondering -- I thought -- I was wondering for a minute if Ms. Shirley did this, but I guess perhaps I did. You understand this has been nearly two years ago and it's difficult to remember that particular time there. This is something that we did quite frequently.

Q. But those calculations are yours?

A. I suspect they are, yes.

Q. And on page seven Ms. Shirley identified two entries in the lower right-hand corner of that page in part two as being entries made by you.

A. That is correct. That's my handwriting, yes.

Q. And page 14 -- go ahead.

A. Mr. Eismann, I should point out that I detected an error in this, what was written by Ms. Shirley. It's a slight error and probably insignificant, but --

Q. Well, go ahead.

A. It's essentially that at 20 foot of crest, 200 -- two tenths of a foot or 20 hundreds of a foot of crest is -- I'm sure. I will have to clarify it or verify it, but I'm sure it's .898 CFS, but that would, in fact, be 44.9 inches -- maybe that isn't an error. I'm sorry. My math's a little rusty. That is correct. 404 gallons per minute.

Q. Now going back to page seven. You have identified the two entries that you made in your own handwriting; correct?

A. That's correct. Yes.

Q. And going to page 14 of part two, Ms. Shirley identified there some items that you made entries -- at the top of the page is your calculations. Would you review that and tell us what you can recall regarding that? Is that your calculation?

A. I'm sure that those are my calculations at that time, yes.

Q. They do not refer, however, to Double Diamond?

A. No. This refers to the Oliver Dobson ditch.

Q. And then going to page 27 is -- Ms. Shirley's identified that as being essentially your entries, I think, in the entirety; is that accurate?

A. That's correct. Ms. Shirley accompanied me, but these -- I recall these. These were my calculations.

Q. And were they accurate, to the best of your knowledge?

A. They are and they were.

Q. Did you take photographs, VCR -- videotape photographs of the inspections and observations that you made in the year 1991 of the Double Diamond irrigation

operation?

A. That is correct. Yes.

Q. And of those videos, about what length would all of them be?

A. I have approximately 40 hours of videotape of inspections of the Porter Creek irrigation systems.

Q. And that includes right holders other than Double Diamond?

A. That is correct. Yes.

Q. Have you taken those and produced a tape directed essentially at the Double Diamond irrigation operation?

A. That is correct. Yes.

Q. Do you have the original tapes here and available for anyone that would want to view the original tapes?

A. That is correct. Yes.

Q. Have you taken pressure readings on other occasions that have been recorded in Ms. Shirley's diary, which is Exhibit G?

A. Quite frequently, both on Double Diamond and especially during the 1990 irrigation season with Ms. Shirley on the Oliver Dobson ranch.

Q. Now with respect to Double Diamond, would you explain how you went about taking the pressure readings,

other than the fact you used a Peto gauge?

A. Yes. If Ms. Shirley did it, I recorded what she was doing or observed and assisted her and if I did it I took the Peto gauge and calibrated it to zero and stopped the nozzle from turning, the sprinkler from turning and inserted the gauge and took a reading and removed the gauge and then inserted it once -- we each always inserted it twice to be assured that we were getting a correct reading and if, for example, on a line such as wheel line number two, when we would measure that, the line had pretty constant fall and we normally would take a reading on just the bottom most and the top most sprinklers and arrive at an average of pressure throughout the line.

Q. What pressures did you find existing in that process?

A. The highest pressure that I -- the pressures varied, of course, with the number of sprinklers and with the head, as evidenced by whether or not a pump was being used, for example, when the three wheel lines and one or more handlines were used the river pump and previously the Porter Creek booster pump -- neither were used, and obviously as you added more handlines we got less pressure readings. With five wheel lines, the highest pressure I have ever gotten on any of the wheel lines, with five

running, was 32 PSI.

Q. And did you get -- I think Exhibit G shows a higher pressure than that with one line running; is that -- page one of Exhibit G. 36 PSI.

A. Yes. To explain, this is a short line right at the source of the water and while the elevation may be slightly higher than these lines, such as number one and number two that are -- three is a mile further away or more, you get the greatest pressure at that point, because of a lack of friction loss. In other words, on this particular day there were five wheel lines running and three handlines running. I'll try to total these in my head, unless you give me a moment, but the pressure in all of these would have been the highest right at the source where there was not a great deal of friction loss, either in the mainline or in these longer wheel lines.

Q. Have you ever recalled measuring a pressure higher than 36 pounds per square inch?

A. I don't -- I can't recall it, Mr. Eismann. I may have, but I don't recall it and if it -- if I had, it would have been a very unique circumstance, such as having just one line running with the substantial pressure and right at the upper end of the mainline so that it had very little friction loss.

Q. Now unless there is a booster pump or unless

water, as Mr. Crockrum described it as being injected into this system with Porter Creek water and the Payette River water at the same time, what provides the pressure to using the Porter Creek water?

A. If no pumps are utilized, there is a head in excess of a hundred feet existing in the mainline starting just to the north of Jackass Creek and continuing on down.

MR. EISMANN: Could Mr. Dovel be handed Exhibit H?

Incidentally, Mr. Hearing Officer, did we ever find the missing water master records? Those have not turned up?

MR. SPACKMAN: No. And I did not look extensively for them. I thought about it this morning. I have been tied up with some other matters, as have you, so I didn't find them.

BY MR. EISMANN:

Q. Would you tell us what Exhibit H is?

A. It is a summary that I prepared from the water master water records of delivery on the dates that the water master actually changed the quantity of water being delivered during the years 1998(sic), 1990, 1991, and 1992.

Q. With respect to -- does that come from Exhibit D, which is in evidence? That's the water master records for 1988, '90, '91, and '92?

A. Yes. If that's the correct exhibit, yes.
Q. Is that the source of your information?
A. That is correct. Yes.
Q. So this is simply a summary of those in a shorter form?
A. That is correct. Just for simplification to look at.
Q. Now with respect to those, would you explain how the water master records his entries and then how long that entry appears to apply?
A. Let's say that, for example, this first entry here on July 3rd, 1988, the water master would have locked the headgate probably and recorded at the time she read the weir, that 2.39 cubic feet per second.
Q. Now why do you say she if that --
A. Because in 1988 our water master was a lady.
Q. Okay. Not Christie Shirley.
A. No. No. No.
Q. And Christie Shirley has not been the water master?
A. No, not -- had no connection with the Porter Creek water master.
Q. Go ahead. Continue.
A. And this headgate would have remained there, according to the records, and the quantity of 2.39 cubic

feet per second diversion would have remained until the day of July 6th and at that time -- in other words, some water masters would draw a line and others would draw an A for absent each day and others would write in the 2.39 day by day until the date that they came to change, which in this case was obviously July 7th -- correction. 6th. And on July 6th the water master changed this headgate setting or possibly because of creek fluctuations she read a setting of 2.48 cubic feet per second and so on. In other words, the following day she'd either change the headgate or got creek fluctuations that read 2.11 cubic feet per second.

On July 8th -- on this particular date it is well set in my memory. The Double Diamond diversion was substantially closed because of excessive overflow at Jackass Creek and because of the complaints that I initiated in the form of a written letter to Mr. Tuthill, David Tuthill, the western region manager of the Department of Water Resources.

Q. What is the maximum setting that the Double Diamond number one right headgate can be set at for its right? How many cubic feet?

A. According to the decree, the number one right can be set at 3.82 cubic feet per second or 191 inches.

Q. And during the measured period, at least, of

1988 it was never -- never delivered the full right?

A. No, it was not.

Q. And the same would be true in 1990?

A. That's correct.

Q. And in 1991?

A. That's correct.

Q. And in 1992?

A. That's correct. However, I might point out that in 1990 and 1991, for a very brief period of time, for one day or several days in one instance, a maximum of 2.79 cubic feet per second was diverted and that is the quantity that was computed by, I believe, Mr. Lester in the department as being appropriate to the number of acres that was then being irrigated. In other words, it pertained to the removal of a certain portion, 50 some odd acres, in this gravel pit operation.

MR. EISMANN: Okay. We would offer Exhibit H.

MR. SPACKMAN: Mr. Riddlemoser?

MR. RIDDLEMOSER: Well, I have an objection to this, furthermore, on the grounds of relevancy and, number two, there, if this comes off of somebody else's records, why that -- foundation has got to be laid on that, too. Therefore, there isn't any basis there that's been shown here to make a summary from.

MR. SPACKMAN: Mr. Eismann?

MR. RIDDLEMOSER: Furthermore, it's irrelevant to the proceeding.

MR. SPACKMAN: Mr. Eismann.

MR. EISMANN: Well, the witness has testified that he took the information and prepared it in summary form from Exhibit D, which is the water master records, and it has been admitted in evidence as such. We are still looking for one year, but the information that is available, what need was used to pump -- was used to compile Exhibit H.

MR. SPACKMAN: Well, I appreciate the attempt to create a summary, which perhaps will make the review of the record simpler. The actual records, however, are the water master records. The witness has testified that he took the information from those water master records and I will allow the exhibit to come in, Mr. Riddlemoser, but it will be subject to review. In other words, I will consult the water master records themselves to determine whether this summary is correct or is not correct and -- because the water master records are the source of the information.

MR. RIDDLEMOSER: I understand that.

MR. SPACKMAN: And that's what the hearing officer needs to look at, but I will allow the exhibit to come in as a summary of those records.

(Protestant's Exhibit H admitted.)

BY MR. EISMANN:

Q. Could Mr. Dovel be handed Exhibit I?

Mr. Dovel, you have been handed Exhibit I. Did you prepare that document?

A. I'm sorry?

Q. Did you prepare that document?

A. Yes, I did.

Q. And would you tell me what Exhibit I is?

A. It's a simplified listing of the information contained in Exhibit G, Ms. Shirley's diaries of 1991.

Q. So it's a summary of those -- that information --

A. Exactly.

Q. -- by day?

A. By day and by time during the day.

Q. And for the year 1991?

A. Of the irrigation season during 1991, yes.

Q. And would you describe the -- each column that is headed?

A. Well, the date, obviously, and, for example, the first entry is June 20th. The time -- there is no time entered. There was an omission of the time. The weir crest is the reading obtained with the staff gauge on the three foot cipolletti weir installed by Double Diamond

below their -- about two or three hundred feet below their diversion, perhaps 200 feet below.

The next item, CFS, is the interpretation or interpolation, if you will, of the weir crest reading by consulting the water measurement charts. For example, .49 feet of weir crest on a three foot cipolletti weir is interpreted to be a diversion of 3.42 cubic feet per second.

The next is a conversion from cubic feet per second to miner's inches. There is a formula or a more simplified portion. It's simply to divide the cubic feet per second by two and then drop two decimal points, which produces 171 miner's inches.

And the next is a total gallons per minute for conversion to gallons per minute, which in its most simplified form is simply multiplying miner's inches by nine.

The next is the total nozzles used to apply water. This refers to all the nozzles used on the Double Diamond Ranch on the number one water right, because this is title 65-3103.

And we arrived at these total nozzles, as Ms. Shirley has indicated, by initially counting all of the nozzles day by day on every line. We ultimately determined that there were 125 nozzles in the six wheel

lines total, if all of them were in use, which I really have never seen quite all of them, there will always been one or two or three or a half dozen or more dropped, depending on the location of the wheel line, but we then decided to use an average of 21 nozzles per line to make Ms. Shirley's job more simple.

It's very difficult sometimes to count nozzles. It's quite easy when you have a video camera, you simply prop it up and telephoto and zoom into whatever viewing area you need and videotape them and if you don't get an accurate count, you take them back home and check it in slow motion and count them quite accurately.

But, in any event, the six nozzles would -- at a hundred -- correction. Six wheel lines at 125 total nozzles averages out to just under 21 nozzles per line.

And so, ultimately, after the first couple of weeks, I instructed Ms. Shirley to simply number the lines one through six and I then made this computation from that. We always -- I think with one exception in these entire several months of books, we always counted the number of sprinklers in the handlines, whether it was one or 14 or whatever it was, and that is added into the compilation on the wheel lines.

And the final column heading is Jackass waste and that is simply designated as overflow waste at Jackass

Creek, which is to say the surplus of water reaching Jackass Creek and overflowing through the discharge pipe into the creek. We used three symbols for this, H for high, M for medium, and L for low, and I explained this at the end of this chart in a key, which is H was in excess of 300 gallons per minute. We found that it was impossible for us to measure a flow that reached 300 gallons per minute or more. We even attempted it with a 50 gallon barrel, a 55 gallon drum calibrated and we just couldn't do it. Even worked with the water master for a while in attempting to do it and couldn't.

The medium designation is the range between 100 and 299 or 300 gallons per minute and the low designation represents a flow of from what one might describe as garden hose flow or about ten gallons per minute to 100 gallons per minute.

I used the designation zero when no waste was coming out the overflow pipe.

Q. Now you have some other symbols on here and you have changing and low pressure. What do those refer to?

A. Well, these were notes that either Ms. Shirley or I made -- in many cases she made them, but, for example, on 7-10, on July 10th, this note indicates that the pipe changers were changing lines. Part of her

instructions were to take the Jackass Creek reading within less than five minutes of observing the sprinkler lines and she was not to take readings if pipe changers were changing and if they were changing lines she was to make a notation to that effect and low pressure indicated usually that either the seal on some of the wheel lines was broken or that they were dribbling in a fashion indicating that there was not a normally adequate -- what's considered an adequate pressure for irrigation.

Q. What do you mean the seals were broken?

A. Well, in other words, depending on whether it's a wheel line or handline, but if it's a wheel line there, if you break the gasket seal it will discharge and then before this happens the water won't be distributed properly, the sprinklers in the higher elevation part of the wheel line will simply start to turn very rapidly or very slowly and the water will dribble out and as you get to a little higher or a little less pressure they simply start to dribble before the seal is broken and that same thing is true on the handlines, we observe that sometimes.

Q. Is there a seal in each length of pipe? Is that what you're talking about?

A. No. Yes, there is, but, no, that's not what I'm referring to.

Q. I still don't understand the seal you're

referring to.

A. Well, most of the -- it's a seal that's used to accommodate the draining of a wheel line.

Q. Okay.

A. And that's essentially -- we also see seals broken in laterals and mainlines sometimes and I suspect that's what you're referring to in low pressure.

Q. But what you're talking to is when the water is off or the pressure is low the line drains itself; is that --

A. That's correct. Yes.

Q. Okay. And what does it mean when it refers to combined with Payette River water this date?

A. Well, it was very difficult for us to tell, because we did not have access to the Double Diamond pump system and valve permitting the regulation of Payette River water, but on the afternoon of August 1st a substantial quantity of Payette River water was combined with Porter Creek water, which increased potential of the system. The pressure went up substantially and the number of nozzles utilized increased substantially. In fact, almost doubled, as you will see from Ms. Shirley's note. At that point in time there was very little sense computing nozzles applying Porter Creek water, since one has no way of determining how many of those nozzles are

applying Porter Creek or how may are applying Payette River water.

Q. So at that point, then, the only reference you would have would be what is being diverted at the Porter Creek --

A. That is correct. What's diverted at the headgate and measured at the weir. In other words, even the Jackass overflow, though, we observed it and observed continuing flows. That flow could and was, in my experience, regulated by someone adjusting the intake from the Payette River. In other words, if the intake from the Payette River was reduced, then the overflow of Porter Creek water or pressurized Payette River-Porter Creek water increased at Jackass Creek.

Q. Are you telling us that it simply backed up?

A. Well, that's an oversimplification, but, yes, in effect it sort of backs up, yes.

Q. The flow of Porter Creek water is -- meets a pressure of water from the Payette River?

A. Exactly. Yes.

Q. And so in a sense, then, doesn't flow as freely or develop a head --

A. That is correct.

Q. -- without that --

A. It simply limits the flow of Porter Creek

water, depending on how much Payette River water is pumping and at what pressure. This is a little more complicated than I'm explaining it to you. There are several things that enter into it than I have gotten involved in it. If you'd like an explanation I'll give it to you.

MR. EISMANN: We would offer Exhibit I.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: And to which we will object on the grounds that there has been no foundation of relevancy. It is taken -- it is a summary of information and calculated based upon some time table that has never been shown that this witness is qualified to make those findings and computations and based upon that and the fact that it is totally irrelevant we will object to it.

MR. SPACKMAN: Okay. I have not looked at the summary.

MR. RIDDLEMOSER: I would add one thing, if I may here, that it is based upon information which was provided by someone else.

MR. SPACKMAN: I think this document is one that a court of law probably would exclude -- and I'm just speculating -- because it has been prepared by someone probably not an expert. I think expert witnesses would be able to prepare this kind of document from data that's

available to the expert and that information could be compiled and placed in a summary form such as this and the expert could testify as to the computational conclusions.

This is not a court of law, however. This is an administrative hearing and the Department of Water Resources is deemed to have the expertise to look at this kind of information and determine its accuracy and I think this is the kind of information that's admissible in an administrative hearing and may not be admissible in a court of law and I'll accept it into evidence, subject to review by the Department as to its accuracy. There has been sufficient foundation laid that the information contained herein was recorded by Ms. Shirley or Mr. Dovel. I think the only question in my mind is the computation and the determination of what the flows are at this point in time, so I will again receive Exhibit I into evidence.

(Exhibit I admitted.)

BY MR. EISMANN:

Q. Could Mr. Dovel be handed Exhibit K?

Do you have Exhibit K?

A. Yes. I have it.

Q. Who took the picture?

A. I did.

Q. And do you know when you took it? Or about when?

A. The lower picture was taken on July 4th, 1991, at 4:37 p.m. and I would have to reference my records and ranch log to find out when the other picture was taken.

Q. Give the best date you can.

A. I would guess this photograph was taken in 1990 and from the condition of the foliage it -- I would assume it's probably in July. It's certainly in mid summer.

Q. Does the top picture reasonably and accurately depict the subject matter that you saw as you took this picture?

A. Yes, I believe it does.

Q. And does the bottom picture do the same?

A. Yes, I believe it does.

Q. There is a person in the top picture. Who is that person?

A. That is Ms. Shirley, Christie Shirley.

Q. And I have just got a black and white copy. Is there anyone shown in the bottom picture?

A. Yes. That is my son Matt Dovel.

Q. And would you describe the location of which these pictures were taken?

A. This is what we refer to as the Jackass Creek overflow. It's the Double Diamond mainline pipe crossing

Jackass Creek, you can see the dump valve there in the bottom picture, and these people are attempting to measure the flow. In other words, I would be standing there with a stopwatch and they'd take ten consecutive measurements with a five gallon bucket and I would time the quantity of time it took to fill a bucket and then times it and average it.

Q. Now looking at Exhibit A, would you identify the point on Exhibit A where these pictures were taken?

A. Yes. It's approximately right here where the trees -- you see the line of trees just below the Jackass Creek road and it just below the end of the ditch where the pipeline crosses under the road. That is to say, it's just south of point B.

Q. Would you mark -- put a circle at the point where that would be with my red pen and we can mark that maybe point C and that's what we call the Jackass Creek overflow where it empties into Jackass Creek; is that correct?

A. That's correct. Yes.

MR. EISMANN: We would offer Exhibit K.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: I can't find my copy. I think maybe I can look at one there, but -- and what you're offering this for is to show that at a particular time

that is the circumstances? At the instant the picture was taken?

THE WITNESS: Yes. I'm sorry. I thought we weren't --

MR. RIDDLEMOSER: Excuse me.

THE WITNESS: -- you were addressing the judge. Yes.

MR. RIDDLEMOSER: That's what it shows at one particular time at the time that picture was taken?

THE WITNESS: Mostly what that picture is for is just to illustrate how we measured the flow at Jackass Creek. Obviously I couldn't take a picture of myself with a stopwatch, but I carry one with me. My wristwatch is a stopwatch and -- I have it depicted, obviously, much better on the videotape.

MR. RIDDLEMOSER: Well, at that particular time do you know whether or not the -- that the irrigator from Double Diamond was --

MR. EISMANN: We object to cross-examination at this point. If there is going to be an objection, fine. If there is a question in aid of objection, fine, but this is simply cross-examine and I don't think it's appropriate.

MR. RIDDLEMOSER: Well, I didn't mean to cross-examination. This is just at a particular time?

THE WITNESS: Yes.

MR. RIDDLEMOSER: And that's what that shows and that's what it's being offered for, to your knowledge?

THE WITNESS: That's all. Yes.

MR. RIDDLEMOSER: No objection. I will object on the grounds of relevancy, Your Honor, or Mr. Hearing Examiner. I do have an objection, because I don't see the relevancy of the picture or the whole line of questioning.

MR. SPACKMAN: Your objection is noted. Exhibit K is received into evidence.

(Exhibit K admitted.)

MR. EISMANN: Could Mr. Dovel be handed Exhibit L?

MR. SPACKMAN: You have the original there, Mr. Riddlemoser.

MR. RIDDLEMOSER: Is that the original?

MR. EISMANN: No. Everybody got a copy.

MR. RIDDLEMOSER: Everybody got a copy of this one. Okay.

MR. SPACKMAN: It is here.

BY MR. EISMANN:

Q. Would you tell us what Exhibit L is?

A. Yes. This is a photograph that I took of a wheel line on the Double Diamond Ranch on July 4th, 1991, and it's simply used to illustrate what I was discussing, for whatever reason, a line that doesn't have sufficient

pressure, whether pipes are being changed, which may well be the case here, but a wheel line that doesn't have sufficient pressure, the highest sprinklers in the line no longer turn and they drain and then the lower sprinklers continue to turn, which is a -- this would be a normal circumstance when the line is being changed.

MR. EISMANN: We would offer Exhibit L.

MR. RIDDLEMOSER: No objection.

MR. SPACKMAN: Exhibit L is received into evidence.

(Protestant's Exhibit L admitted.)

MR. EISMANN: With the time element that you indicated, Mr. Hearing Officer, I think we ought to move, then, to the videotape that we have.

MR. SPACKMAN: Okay. Let's recess just for a moment.

(A recess was had.)

MR. SPACKMAN: The tape is operating again. We discussed the method that we will follow in viewing a videotape prepared by Mr. Dovel and the method that I have decided upon is that the audio portion of the tape will be turned off, Mr. Lester, who is assisting me, will operate the VCR and will also call out counter numbers on the VCR that will correspond to Mr. Dovel's testimony we are reviewing. By calling out the numbers anyone reviewing the records should be able to reference to the videotape

and to what Mr. Dovel is witnessing or viewing at the time he testifies.

We may also stop the tape at certain locations for objections or for explanation of what has just been viewed.

MR. EISMANN: Does the tracking need to be adjusted?

MR. LESTER: It's just on pause right now. I've just got it at the beginning point.

MR. SPACKMAN: Okay.

MR. EISMANN: This tape will be identified as Exhibit M.

MR. SPACKMAN: Okay. Let's start -- and one other point. As the tape is running, Mr. Eismann, do you expect to be asking Mr. Dovel questions or do we want him to narrate informally, which I think is a better form?

MR. EISMANN: I think so. Otherwise, we'd have to stop and start and stop and start, so my opening question to him would be, okay, you're looking at the videotape and have him, even in this mode, describe briefly the segments of the tape and then let's try to handle it a segment at a time, have him show it, and then describe any verbal description that's appropriate.

MR. SPACKMAN: Okay. Mr. Riddlemoser, if you object to certain portions, sound off and I will ask Mr.

Lester to turn it off until the objection is resolved. Okay.

MR. LESTER: We are on the tape?

MR. SPACKMAN: Yes, we are. Do you want to start, Mr. Eismann, questioning Mr. Dovel before Mr. Lester turns the video on?

BY MR. EISMANN:

Q. Yes. Mr. Dovel, you have prepared a tape which is portions of a great many other tapes that you have taken that refer to or depict various portions of the Double Diamond irrigation operation and system; is that correct?

A. That is correct. Yes.

Q. And you have the original tapes, which this is a -- you picked pieces and parts out of other tapes to assemble into this one tape of approximately 45 minutes; is that correct?

A. That is correct. I have the 22 original eight millimeter tapes here and this was simply transferred in small part onto a VHS tape for showing.

Q. The way we have anticipated proceeding is that you -- the tape will roll and we will view a segment and where you want it stopped you simply indicate to Mr. Lester and he will stop it, you could then give us an explanation of what we have seen or what it depicts. Do

you understand?

A. Yes, I do.

Q. All right. Let's roll the tape.

MR. LESTER: The counter on the VCR is at zero at the beginning of the tape.

THE WITNESS: This is a picture taken of the Double Diamond's main ranch, the Porter Creek portions.

This part here is the gravel pit area.

The date on this picture as shown there was May 15th, 1991, and I have to say at this point that's extremely dark. It's really difficult for me to make out. I don't know if it's the adjustment, but, in any event, it will be noticed that the gravel pit continues all the way down to the Porter Creek boundary and this is Shafer Creek wheel lines off to the south. We are looking directly from west to east across the Payette River. This is, as I say -- that's much better. This is the boundary of Shafer Creek ground. This would be the boundary of the gravel pit and this is the boundary between Shafer Creek and Porter Creek ground right here.

This is the number one wheel line lying to the east of the gravel pit.

MR. EISMANN: Excuse me. What -- where are we now on the tape?

MR. SPACKMAN: What's the count?

MR. LESTER: The count is 14.

MR. EISMANN: Thank you.

THE WITNESS: And we are continuing on up through this field, the southern most field, the east side, to the road which provides access to the gravel pit and then we see number two wheel line, as designated on that Exhibit A, and number three wheel line, both of which are functioning.

Again, we are looking at the gravel pit and beyond to the east half of that ranch.

Looking to the left here we can see Double Diamond's hay shed and sufficient buildings.

It's a little difficult to keep a running context when I don't know what's coming up, but -- in any event, we are proceeding further northerly at the gravel pit to the -- one of the areas that was designated as a more or less storage area, the northern part of the gravel pit.

MR. EISMANN: Let's stop the tape there.

MR. LESTER: The count is 24.

MR. SPACKMAN: Stopped at what?

MR. LESTER: Stopped at 24, basically.

MR. SPACKMAN: Okay.

MR. EISMANN: Again, when were those pictures taken that --

THE WITNESS: This particular picture and continuing for about another three to four minutes were taken -- and you will see the date flash from time to time. That's a procedure I've used when I'm taking pictures -- of May 15th, 1991.

MR. EISMANN: Okay. Let's role the tape -- before we start, Mr. Lester, could you simply give us a tape reading, whether we ask for it or not, about every -- let's see. We are -- let's give the next one up to maybe 40 and then every 15 thereafter, just -- if nobody stops it in the meantime.

MR. LESTER: Sure.

MR. EISMANN: Then we have some way of relating the -- Mr. Dovel, when you describe these things, if you can, pick out something in the picture, other than maybe the material that is being depicted, so that it can be tied into your testimony. Let's roll it.

THE WITNESS: Okay. We are looking at the distance -- this is the hill around which the main ditch comes as Jackass Creek. This is Jackass drainage, an old one-time existing ditch and another ditch. We are looking across the airstrip in the foreground here of the picture, looking to the east at the northern-most boundary of the gravel pit here.

MR. EISMANN: Does that show an excavated area?

THE WITNESS: That's correct. And we are looking at a field that contains the number four and number five wheel lines. It will be seen that one wheel line is running here. I'm not sure how clear this is to you folks, if you can see it. There is a process of a pipe changer walking up this pipeline right now. I can see him here and he's changing what is the number five wheel line and essentially the two things that these first few minutes of this tape that I attempted to show was the location of the fields and lines and the location of the gravel pit on this date, this is 10:01 a.m. on May 15th, 1991. It will be seen that the gravel pit area extends from the northern most boundary of that area, just as it's depicted on Exhibit A, all the way down to the southern most boundary, which we have looked at a moment ago and we will see again shortly.

MR. LESTER: 40.

THE WITNESS: Just as it's depicted on Exhibit A as field 3-A. In other words, we are going to look at 3-A again in just a minute when it gets back down.

I think that at this point in time I was referencing wheel lines number two and number three.

Quite often I would shoot from this angle into the sun, which makes the irrigation lines and sprinklers much more visible, so early in the morning I

might do as I have done here, shoot videotape from the west side, shooting into the eastern sun and do just the reverse in the evening.

MR. EISMANN: Now is there a trailer house depicted just at that point?

THE WITNESS: That is correct. It will be noted here that the gravel pit lies along the southern most boundary of the field designated as 3-A. In other words, the field is, in fact, a gravel pit on this date, as is that entire stretch of field.

I sighted across here to get some reference mark. This is the Christensen house across the way. The field dividing Porter Creek from Shafer Creek goes from the house -- this is very difficult narrating when I don't know what's coming up.

In any event, at this point in time it's just a repetition of what we have seen.

Wheel lines number two and number three.

MR. LESTER: 55.

THE WITNESS: The Double Diamond hay shed, the second hay shed and granaries. The farmer's residence and machine shop and storage area.

Basically about all this does is do what Mr. Cockrum has already done in determining where these lines are, but it adds to that the question of the size of the

gravel pit, the area itself. In other words, I have panned several times across here to indicate that it goes all the way to the northern most boundary of the gravel pit area and all the way to the southern most boundary of the gravel pit area on this date in 1991.

Again, this is a view of the airstrip and the northern part of the gravel area.

In the film, as I was taking these pictures, I discussed what the pipe changers were doing.

This is the hangar on the northern most end of the airstrip.

It can be seen that a man is carrying a pipe there and changing it.

MR. LESTER: 70.

MR. EISMANN: What is depicted there?

THE WITNESS: Simply, again, this is the field, this is number five wheel line right here and the field that contains also number four wheel line and can be seen. This is number one wheel line here, a gravel truck, belly dump trucks can be seen driving up the main road, the company ranch or Cemetery Road. The Jim Price ranch is over, there is a reference mark, and, again, this is the Porter Creek-Shafer Creek boundary.

The Christensen house by reference to two belly dump trucks coming in this road.

Now while it was possible for me to take this video and then take it home and pause or slow motion it and count these sprinkler lines, I normally counted all the lines from the other side when I was closer to them.

That pickup departing the area was a Double Diamond employee going to change some other pipes.

MR. LESTER: 85.

THE WITNESS: Again this is the formerly existing Double Diamond ditch.

MR. EISMANN: What is being depicted now?

THE WITNESS: We are coming back down the Payette River and looking at a wide angle view of the gravel pit area. A great deal of overburden can be seen here and as we go further down we are going to see both excavation and overburden on the boundary of the Porter Creek-Shafer Creek fields. That's the southern most boundary of Porter Creek fields.

This pipe changer is driving in in a pickup right now. It can be seen that there is quite an excavation here and he's about to change the Shafer Creek lines.

This is simply a more magnified or close-up view of the gravel pit in that field number one boundary.

The valve was located approximately here, that is the valve in the mainline which closes when Porter

Creek water is being used -- to separate Porter Creek and Shafer Creek water.

Again, it's possible to easily count these sprinklers right now.

The pipe changer is operating a mainline valve that -- to irrigate Shafer Creek land, as I have said, in the background. Other belly dumps and vehicles can be seen traveling to the gravel pit.

MR. LESTER: 100.

THE WITNESS: All of this land that we are looking to the south is Shafer Creek ground. In fact, we are looking off of that Exhibit A.

Again, it's designated this is 10:16 a.m. on May 15 and simply a closer look at some of the overburden, some that has existed, obviously, for sometime and a great deal more that's much newer in the northern part of this area.

Again, here is some that's been there quite awhile, that is to say it's from other years.

Now we have changed --

MR. EISMANN: Did it have vegetation growing there?

THE WITNESS: I'm sorry?

MR. EISMANN: Did it have vegetation growing on it?

THE WITNESS: I'd have to revert back. We have changed entirely. We are back on the other side. We are

looking at the number one wheel line right here. This line with no sprinklers on it is a Shafer Creek line. In other words, we are looking from the road back to the west and northwest viewing the gravel pit area from the opposite side.

At this point in time I did some sprinkler counting when I was doing this video, but it's also done a little bit later.

Mr. Hearing Officer, there may be a little more delay or time involved here than you might want to see in this video right now.

MR. LESTER: 115.

MR. SPACKMAN: Let's stop it a minute, Mr. Lester. If this is cumulative -- in other words, if it's just more pictures of the gravel pit and what's happening, I think we ought to be able to go forward to some point in the tape where there may be something else. I hate to be cumulative.

MR. RIDDLEMOSER: Oh, I think it's -- we are just wasting time here.

MR. EISMANN: I have no problem with fast forwarding to the next subject.

MR. SPACKMAN: Okay.

MR. EISMANN: But let's go to that point and stop and get a reading and then --

MR. LESTER: We are at 117. We are fast forwarding.

THE WITNESS: Can we keep it on view and fast forward, because I --

MR. LESTER: Sure. If you will, just tell me when you want to stop.

THE WITNESS: Now could you stop just a moment? I was counting sprinklers there, but I'll take you through how I've done it. This the overflow at Jackass Creek.

MR. EISMANN: What number are we now?

MR. LESTER: We are at 138.

THE WITNESS: 12:14 p.m. on the afternoon of May 15th. It can be seen that there is a substantial overflow -- what we would categorize as being heavy, which is to say in excess of 300 gallons per minute. I would estimate, looking at this picture, that there is between 600 and 1,000 gallons per minute coming out the overflow pipe and the purpose in taking these pictures was to illustrate the large quantity of water that was being diverted on November -- correction, on May 15th at this time.

At this time I had lived on my ranch for nine years and I have never seen, during those nine years, this quantity of water being diverted.

I read a weir crest reading, if I recall, of

.55, which is approximately four cubic feet, my recollection is, per second or approximately 200 miner's inches.

This is the weir pond on Double Diamond's weir pond above the weir and then the faster weir flowing diverted through their culvert. This is done for illustrative purposes.

MR. LESTER: 150.

THE WITNESS: And this is the Double Diamond dam above that culvert showing the overflow, the visqueen, or plastic lining over the dam and the headgate, which is in the extreme open position at this time permitting all the water that will flow through to flow through.

Now the reading I got of .55 feet of crest represents 4.07 cubic feet per second. The --

MR. EISMANN: You're looking at a chart now?

THE WITNESS: Yes. I'm looking at the chart. The normal reading is about four and a quarter inches or 2.07. That is the normal diversion that I have observed Double Diamond make since the weir was installed in 1956. In fact, they installed a gauge, a yard stick, and four and a quarter inches is the measurement that they always diverted for their maximum water right. It would be seen here between four and 3/16ths, four and 5/16ths, is about 2.1 cubic feet per second or just over a hundred inches

and that is normally during these past several years all that Double Diamond has diverted as their maximum right until this particular day. In fact, in my observations a great deal of ditch work was done at this time and on this particular day this is the first time that their ditch would carry that quantity of water through my property.

We are back here again and this may be a little bit delayed.

Mr. Hearing Officer, would you like to have me count sprinklers here?

MR. LESTER: 170.

THE WITNESS: There is about two to three minutes or more.

MR. SPACKMAN: I don't see a need to count sprinklers personally.

MR. EISMANN: No. I don't either.

MR. SPACKMAN: Let's fast foward through it.

THE WITNESS: Okay. You understand the procedure I used was simply to count all of the nozzles to the motor on one side and all the nozzles on the other and that's the same thing that Ms. Shirley did under my direction.

We are simply repeating the same thing on a given date for the same illustration.

Again, the Jackass overflow at 7:03 p.m.

MR. LESTER: The count is 222.

THE WITNESS: Again, the Jackass overflow would be considered heavy or very heavy.

Now this is 9:59 p.m. on June 26 and with the poor light that we are getting right now with this picture it's difficult to say, but we have just viewed the Jackass overflow pipe. We are looking across the road and into Jackass Creek and this is after the water master had adjusted the headgate and locked it at 2.79 CFS and this you will find verified both in the water master records and in Ms. Shirley's notes. Without hearing the sound it's difficult -- if you look closely you will see a tremendous amount of water out the Jackass Creek overflow and the purpose in this illustration is simply to show that when this quantity of water is diverted, in every case where this quantity is diverted, regardless of the number of pipes utilized in the system, up to and including the maximum number we have ever counted and used when Porter
Creek water was the sole source, there is always a tremendous overflow at Jackass Creek and this particular circumstance in 1991 I requested that the water master shut down the flow to any amount that they could reasonably use.

MR. SPACKMAN: Can we fast foward again?

THE WITNESS: Okay.

MR. SPACKMAN: What is the reading?

MR. LESTER: The reading is 235 and we are fast forwarding now.

THE WITNESS: This is also photography of the Double Diamond pump house. There was some audio here involving the running of the motor, things like that, and then this is a late check of the line.

This is at 4:35 p.m. on July 4th.

MR. SPACKMAN: Okay. Let's stop it now, Mr. Lester.

THE WITNESS: And this simply illustrates --

MR. SPACKMAN: What's our reading?

MR. LESTER: Our reading is 267.

THE WITNESS: Ms. Shirley taking a measurement and, again, the quantity of overflow at this specific time and date out the Jackass overflow pipe.

Correction. In this case it's my son Matt Dovel who was taking this.

Now if my recollection is proper, we are going to see -- as soon as this little narration is through, we are going to see some pretty fast shots of all but one of the dates and times described in Ms. Shirley's record where any diversion in excess of 1.8 is diverted. This is at a later time, 9:17 p.m., on July 4th, 1991, indicating an overflow at the dam and ultimately a weir

reading.

My recollection is that this weir reading is probably .38 CFS. In other words, it has already been substantially reduced from the 2.79 CFS. By that, I mean 3/8ths feet of crest.

Again, yes, we are going down toward the weir and taking a reading and this would illustrate the procedure that we normally used.

You can see that Ms. Shirley is taking a reading and it could be seen that it's between -- I suspect it's probably .3 -- yes, it's .36 feet of crest on the weir.

This is 11:24 a.m. on July 5th.

4:32 p.m. on July 5th. Mr. Bernstein arrived just at this point to witness that no pipe change was taking place.

MR. EISMANN: Does that depict where the water enters the pipeline that flows into Jackass Creek?

THE WITNESS: That is correct, yes.

MR. LESTER: 285.

THE WITNESS: This is 4:27 p.m. Ms. Shirley is taking measurements. That's on July 7th. My recollection is that we shot ten measurements and it took 1.52 seconds to fill the five gallon bucket each time.

This is 4:00 p.m. on July 8. It could be

seen that the waste is excessive.

11:44 p.m. on July 12th the waste is obviously very heavy.

MR. EISMANN: All of those are taken at Jackass Creek diversion?

THE WITNESS: That is correct.

MR. SPACKMAN: I don't even know what we are viewing at the present time.

THE WITNESS: You're viewing a large quantity of water flowing out the Jackass Creek overflow pipe. If we measured -- you can see more of it here. If we made the tape longer, this is the overflow pipe and this is the pipeline going to the -- to the point of use, the mainline.

MR. EISMANN: Okay. Stop it at this point. At this point is there any water naturally flowing in Jackass Creek?

THE WITNESS: It's difficult for me to say. I'd have to pan -- I did this, but -- I tried to abbreviate this as much as possible and -- because if you visualize and take the entire process of identifying the pipe and the creek itself, it takes a lot. I can't tell you whether or not there was. At this time of year there is always either a slight flow or no flow at all in Jackass Creek.

MR. EISMANN: All right. And that's July 14th?

THE WITNESS: That is correct. At 6:15 a.m. We took readings at these odd times, at 11:00 p.m. or even maybe 1:00 a.m. or 5:00 a.m. or 6:15.

MR. SPACKMAN: What's our reading here, Mr. Lester?

MR. LESTER: 293.

MR. SPACKMAN: And I think the record should reflect that the tape has stopped at the present time. Go ahead, Mr. Dovel.

THE WITNESS: We took readings at these odd times, although it was inconvenient, to be assured that there were no pipe changes and there was not just a reading at this time -- in other words, we progressed from reading the Jackass Creek overflow immediately to the sprinkler lines and photographed every line. So, for example, it might require 25 to 30 minutes to just substantiate this one thing. They are in the tapes if anyone would like to see them, a count of the sprinklers, the condition of the sprinklers as far as pressure is concerned, a weir reading to substantiate it.

The purpose of this particular part of the tape was to show that at any time that more than .14 CFS or 80 inch was diverted, regardless of the number of pipes, again, there was always an overflow at Jackass Creek. Why don't you -- like to scoot --

MR. SPACKMAN: The tape is running again.

THE WITNESS: Again, this is July 14th at 6:16 a.m. It can be seen that the overflow is heavy. In fact, during the period from July 12 to July 19th -- this is 5:15 a.m. on July 16 -- during this period there was always a very strong overflow in Jackass Creek with the quantity of water that was being diverted. On this date my recollection is that there were two of the five mainlines shut down, several handlines were running.

This is 4:46 p.m. -- 4:46 on July 16th. Again, the overflow is substantial.

MR. LESTER: 300.

THE WITNESS: The reason for this lengthy segment -- obviously there is some narration.

12:08 a.m. on July 18th. Again, the overflow is heavy out of the overflow pipe.

MR. SPACKMAN: Okay. Mr. Lester, will you stop the tape here and give me the reading.

MR. LESTER: The reading is 305.

MR. SPACKMAN: Okay. Mr. Eismann and Mr. Dovel, at this point in time I'm of the opinion that any additional viewing of overflow --

THE WITNESS: Is repetitious.

MR. SPACKMAN: -- is repetitious during the summer of 1991. It seems to me that you have established through

this tape that there has been a significant overflow through the waste pipe.

MR. EISMANN: Let's fastfoward it then to --

MR. SPACKMAN: So let's push forward if we can.

THE WITNESS: Could you slow it down, please?

MR. SPACKMAN: What's our reading, Mr. Lester.

MR. LESTER: Reading 319.

THE WITNESS: Here for the past minute or so of tape this is a view of the first eighth to quarter mile of Double Diamond ditch. If we had looked at it rather slowly it noted that we came from the weir pond down the weir and to my knowledge this stretch of ditch -- there are about three places where you can actually see the water and most of this ditch is impenetrable jungle. To my knowledge, it has had no maintenance whether by equipment or shovel or anything. In fact, I don't believe a dog can get through this -- portions of this to the water.

MR. EISMANN: How long has it been in that condition?

THE WITNESS: Since I have lived there. This photograph was taken --

MR. EISMANN: Give us the year.

THE WITNESS: -- in 1991, so that's approximately nine years as of that date and I represent that the same

condition exists today, which has been approximately 11 years.

MR. EISMANN: And how long is the stretch of ditch that is in that condition?

THE WITNESS: The initial part of it is in excess of an eighth of a mile and less than a quarter of a mile. However, the majority of the rest of the ditch has not had regular maintenance and it can be seen from this foliage that there are very heavy transpiration losses when the weather turns hot.

MR. LESTER: Shall we resume fast forwarding or --

MR. SPACKMAN: What's the count on the counter, Mr. Lester?

MR. LESTER: 331.

MR. SPACKMAN: Okay. Let's fast foward again. Mr. Dovel, if you will state when you think some significant change is shown.

THE WITNESS: Yes. Now could we back up just a moment, Mr. Lester.

MR. LESTER: Back up a little bit?

THE WITNESS: Yes. We are almost to the end of this tape.

MR. LESTER: Okay.

THE WITNESS: If you can back just until you indicate a change of scenery from the foliage to the --

yes.

MR. LESTER: The count is 352.

THE WITNESS: Now you will note that this picture was taken at 4:36 p.m. on March 9th, 1993, illustrating several things. One, there has been additional roadwork and fencing which inhibit the use of this ground. In other words, this ground has been in gravel pit for in excess of five years and has not been utilized. The ground has not been cultivated nor seeded nor irrigated, any of this ground that we are looking at. It will be noticed that these gravel piles are quite large by comparison with what they were in terms of spread area, especially this pile, the northern most of the two piles in 1991.

The area between the airstrip and the gravel is quite limited. It's unfortunate that I wasn't in an aircraft to get a flight arrow view, but as of now, today, this area that is in gravel pit is substantially larger than it is in Exhibit A, which was taken in June of 1992.

I think that there is little else that will be illustrated. It will be noted that there is two fences here for hay storage. This is the wheel line that has been discussed, the number seven wheel line, and it runs from here down. It cannot run from here up unless some modification is done. That is, it can't go from there

north, only from its location, which is substantially south of the gravel pit access road.

MR. EISMANN: In the immediate foreground does that depict the airport?

THE WITNESS: That is the airstrip, yes. There is the airstrip and there is a fence that boundaries the airstrip right here from the gravel pit area.

MR. EISMANN: From the gravel mounds to the Payette River is there any area that has been irrigated or farmed?

THE WITNESS: I guess I couldn't hear you.

MR. EISMANN: From the gravel pit to the Payette River is there any area that is now farmed?

THE WITNESS: Not that I have seen farmed, no, and, in fact, there is nothing growing in there, except weeds at the present time.

The dark area just to the right, which is to the south, is Shafer Creek ground that has been plowed.

Again, the location of the wheel line that falls within that area that's described on Soil Conservation Service maps as 23 acres, a portion of which is the number 12 priority at Porter Creek water right and a portion of which is the number one priority Porter Creek water right.

I think that I have nothing more to illustrate there.

MR. SPACKMAN: What's the reading on the counter, Mr. Lester?

MR. LESTER: 373.

MR. SPACKMAN: We don't need to view any more of the videotape then?

THE WITNESS: One more, but not with this --

MR. SPACKMAN: Let's fast forward then, Mr. Lester.

THE WITNESS: These are simply references as you fast forward it.

If it's stopped, then that's all the tape.

MR. SPACKMAN: I think that's the end.

MR. LESTER: You want a count at the end of the tape?

MR. SPACKMAN: No. I think -- no. I think when you called out the number that's the end of what we viewed and I don't think we need another number.

MR. LESTER: Apparently they don't want you to back it up inside the machine, so we will just push stop.

MR. EISMANN: Could you mark that -- the tape has been unmarked. Could someone put an Exhibit M on the tape -- on the label maybe on the back.

MR. SPACKMAN: Is there a label on the tape itself? Put the label on the tape itself.

MR. LESTER: Exhibit?

MR. SPACKMAN: M.

MR. EISMANN: Could -- well, first, we would offer in evidence Exhibit M.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: I'll renew my same objection to it there. It's composed of many parts, it is totally irrelevant to any of the proceedings here, it purports to show a particular year, none of which, by itself, has any bearing on any of the issues. Particularly as to relevancy for either abandonment or forfeiture. It does not have any authenticity to show that issue and it is irrelevant to any issue in this case.

MR. SPACKMAN: Well, I will say that it's at least relevant for purposes of illustration and helping me understand the system itself, so I'll allow it into evidence. Mr. Eismann?

(Protestant's Exhibit M admitted.)

BY MR. EISMANN:

Q. Mr. Dovel, Exhibit A that's in evidence, what was the date that that was taken?

A. The photograph is stamped and we have it here. June 1992.

MR. EISMANN: Could Mr. Dovel be handed Exhibit V and V-1?

MR. SPACKMAN: V?

MR. EISMANN: V as in Victor.

MR. SPACKMAN: V-1 is the larger plat, Mr. Dovel.

BY MR. EISMANN:

Q. With Exhibit V, looking at page two, what do the colored portions on page two --

A. The area outlined in green represents irrigated ground covered under the number one priority Porter Creek water right of Double Diamond, 65-03103. It will be noted that there is an L-shaped area excluded from that, designated as area 14, which is .34 acres or about a third of an acre, and there is also a portion designated as six, 1.9 acres, which does not have a Porter Creek water right of any type. The areas outlined in yellow are those areas that are outlined here as number one, number two, and number three, which have a more junior Porter Creek right to the number 12 right, and the area outlined in pink or red is that area of the Double Diamond Porter Creek farm ground that always does duty as a gravel pit or source of gravel.

Q. And what does page three and four compute?

A. The third and fourth pages -- page three is a listing of these particular parcel numbers that were referenced in both of these maps and the areas that are included in the green outline for priority number one, 65-03103, are computed under here. The parcels that apply at the priority number 12, Porter right number 65-10746,

are computed in that column and those areas with no Porter Creek water right, such as parcel number six, the buildings, and the parcel 22, .64 hundreds of an acre that the engineer previously explained, was not a part of the Double Diamond Ranch irrigated property.

Q. And then what are the totals of the area marked in green?

A. The total of the area marked in green, as determined by the engineer, is 164.47 acres.

Q. And the area marked in yellow?

A. The totals of the junior priority is 17.73 acres.

Q. And the last column?

A. 2.88 acres are those acres indicated as not being irrigated or having a Porter Creek water right.

Q. Directing your attention to the last page of the Exhibit V. What do those calculations represent?

A. These calculations are the particular parcels, again designated by the engineer who testified, that -- which apply to the area that was converted to gravel pit. That is to say, parcel 11, 12, 16, 17, 20, and 21, with a number one priority Porter Creek water right, and parcels 23 and 24 with a number 12 priority Porter Creek water right.

Q. And then what is the total in the gravel pit?

A. The total acreage shown in the gravel pit for priority number one is 60.59 acres and for priority number 12 is 6.16 acres.

MR. EISMANN: We would offer pages two, three, and four of Exhibit V, as in Victor.

MR. SPACKMAN: Mr. Riddlemoser?

MR. RIDDLEMOSER: And to which we will object upon the grounds here that if we are attempting to use that aerial to contradict the acreages shown in the records of the water resource board as to what is covered under a decree, then if -- and I'm assuming this is what it's attempting to show, then that would have to be done for every parcel that is on Porter Creek, because the decree shows in various quarter quarters or lots or so forth certain acres and that's how it -- that's how the records are developed and now this one, by saying by reason of photography and so forth that we are going to just say that where the decree says 193 acres, we are going to show that there is only 164, then before that becomes relevant then everything else on every other water right on that ditch has got to be so designated the same way and I think is -- by itself, is purely immaterial and it's irrelevant for the purpose intended and to say there that we are now going to adjust a water right in a particular case based upon this basis, which is contrary to the way that the

water rights themselves are handled, is -- does not have that authenticity there in and of itself on this deal without taking it into every place else.

In other words, I'm saying just to go right up and down the line we want the same -- have the same calculations on Mr. Dovel's property, Oliver Dobson, Arlie Woods -- and who else is up there? This right here in here to show some loss of acreage doesn't do it.

MR. SPACKMAN: Mr. Eismann?

MR. EISMANN: Well, when you seek to transfer a water right the whole water right is up for evaluation. Any other person who seeks a transfer of a water right on Porter Creek is subject to the same rule, but because this person elects to transfer a water right or seeks to transfer a water right, Double Diamond in this case doesn't subject anybody else's water right to scrutiny. We are here on this water right and the transfer of this water right alone and it certainly is relevant what the applicant's position would be is that if, in fact, there was only 40 acres irrigated on it of an 80 and a transfer that could not be looked at, because as you indicated, 40. This process reaffirms a water right as to location and as to acreage and as to quantity of water and it's all relevant when you talk about a transfer.

MR. RIDDLEMOSER: If I may respond also then.

MR. SPACKMAN: I'll let you.

MR. RIDDLEMOSER: Okay. Now we come in also here -- look at page -- which one is it? Page four, the last one. To come up with a self-serving declaration that there is 60 acres in the gravel pit, Mr. Watts himself testified the gravel pit area is 20 acres. Now we are in the process there of reclaiming some of this and so forth. That doesn't say that that 60 acres is going to come off. He testified that the gravel pit area is about 20 acres. We are saying 22. That's what our measurement was.

MR. SPACKMAN: Okay.

MR. RIDDLEMOSER: Those figures are self serving and without foundation.

MR. SPACKMAN: All right. Let me rule on the objection. The Department of Water Resources does not have the authority to go up Porter Creek all the way when a transfer is filed and readjudicate the stream and redetermine all of the acres that are irrigated and restructure the priorities and the amounts of water that are diverted by the area's right holders.

When an application for transfer is filed with the Department, the applicant brings his water right before the Department of Water Resources and a determination of that water right is appropriate. In other words, the validity of that right is brought into

question and the department has a responsibility to look at it and the parameters of that right and its boundaries, so in my opinion the basis for the objection I don't think is -- and I don't mean this in a bad way -- I don't think it's well-founded on that basis.

I am concerned, however, about the preparation of a document without any reference to department records. What is the place of use, what's the described place of use, and I think at this point in time I will sustain the objection.

I've not looked at the document, but it seems to me I have a document prepared by a competent engineer showing acreages and the Department can then superimpose itself the water rights on top of that document to determine what the irrigated acreages are and also can take the testimony regarding the excavation and reclamation of that gravel pit, including its present condition today, to which Mr. Dovel testified and which was shown on the videotape itself. That would be in the immediate vicinity of the gravel pit itself.

So I'm inclined at this point in time, Mr. Eismann, to sustain the objection, unless there is further foundation laid somehow for its admission.

MR. EISMANN: Well, let me point out to you if you're concerned about quarter corners -- is that your

concern?

MR. SPACKMAN: I'm concerned about -- I'm concerned about the witness overlaying water rights data on top of the acreage that's been determined and based on his own determination giving me a document that tells me what lands are covered by various water rights and I'm not certain that the witness has the -- well, has researched the water rights, number one, has gone through the records to determine whether the outlined areas are, in fact, the areas -- the place of use for which those water rights are appurtenant and I think that's something that the department can do using the engineer's manual that's been prepared without the additional information that's been placed on the map by the witness.

So what I'm saying is that I think it's a matter for the Department to determine, not the witness, unless the witness can show somehow that he has researched those water rights, that he's taken each one of those rights and he's laid it on top of the -- placed the map that's been prepared by the engineer and has gone through them individually to determine where those places of use are.

MR. EISMANN: Let me suggest to you that, number one, the engineer's testimony is that the parcels that he has outlined here -- that he has computed acreages in and

given a number to represent irrigated acres.

MR. SPACKMAN: Uh-huh.

MR. EISMANN: And he has testified that the -- where the section corners are, so that you or I or anyone else could indicate the northwest corner of the northwest quarter of section 26 or 23 or whatever we are talking about, so we now have the south line, the outer parameters correct. As I see it, those have been established.

MR. SPACKMAN: And that document is admitted into evidence, the engineer's document. I don't have a problem with that document.

MR. EISMANN: The next thing is the outline of where the number one right is. Apparently in your ruling you're concerned as to whether Mr. Dovel can locate the -- where the number one -- what lands the number one right applies to; is that correct?

MR. SPACKMAN: Yes.

BY MR. EISMANN:

Q. Mr. Dovel, what work or preparation have you done to determine the location on page two of Exhibit V as to the number one right which you have outlined in green?

A. Well, I guess initially a year or so ago --

MR. RIDDLEMOSER: I don't like to interrupt there, but we are invading the province of the department here in this case. I mean this is one of the ultimate issues

here. We don't need a self-serving statement which attempts to prove the ultimate result of the hearing, even going along with your rulings, which I have some problems with, but that's what is purported to show here.

MR. SPACKMAN: Okay. Well, I'll allow Mr. Eismann to lay a foundation if he can, but unless Mr. Dovel has consulted our records and gone through them to determine what the place of use is and properly placed on the map, I won't allow the documents to come in. Mr. Eismann.

BY MR. EISMANN:

Q. You may proceed. What have you done with regard to locating where the number one -- what have you done to locate where the number one right applied?

A. First, I obtained an ortho photo quad and contacted the engineering firm, formally McCarter and Tuller, and worked with an engineer, a good friend of mine. I also have a lot of experience, as you know, and this department may know in this regard, but, in any event, I contacted the engineer and I got my map and I overlaid bit by bit to determine the acres that I believe were here, then I took something that we don't have introduced into evidence yet for one specific quarter quarter here. A part of this transfer application pertains to the fact that -- and I can't call this -- this will be the southwest or the -- or the southeast of

section 23, as adjudicated in the records it pertains to 39 acres, so number one Porter Creek water right, and in this application prepared by Mr. Lester he has asked that 31 acres be reallocated in this transfer to this particular quarter quarter and that eight acres be reallocated to this particular quarter quarter --

Q. And again --

A. -- which is the southeast of the southwest of section 23 and so I did, in fact, take my plotters, as you're aware, and plot these exact acreages, not once, but many times -- by many I mean as many as three or perhaps four times on all of the scaled maps that I obtained from ASCS and on this ortho photo quad and I determined that there were not 31 acres of irrigated ground in the southwest of the southeast of 23, nor were there eight acres of irrigated ground here.

Q. Where?

A. That is in the southeast of the southwest of 23.

The engineer's testimony today would bear out what I say and I think that the -- I don't know if you gentlemen would like me to go through my background step by step and everything that I have done in this regard. I will be happy to.

MR. SPACKMAN: Well, again, I think I will sustain

the objection. If Mr. Dovel wants to submit something -- a document which shows to the best of his knowledge what lands are irrigated --

MR. EISMANN: That's what --

MR. SPACKMAN: And that's contrary to what the engineer has submitted to us, then Mr. Dovel can submit that information, but it's my understanding that this document, the second page of V-1, or the third page, purports to show the department what lands are being irrigated by what water rights and I think that's something, unless the records of the department are specifically consulted, that's something that I think is not admissible at the present time. I will sustain the objection.

BY MR. EISMANN:

Q. Have you compared the water rights against the description in the decree, the adjudicated water rights?

A. Yes, I have. In fact, that portion there is number one priority 65-03103 water right, for example, in the northeast of the southwest of section 26, this portion designated as parcel 22 by the engineer, and I think, therefore, had to conclude that all the southern most boundary of the number one priority water right had to be this line, since there is no water right with a priority

-- senior priority in this particular quarter quarter. In other words, this is the method that I arrived at that and I attacked it quarter quarter by quarter quarter to determine exactly where this was. I used my acreage plotter to plot the acres and that's all I have done.

In truth I have done it thoroughly I think, but that's all I have done and I think that concurs entirely with what the engineers arrived at.

Q. Well, the engineer did not plot out what is in -- what the total gravel pit amount is, for example?

A. That is correct. He did not. He was not asked to.

Q. Right. He plotted out what was shown on the SCS and on Exhibit A; is that correct?

A. Yes. But I provided the engineer with Exhibit B and he worked from Exhibit B and Exhibit B has SCS parcels that have not been discussed here, but Exhibit B was the basis for both my calculations and for the engineer's subsequent calculations, which were done independently from me.

MR. EISMANN: I need to tell you we are almost to 5:30.

MR. SPACKMAN: And we will probably be evicted and we will need to move over to the department's conference room, I suppose.

I just want to say again I will sustain the objection regarding the second and third pages of the V-1 -- excuse me -- Exhibit V, because, again, I think --- I think the Department will take the map prepared by the engineer. Mr. Dovel has testified that he doesn't -- he doesn't disagree -- or he agrees with the engineer's estimate of acres that are shown there and our records should reflect what lands are irrigated, the department's water right records, by the -- by the various water rights and we will superimpose those and look at it ourselves and I'm not willing to take those documents into evidence, Mr. Eismann.

MR. EISMANN: We have handed the witness Exhibit C.

MR. LESTER: We have five minutes to clear the building.

MR. SPACKMAN: We have five minutes to be out. I wonder if maybe we just ought to gather our stuff --

MR. RIDDLEMOSER: This is a good time to quit here.

MR. SPACKMAN: So let's recess and come back to Mr. Dovel.

(A recess was had.)

MR. SPACKMAN: We are recording again after a brief recess and move of location. We are back at the conference room of the Department of Water Resources.

Mr. Dovel you were testifying. Perhaps you

could resume the seat there at the end of the table and then everyone can see you and hear your testimony and review your demeanor both. They tell me that's an important part of being a witness.

THE WITNESS: You're not running that machine, are you?

MR. SPACKMAN: It's on.

BY MR. EISMANN:

Q. Mr. Dovel, I have handed you Exhibit Q and this is two pages, page 304 and 305, out of the Payette River drainage adjudication.

A. Yes.

MR. EISMANN: We would offer Exhibit Q.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: We have no problem. It's part of the records of the Department of Water Resources.

MR. SPACKMAN: Okay. Exhibit Q is received in evidence.

(Protestant's Exhibit Q admitted.)

BY MR. EISMANN:

Q. Have you reviewed before just now the Exhibit Q or those parts of the Payette River --

A. Yes I have.

Q. -- adjudication? And over what period of time have you been familiar with and reviewing that

document?

A. Since 1981 or early in 1982.

Q. With respect to the department's maps showing the location of irrigable acres, meaning in the files of the Department of Water Resources, have you reviewed those?

A. Yes, I have. Both the aerial map, which was utilized as a field inspection work sheet, and the actual work sheet that became a part of the adjudication.

Q. Have you reviewed those with respect to the location of Double Diamond's number one right and the lands that it -- those maps show it's applied to?

A. Yes, I have.

Q. And have you reviewed what has been admitted in evidence as Exhibit B, which is an ASCS map?

A. Yes, I have.

Q. And from the ASCS map have you made computations as to what lands that are irrigated by the number one out of Porter Creek for the Double Diamond water right?

A. I have observed the computations that ASCS made.

Q. And have you made a summary of those?

A. That is correct.

Q. Is Exhibit C a summary of those?

A. Yes, it is.

Q. Okay. And what does Exhibit C show, then? What are the conclusions?

A. Exhibit C shows the acreage of the specific fields, irrigated farm land on the Double Diamond so-called company ranch, the main ranch, in sections 23 and 26.

Q. And are you familiar with the general lay of the land and where the quarter lines generally fall on the land itself?

A. Yes, I am.

Q. How many acres did you determine were shown on Exhibit B to be irrigated with the number one Double Diamond right or appurtenant to --

MR. RIDDLEMOSER: If the Court please -- or Mr. Hearing Officer, I'm going to object to this as being incompetent and irrelevant and not bearing upon the issues of this case and it's also calling for a conclusion of this witness on self-serving testimony that invades the province of this hearing and also to preclude the ultimate determination. This is pure repetition of what we went through before.

MR. SPACKMAN: Mr. Eismann, what's -- this is Exhibit C now, I suppose, Mr. Dovel is referring to?

MR. EISMANN: Yes, it is.

MR. SPACKMAN: What does it purport to show?

MR. EISMANN: It purports to show and does show the the calculations that through his observation and research are actually irrigated land using -- applying the acreage figures from Exhibit V.

MR. SPACKMAN: And applying to that, I suppose, looking at the -- superimposing on it something from our water rights information, because --

MR. EISMANN: Well, I've reviewed your water right information and some of your maps are simply SCS maps with the acreages on them that you use for ASC.

MR. SPACKMAN: That may be. Some of them are ortho photo quads.

MR. EISMANN: But in this particular instance there are some with just the ASCS history on them. Acreage history.

MR. SPACKMAN: Okay. I want to take the position at this point in time that if -- because I think we need to move along. If Mr. Dovel wants to represent somehow that he's familiar with the fields and the acreage that's irrigated within a particular parcel and he knows the boundaries and he knows them to be substantially what's shown on an ASCS map, I'll allow that kind of evidence to come in.

I won't, I think, allow evidence to come in

where he has calculated or gone to some maps within our department and determined that these acres or these particular acres are irrigated by a particular priority right. I don't think I will allow that kind of summary in, Mr. Eismann, and that's what this summary purports to be. I think that's something that I want to look at independently and those records are contained within the department records showing what these rights are and what acres they should irrigate.

MR. EISMANN: Well, the problem with what you're suggesting is that you foreclose any testimony as to the difference between what the department records may show. This is a transfer and what they, in fact, may be, what you're indicating may go to the weight of the evidence but, certainly doesn't go to the admissibility of relevant evidence as to what fields are being actually irrigated and what the total acreage of the fields that are, in fact, being irrigated. That's part of the whole dispute.

MR. SPACKMAN: And I'm willing to allow Mr. Dovel to testify about what fields are actually being irrigated.

MR. EISMANN: And that's what this information is.

MR. SPACKMAN: Well, there is more information on this exhibit than just the information regarding what's being irrigated. This document purports to assign to each of those parcels -- or it doesn't assign to each one of

these parcels water right priority number one, priority number two of 12, and that's the determination that I'm not allowing into evidence. Now if he wants to -- if you want to strike that information from the document and simply give me a total of how many acres are in field number one, field number two, field number three, and this is Mr. Dovel's determination of those acreages, I will allow the information into evidence.

MR. EISMANN: Well, Mr. Dovel has also testified that he's familiar with the quarters and the records of the department which disclose or in which the present water right is predicated and so you're going to have him testify as to what fields are irrigated, but not as to what water right applies to the fields. We think that's a matter of foundation that we have now established. He has -- he's relied -- he's looked at your records, he's looked at ASC records, and he's familiar with the property and obviously from the videotapes and other evidence that's been introduced, is very familiar with the property and so our offer of proof would be that he's now the -- now entitled to show what fields are, in fact, irrigated and the source of the information and what right it appears to apply to that field.

Now the department may take a different position, you may not adopt his position, or you may adopt

part of it and not all of it, but without that evidence -- he's entitled to have that evidence in the record for consideration.

MR. SPACKMAN: All right. I want to get off dead center. I'm not sure that it's that important one way or another. I think I can discount the testimony and look at it independently anyway. I hate to be simply giving in. What I guess I'm -- I don't want the testimony to come in by Mr. Dovel simply representing that he's familiar with the department records and as a representation of that this is what the records show. If he's familiar with where those rights have been delivered through his personal experience, then if you will lay that foundation I will allow this information to come in, Mr. Eismann.

MR. EISMANN: Well, you say where that right has been delivered, you mean the boundaries the department has struck?

MR. SPACKMAN: No.

MR. EISMANN: See, the department struck some boundaries over there and locked some valves so that they could only be used one way or the other and so certainly -- he can certainly identify the area that the department has determined is the difference between the -- what's the creek's name? What's the creek's name on the other side?

THE WITNESS: Jackass or Shafer.

MR. EISMANN: Shafer Creek. What the Shafer Creek line was struck by the department. They flagged it. Is that correct?

THE WITNESS: That's correct.

MR. SPACKMAN: All right. If he knows that by personal experience and you want to explore that and he knows by personal experience that the water can only be delivered to certain parcels, the priority -- number one priority right, then I'll allow him to testify to that, but I don't think that foundation is laid, that the foundation that -- that's before me now is that Mr. Dovel is somewhat familiar with the records of the Department of Water Resources and by those records he's assigning water rights to land. I see no reason for him to present that testimony. To me, those are matters of record before the department. I don't need it.

MR. EISMANN: Well, it's not just a quarter acre that's involved, it's the number of acres in each quarter acre. Do you understand what I'm saying? And there are two sources for this information in the records to date. There is the engineer's work that he did and then identifying each field within a particular subdivision, assigning a number to it, that's in evidence, and there is in evidence the application which establishes these two, the marks in yellow, as being number 12 right and the

application itself shows where the other -- where the other rights --

MR. SPACKMAN: Just a moment. I need to change the tape.

Okay. We are back on the record. Mr. Eismann, I'll allow you once more to lay a foundation with Mr. Dovel to get some of this information in, but if the foundation is simply that Mr. Dovel is acquainted with the department records, then I don't think I will let the information in. If there is some way physically that restricts the applications of the number one right to certain lands and he knows what that physical restriction is and through personal experience he knows that's where this number one right has been delivered, then that seems to me to be sufficient foundation, so you may go ahead.

BY MR. EISMANN:

Q. Mr. Dovel, are you familiar with what steps have been taken to differentiate between Shafer Creek lands and Porter Creek lands on Double Diamond?

A. Yes, I am.

Q. And what steps have been taken?

A. Between Shafer Creek and Porter Creek lands that are specific boundaries, one of the main lines drawn by Mr. Cockrum right here -- I'm sorry. It is not drawn by Mr. Cockrum. Just below the number one wheel line on

the map there is a mainline and a roadway and a field that's designated as having -- as being the Shafer Creek boundary. This is the end of the mainline, the southern most point of the mainline.

Q. And that's near the 3-A field?

A. That's correct. That is on the Shafer Creek-Porter Creek boundary and has been flagged by Mr. Lester in the department. This -- your after only Shafer Creek; right?

Q. Right. That's what the question was. What steps or control methods to your knowledge has been taken to prevent Porter Creek water from being applied to Shafer Creek land?

A. There is a valve located in the mainline which is closed and locked.

Q. And who is it controlled by?

A. It's controlled by the water master. I believe the lock was furnished by Double Diamond.

Q. And do you know about where that valve is located?

A. Yes. It's about where Mr. Cockrum drew the end of the mainline adjacent to field 3-A on the west and adjacent to water line number one on the east.

Q. Now the applicant in this case has designated certain fields as those having a number 12 right and

looking at Exhibit V are those -- second page. Do you have Exhibit V?

A. Yes, I do.

Q. The ones outlined in yellow, what do they represent?

A. They represent the fields with the number 12 priority as indicated here by Mr. Cockrum and Mr. Rumsey.

Q. And as shown on the application?

A. Yes.

Q. And then all of the other Double Diamond irrigated lands laying north of the Shafer Creek boundary, except those number 12 rights designated in the application and designated in page two of the Exhibit V, are irrigated with number one Porter Creek water?

A. That's correct. Except for this parcel that's east of the county road. Two of these parcels have been flagged.

Q. Okay. But this is -- that's marked as ten and is yellow, is it not?

A. That's correct. And it's --

Q. Field number one?

A. Field number one on this Exhibit A.

MR. EISMANN: We would re-offer Exhibit C.

MR. SPACKMAN: Okay. Are you re-offering Exhibit C or are you offering exhibit pages that are attached to

Exhibit C?

MR. EISMANN: First C.

MR. RIDDLEMOSER: Same objection, sir.

MR. SPACKMAN: Well, let me ask a few questions of Mr. Dovel. In the first column it refers to field number. What are those numbers?

THE WITNESS: I'm sorry. On Exhibit C?

MR. SPACKMAN: On Exhibit C.

THE WITNESS: Okay. These pertain to Exhibit B and these are the numbers when the ASCS surveyed Double Diamond Ranch and my ranch and every other ranch in the area, they assigned specific fields specific numbers, beginning on one end of the ranch and starting with field number one and those numbers are contained in our Protestant's Exhibit B. For example, field number one is identified in Exhibit B as being located in a particular area, which we can identify both on the ground and on this exhibit here, as containing 15.3 acres.

The flagging priority here establishing that approximately 13.3 of those acres have a number one priority, that's the flagging that was done by Mr. Lester, and that approximately two of those acres have a number 12 priority. That's in reference to field number one.

Field number two is designated as the ten to 11 acres field that lies to the east of the county road

and is designated as containing ten acres on the ASCS survey of this ranch.

MR. SPACKMAN: Okay. So this document will cross-reference to the ASCS map?

THE WITNESS: Yes, it is.

MR. SPACKMAN: And the numbers on the left hand -- or contained in the left-hand column were referred in numbers of fields shown in the ASCS?

THE WITNESS: Yes, sir. That's correct.

MR. SPACKMAN: What is the year of the ASCS map?

MR. EISMANN: It's Exhibit B.

MR. SPACKMAN: What is the year of that aerial photograph?

THE WITNESS: Sir, the particular map that I removed these figures from was a 1980 date and I don't remember what of the 1980s. I can't recollect.

MR. SPACKMAN: Well, Mr. Riddlemoser, I see no reason to keep this particular information out, but it's subject to review of our water right records and I will superimpose on top of it what our records show, so I'll receive Exhibit C into evidence.

(Protestant's Exhibit C admitted.)

BY MR. EISMANN:

Q. Now going back to Exhibit V with the background that you have established and with your

familiarity with the property itself, have you, on page two, located what is your best estimate of the total gravel pit area?

A. Yes, I have.

Q. And how is that reflected on Exhibit A?

A. It reflects this area that has been designated by X as the existing gravel pit at a certain time. It reflects all of the rest of this area that was contained -- for example, most of this in my videotape shows that all of the rest of this light-colored area contained between the Shafer Creek boundary on the south, the airstrip fence boundary on the west, the irrigated field to the north containing the two wheel lines and the other fields lying to the east and irrigated, it reflects that all of this area of nonirrigated land for the past several years is that land which I consider to be the gravel pit.

Q. Now has the area that you're indicating is the gravel pit -- what was its condition with respect to farming or not being farmed or what happened in the year 1988?

A. In 1988? I did not walk it in 1988. I observed it from across the river where this videotape was taken. I observed it while driving in the access road once it was built. The majority of the area was not

farmed in 1988.

Q. Can you tell us how much was farmed?

A. I took no measurements. No, sir.

Q. Can you estimate how much was not farmed?

A. I would feel a lot more comfortable if I could refer back to some records that I don't have here. I will state that a majority of it was not farmed, because they scarfed a tremendous amount of that land off. That land comprises, according to the -- whatever exhibit it is that the gentleman from the transportation department gave this morning -- comprises more than 70 acres and it's my belief that the -- that in excess of half of that quantity was not farmed.

Q. So how many acres would that be?

A. Well, on the basis of my experience, this field here, which can be seen, the field lying to the southern most part and the western most part of this Porter Creek irrigated ground, comprises what I believe to be about 23 acres and a southern part of that field, something between six and nine acres, is -- has a junior priority right as flagged by Mr. Lester and the remainder is about 14 acres of the senior priority right and I don't have a recollection of that being farmed, but I don't have a recollection that it was not -- that it was a gravel pit in 1988. In other words, I can't say, you know, in

honesty that it was a gravel pit.

Q. Can you tell us what was farmed as your best estimate?

A. Well, my best testimony would be -- I would judge -- now which figure do you want, farmed or not farmed?

Q. First, let's talk not farmed.

A. Okay. I would judge that 43 acres, by my recollection, were not farmed in 1988.

Q. Between the airport and the Payette River was any of that area farmed in 19 --

A. I have not seen it farmed.

Q. Never?

A. Never.

Q. And have you observed it in the year 1988 and each year thereafter?

A. I have, yes.

Q. In 1989 what area, if any. of the gravel pit area was not farmed?

A. A lesser quantity by my recollection, but, again, I'm reluctant to -- forgive me -- not farmed was a greater quantity. I just don't have a recollection. I don't have any photographs to document it.

Q. What is your best estimate?

A. I would judge possibly 50 acres that I can

say with surety that I can recollect was not farmed.

Q. And how about 1990?

A. Most, if not all, of it was not farmed, but I can't say with assurance that all of it was not.

Q. What's your best estimate?

A. Does this include dry farming or irrigation?

Q. Well, we are talking irrigated farm land.

A. Okay. Mr. Eismann, I'm reluctant to throw a guess out and all my recollection is that I know the gravel pit expanded as I watched it expand.

Q. In 1990 was there more not farmed than there was in 1988?

A. That is correct. At least 55 acres, but --

Q. In 1991?

A. Nothing whatsoever in that parcel that I have outlined was farmed.

Q. So none of the 65 or 70 acres was farmed?

A. Whatever quantity there is. There is about a five-acre parcel designated here as handline number two, I believe -- no, that's the wrong figure. Anyway, this parcel right here in the northeast corner I believe was farmed and had handlines on it, but none of the rest of this parcel was farmed in 1991.

Q. How many acres would not have been farmed in 1991?

A. Approximately 60. Depending on whose acre figures we assume are correct.

Q. Well, what is your opinion as to the acres?

A. Well, until today I believed that the ASCS acre figures and the Department of Water Resources figures on their field aerial photographs were the more correct. This study presented by Mr. Watts indicates a slight increase in some of those acres.

Q. All right. How about 1992? What of those acres in the gravel pit area were farmed in 1992?

A. Again, none of the acres that I had designated, excluding that small -- the five acres, roughly.

Q. How many acres were not farmed?

A. Again, about 60 acres.

Q. Handing you what has been marked as Exhibit X. Would you tell me what that is, please?

A. Yes. This is the photograph that I took on the afternoon about 3:30 p.m. on March 9th, 1993.

Q. And what does it portray?

A. It portrays the existing gravel pit area, that part that has been leveled as part of the reclamation process and that part which still remains either as a dug pit or is piles.

Q. And does it show the airport?

A. Yes, it does. Most of it.
Q. And does it show the Payette River?
A. Yes, it does.
Q. All right. And does it correctly portray -- accurately portray how that property existed on the date you took the picture, March 9th, 1993?
A. Yes. I believe that it does.
Q. Now was there any farming between -- any evidence of any farming in prior years between the Payette River and the gravel that is obviously stacked?
A. I have never seen any evidence of that, including the year 1988, '89, '90, '91, and '92, nor do I see any evidence of it now.
MR. SPACKMAN: Okay. Mr. Eismann when you move to a remote location from those mikes you need to speak up or stay close to one, because it's not picking up here. You're welcome to take it with you if you like.
BY MR. EISMANN:
Q. I need to see the picture. Now with respect to the gravel mounds or piles, have they -- how long have those been there, to your knowledge?
A. For a number of years. In fact, some of the gravel and some of the overburden that was further to the north has been moved around quite a bit, in other words.
Q. Okay. But when is the first gravel pile that

you remember seeing on that site?

A. 1988.

Q. Now the area to the right of the gravel piles, what area is that?

A. That's the southern most portion down toward what is designated as field 3-A on Exhibit A.

Q. And that's an area you have designated as at least a portion of it was not farmed in 1988 or '89 or '90 or '91 or '92?

A. That's correct.

MR. EISMANN: We would offer Exhibit X.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: We have no objection to its admission.

MR. SPACKMAN: Exhibit X is received in evidence.

(Protestant's Exhibit X admitted.)

BY MR. EISMANN:

Q. Handing you what has been marked as Exhibit Y. Would you describe what that is?

A. That's essentially the same photograph as Exhibit X with a couple of overlays, one taken to the north to show all of the airstrip and adjacent ground and one taken to the south, which shows all of the ground that was once gravel pit. In other words, these three photographs, placed together as they have been, show all

of that ground that was removed from farming during most or all of this period and converted to a gravel pit.

Q. And what portion, if any, of that was farmed in 1992?

A. None of it.

Q. And then you have given your estimate as to the acreage in that area that was unfarmed in 1988, '89, '90, '91; is that correct?

A. '91 none of it was farmed either.

MR. EISMANN: We would offer Exhibit Y.

MR. RIDDLEMOSER: Mr. Dovel, what's the date of this picture?

THE WITNESS: March 9th at 3:46 p.m., if I recollect. 1993.

MR. RIDDLEMOSER: We have no objection to Exhibit Y.

MR. EISMANN: Handing you Exhibit Z.

MR. SPACKMAN: Exhibit -- what is that marked?

MR. LESTER: Y.

MR. SPACKMAN: Y is received into evidence.

(Protestant's Exhibit Y admitted.)

BY MR. EISMANN:

Q. Do you have Exhibit Z in hand?

A. Yes, I have.

Q. What does Exhibit Z portray?

A. It portrays this same gravel pit area, but taken from a different side and a different view. It's taken from the east side of the gravel pit and, in fact, it's taken on the access road to the gravel pit and it shows that area to the south that was part of the gravel pit, it shows an inactive wheel line once this area was releveled, it shows the hay storage that occurred in the year -- the summer and fall of 1992 and, as I said, it shows the access road and some of the piles of gravel and what have you.

Q. And when were those pictures taken?

A. The date on these pictures is November 2, 1992.

Q. And does it fairly depict -- as you have assembled them into one panoramic view, does it fairly project and portray what conditions existed at that time?

A. I believe, yes, it does.

MR. EISMANN: We would offer Exhibit Z.

MR. RIDDLEMOSER: We have no object. No problem. No objection to Number Z.

MR. SPACKMAN: Exhibit Z is received into evidence.

(Protestant's Exhibit Z admitted.)

BY MR. EISMANN:

Q. Now returning to Exhibit V, page two. You have explained how you arrived at the area marked in green

as number one irrigated land; is that correct? Number one right?

A. Yes. As the number one priority.

Q. Yeah. And you have explained how you arrived at the area outlined in red representing the extent of the gravel pit as it's been used over the years?

A. I used several sources. I used the decreed water rights, I used the department's work sheet, I used the department's aerial map, I used the ASCS aerial map, and used the ground itself with a comparison and when I received this from the engineer Mr. Watts I simply overlaid that data that I had before and put it on here. For example, the area that was delineated by Mr. Nottingham on his aerial photographs that he showed me, I compared this with the information that I had and with the data on the department's listing of water rights, for example, fields 23 -- field 23 was a junior priority right, because it laid below that line -- below the decreed line. Field ten, obviously, is a junior priority right because of its location and the quarter quarter in which it's located and so forth.

Q. And page three and four are summaries of fields that you have designated within each group?

A. That is correct. Yes.

MR. EISMANN: Mr. Hearing Officer, we would reoffer

Exhibit V.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: Well, make my same objection there as far as relevancy is concerned. I object on the grounds that it is irrelevant. It is a self-serving computation which invades the province of the result of this hearing right here. In other words, this is a decision to be made there by the Department of Water Resources and their records are what's involved here and the self-serving summaries, without relevancy, should not be admitted.

MR. EISMANN: May I address it?

MR. SPACKMAN: Yes, Mr. Eismann, then I will rule.

MR. EISMANN: Let me comment.

MR. SPACKMAN: Yeah.

MR. EISMANN: I don't remember Mr. Riddlemoser offering any evidence that I wouldn't classify as self-serving and I hope we haven't offered any evidence that's not self-serving. This is an adversarial proceedings and each party brings forth the evidence that it feels best puts forth and portrays their position. Obviously by any definition that would be self-serving.

This is relevant as to whether there is forfeiture or not and what acres are involved and it's our position that the department has no more firmer lease on

accuracy of acreage computations than any other person reasonably qualified or having studied the matter and I recall to your attention your recent department's notice to the public that even the United States agent -- United States agencies made a grievous error by Mr. Higginson's comments with respect to our state of Owyhee county and water regenerating or filling capacity in those aquifers, so we think that this is appropriate evidence in the record. You may come to a different conclusion, you may come to this conclusion, but certainly we think we are entitled to have it in the record as to what our position is and how we arrived at it.

MR. SPACKMAN: Okay. I feel like I'm recanting to some degree, but there has been some foundation laid as to physical boundaries regarding the application of water to these lands and through personal experience Mr. Dovel knows where that water has been applied, so I also think that some of this information -- some of the rules of evidence are set up to protect, you know, whether it's self-serving, you know, whether their arguments about being self-serving or whether it's hearsay or whatever it may be, mainly those rules, I think, were put into the rules of evidence to prevent undue prejudice by inexperienced jurors and prevent the information -- information coming in that might be inflammatory or might

sway them in a way that would not be proper. I don't think that's the case here. I will allow the full text into evidence and let's go on.

(Protestant's Exhibit V admitted.)

Mr. Eismann.

MR. EISMANN: Thank you.

MR. SPACKMAN: I, again, want to qualify it, however, and say that I intend to overlay the department records on top of it and I don't accept it as a representation of what the department's records show.

MR. LESTER: Would it be fair to say that that's Exhibit D, four pages?

MR. SPACKMAN: I think there were three or four pages.

MR. EISMANN: Four pages of Exhibit V as in Victor.

MR. LESTER: The original four pages now are known as V?

MR. SPACKMAN: Yeah.

BY MR. EISMANN:

Q. Now, Mr. Dovel, I'd like to digress a moment and go to the sprinkler record and summaries which you have provided in the form of -- we need to have you have Exhibit I before you and Exhibit H.

MR. SPACKMAN: Here is H. Were we ever given I, Mr. Eismann?

MR. EISMANN: Yes. That was admitted.

MR. SPACKMAN: Oh, it's there.

MR. EISMANN: At this point it might be helpful -- it would be helpful to me, at least, to review some exhibits. My records reflect that all of the exhibits that we have offered have now been admitted, with the exception of Exhibit R, and we have not offered Exhibit M or O or P as yet. Does that correspond with your records, Steven? Or have you been keeping record?

MR. LESTER: As I recall, we had R listed as a dial caliper.

MR. EISMANN: Yeah. I will take care of that right now.

MR. RIDDLEMOSER: I thought that was --

MR. EISMANN: No. Ms. Christie hadn't used it, so I held it.

MR. LESTER: Oh, you held off on it. Okay.

MR. SPACKMAN: I think there was some brief discussion about the dial caliper and then we didn't go any further.

MR. LESTER: Okay.

BY MR. EISMANN:

Q. Am I correct? Do your records jive with mine?

Did you measure orifices in the sprinklers?

A. Yes, I did.
Q. And what did you use to measure the orifices?
A. This dial caliper.
Q. And is Exhibit R a picture of the dial caliper that you're referring to?
A. Yes, it is.
Q. And with what familiarity do you have with a dial caliper?
A. Well, I have used a micrometer and dial calipers and Berneer calipers for years. I'm quite familiar with them.
Q. And how did you use them to measure the opening in sprinklers?
A. Simply place the inside dimension mike into the nozzle of the sprinkler and this particular dial caliper is graduated in 64ths of an inch, it's an extremely accurate instrument for a Berneer caliper, and I've read the dimensions of sprinklers in 64ths of an inch. In other words, if it read 10/64ths, then it was a 5/32nd nozzle sprinkler or a 9/64ths or what have you.
Q. Have you examined the sprinkler orifices on the Double Diamond wheel lines?
A. I have, yes, on several occasions.
Q. And did you then measure them as you examined them?

A. In most cases, yes, I did. On some occasions I took the reading. On others I measured them to determine how much wear and whether or not they had been bored out.

Q. And what did you find?

A. I have never encountered one bored out. There may be some on the ranch, but I have never seen them.

Q. What dimensions did you find as to --

A. I found them to be the same that was implanted -- imprinted on the nozzle itself. Normally for a long period of time 9/64ths comprised most of the sprinklers on the ranch and in the last couple of years I have seen some that have been changed to 5/32nds and others, especially two lines that have gone to flow control nozzles of the five gallon -- or 5.0 Nelson flow control.

Q. Give me your estimate of what proportions would fall into what category based on your observation.

A. In other years, including, for example, 1990 and 1991, the majority of the sprinklers on the ranch were 9/64ths. There was a -- in 1991 there was a wheel line that I observed with flow control nozzles on it.

Q. Can you put your estimate into percentages or approximately or a range?

A. Oh, I would say that that would mean 12 percent, maybe 14 percent, had something other than the 9/64ths nozzle on them.

Q. Okay.

A. Maybe 15 even, but somewhere -- I'm just doing some calculations here.

Q. So in round figures then, 85 percent would have been 9/64ths and 15 percent would have been larger, either --

A. That's correct. Yes.

Q. -- 5/32nds or the flow control?

A. Yes.

Q. Do you have Exhibit H before you?

A. Yes.

Q. And Exhibit I?

A. Yes.

Q. First, let's take Exhibit I. Applying the pressure figures that you have disclosed and have testified to, what would be the most appropriate -- giving the benefit of the doubt to the irrigation system -- that the pressure would come up to day in, day out or year in and year out on the Double Diamond setup? Now I'm qualifying this when it's being used from Porter Creek --

A. Uh-huh.

Q. -- on a gravity system.

A. Uh-huh. Well, if there is no other source of boosting, then gravity. If they are not using the booster pump and if they are running all of the lines the pressures are quite low, but if they are running three lines a reasonable pressure -- and my experience on let's say the number two, three, and four lines, for example, would be around 31 PSI, perhaps 32, but generally about 31. It varied considerably if they gave some boost and added more in output.

Q. What's the typical -- on those three lines what's the typical number of sprinklers?

A. The maximum number is 64. A typical number would be about 58, 59. That would be an average number.

Q. And why would it be reduced?

A. Because of the nature of the fields. In other words, to get the maximum number of sprinklers each or all of those lines would have to be running in the widest place in the field.

Q. And you drop off a sprinkler as you narrow down?

A. Exactly.

Q. Okay. At that rate or at that number of sprinklers what would be the use of water from Porter Creek in gallons per minute at the wheel lines themselves?

A. Are you asking me for just at total of those

three wheel lines or --

Q. Yes.

MR. RIDDLEMOSER: We object to this. We are getting afield -- far afield from what I think is the issue here in this case and I think also beyond the scope of this witness without other foundation. I mean we are -- when you start getting into how much water is going out on the field at any one time, that depends upon all the factors of which you're well aware of and I think that we are invading the province of this hearing, without foundation laid as to this witness's testimony.

MR. SPACKMAN: Mr. Eismann.

MR. EISMANN: To determine what a wheel line or what a sprinkler puts out the testimony that you need is pressure, you need the size of the orifice, then go to the manufacturer's handbook, which Mr. Watts did, and you get the gallons per minute and in applying those -- and if you take it across the irrigation that is actually being conducted, then you will come to the number of gallons, pretty close, that have actually been applied through this system in these fields.

MR. SPACKMAN: Well, I'll overrule the objection, Mr. Riddlemoser. The amount of water that's been diverted under these rights is at issue in this hearing. I think the method that's being described is one that's recognized

as a way of estimating flow rate, so you may proceed, Mr. Eismann.

BY MR. EISMANN:

Q. You may answer.

A. I'm sorry, but I forgot the question. Was that for the three lines?

Q. Yes.

A. Yes. I'm sorry. Okay. About 190 gallons per minute would have been applied through three lines without a booster pump and with no other lines running, with just the gravity head from Jackass Creek.

Q. Now what -- have you measured the pressure when there was just Porter Creek water and some booster pump applied?

A. Absolutely.

Q. And what pressures have you determined then?

A. I determined on several occasions an approximate pressure -- and that's an average pressure for all of the lines -- of 31 PSI with the size nozzles I have indicated to you in 1991. I also measured those pressures in 1990.

Q. And that was with the booster pump running?

A. That's correct.

Q. All right.

A. Not with what's known as the booster pump,

but with a river pump running.

Q. And how many lines were running?

A. Well, it varied with each measurement. On a specific day that I measured there were 127 nozzles and --

Q. What date would that be?

A. I'd have to look in the diary, if I may.

Q. Exhibit G?

A. I will tell me here. I'm sorry. I guess I do need Exhibit G. Thank you. I guess I don't have that particular day in the diary. I have got one when 124 nozzles were running, which is quite close.

Q. All right.

A. I came up with an average reading and spent sometime walking those lines both with Ms. Shirley and by myself and I came up with an average reading of 31 PSI and that gave me, with the Rain Bird nozzles, about 3.14 gallons per minute. I computed the overall border being applied on the ranch as 3.2 gallons per minute, because of the potential for wear in the sprinklers and because there were always some variable nozzles. I did not always check the entire group of 21 or 19 or 14 nozzles, I usually checked some representative nozzles.

Q. All right.

A. And so in any event, I arrived at 3.2 gallons

per minute that was being applied as an average figure for every one of those 120 some odd nozzles.

Q. And what would that amount to in gallons per minute then for the total?

A. I'm sorry, it's so late in the day, if you don't mind I will do a computation.

About 400 gallons per minute.

Q. Okay. And converting that to cubic feet per second, what would that be?

A. I'm trying to find a quick fix here, but, in any event here -- about 888, 890, so that would be about .89 CFS.

Q. And converting that to inches, would be about how many inches, miner's inches?

A. About 44 and 4/10th. A little more.

Q. Now you stated earlier in your testimony that at a certain point in diversion from Porter Creek into this irrigation system of Double Diamond's there would be a significant increase in the water overflow in Jackass Creek; is that correct?

A. That's correct. Yes.

Q. And at what point does that occur?

A. I can't tell you exactly the point, because, of course, the number of sprinklers and their pressures vary, but I know from Ms. Christie Shirley's measurements

that it occurs when in excess of 1.4 CFS is turned into the lines.

Q. And that's when they have got all of their lines operating?

A. In some cases, yes. Always if -- if in the vicinity of two cubic feet per second is -- regardless of how many lines they have, according to these tests we did in 1991, if they turn in as much as or more than two cubic feet per second there is a continual overflow around the clock, regardless of plugged screens or anything else.

Q. At Jackass Creek?

A. That's correct. The only exception to that is when the screens have been terribly plugged and there is a bad overflow and just when they clean the screens it takes a little while while they are still irrigating to fill the mainline back up and for that brief period the overflow may halt, it may take an hour, it may take two hours, but then there is always an overflow.

Q. Then what is the most water that -- from the point at the Jackass Creek overflow that you have seen being actually then delivered and applied to the fields?

A. That I have seen?

Q. Delivered and applied to the fields from the Jackass Creek overflow.

A. The most that I have personally measured has

been about 51 to 52 inches. The most that I have estimated has been perhaps as high as 60 inches. You get a lot of variable factors, some credibility -- in other words, the potential for some things that I could not factor in, such as a great many worn nozzles and so forth, too many larger sprinklers in the system.

Q. Now we have been talking about wheel lines, but in your calculations do they include handlines when they are being used?

A. My calculation included every nozzle, yes.

Q. Now have you viewed this system since 1988 or before?

A. Yes.

Q. And the situation you described in 1991, was there any material change in that situation for any of the prior years to and including 1988?

A. I have watched some changes, yes. Very definitely. In other words, when the booster pump was being used there was less pressure during the last two years that that pump was used than there is now in that system. In other words, when the river pump is used as a booster pump or in conjunction with the large quantity of Payette River water, especially if there is a large quantity of Payette River water, there is a very substantial increase in the pressures in that system.

Q. And what do those pressures reach?

A. I measured some in -- this summer and they reached in the upper 30s, but, again, that was with a quantity of Payette River water being applied.

Q. You say upper 30s. Can you tell us --

A. 36, 37 PSI.

Q. Now the situation you're describing at that point in the operation is with the Payette pump running pumping Payette River water?

A. That is correct. Yes.

Q. What effect, if any, does that have on the overflow at Jackass Creek?

A. Well, it's -- in my experience they have been able to regulate the overflow more efficiently once they pump a large quantity of Payette River water in by adjusting the quantity of Payette River water so as to reduce the overflow.

Q. Now how do you relate or what relationship, if any, is there between Exhibit I and Exhibit H?

A. Well, there is an absolute correlation there. In fact, they agree with each other, if you compare the times that these measurements were taken.

Q. Well, what is the significance of that?

A. Well, that simply means that the water master is getting the same measurement that Ms. Shirley was.

Q. Well, in addition to the measurements.
A. Well --
Q. What about the diversion of the amount of the water?
A. For example, in 1991, as with both exhibits, it's obvious that we had an overflow during all of the days when these larger quantities of water were diverted.
Q. What do you mean overflow?
A. At Jackass Creek. In other words, a significant waste of water. That was also true in 1990 and in other years.
Q. Has that generally been the condition?
A. That's always been the condition that I have observed since I have been on that ranch.
Q. And how many years is that?
A. 11.
Q. So that would have been true in 1988, 1989, 1990, 1991, and 1992; is that correct?
A. And also in 1986 and '87. It was until -- quite recently it was an accepted standard that the maximum amount diverted by Double Diamond during the irrigation season was about 2.1 CFS and with that 2.1 CFS during the 12 or 14 hours when it's cooler, that is between 1:00 o'clock in the morning and 11:00 or 12:00 or 1:00 o'clock, noon, there always was a -- not a

substantial, but a light to moderate overflow and then during the remainder of the day that overflow was slacked off until about 9:30 at night there was little or no overflow.

Q. Why would that be?

A. That's because of the loss in the evapotranspiration losses in the creek and in the ditch itself. We were able to pretty well judge that by our different weir readings from one time of day to the other and I believe, in fact, Mr. Lester indicated that -- as I have said for years, that there is a substantial fluctuation daily in the creek, about 30 percent or sometimes more.

Q. In your calculations of number of heads used as shown in -- or nozzles used as shown in Exhibit I, is that typical of what has gone on in years prior to 1991?

A. I think that's typical and until the river pump is turned on to a full capacity. In other words, in the first few years that I occupied our ranch, the procedure was that Double Diamond, when they ran more than three handlines, they always boosted the Porter Creek water head, the head developed by the Jackass Creek pipeline, with this booster pump and at such time as Porter Creek could not supply the entire quantity of water required to run this system of six or seven wheel lines,

the Porter Creek water supply was shut off and the river pump was turned on and that's the way Double Diamond irrigated for many years, including those first five or six years that I encountered with them.

A little later on they began irrigating just with Porter Creek water without a pump one year and at Mr. Cockrum's insistence that occurred, with extremely low pressures. I believe he -- I don't know if he would agree, but, in any event, what I would consider in my operation to be unsatisfactory pressures, provided rings in the alfalfa, because they didn't get it adequately wet, and eventually the booster pump was discontinued and the combination -- the utilizing of Porter Creek water with Payette River water begun as common practice. Again, in my experience they pump quite often -- I can hear this pump exploding. It is not an efficient use of the pump, in my experience.

Q. You have shown in the video the portion of the ditch that is not maintained and we have talked about the Jackass Creek overflow situation. Are other persons taking water from Double Diamond's ditch?

A. Yes, they are.

Q. And would you explain what kind of diversions there are in that situation?

A. Yes. When we first moved there we had a pipe

in Double Diamond's ditch and we removed water through flood irrigation. That evolved into some controversy and the pipe was removed, but there are three persons who live between my property and the Double Diamond property who, in fact, do remove water from the ditch in varying quantities. Some of them use it for stock water and some for domestic and some for irrigation.

Q. Do any of these persons have a decreed water right, to your knowledge?

A. No, not a decreed right. They recently applied for an expansion of the water right for just one inch per person.

Q. What effect does the lack of available irrigation water have in your operation?

A. It has several. As Ms. Shirley has already pointed out, it causes her to layoff five employees and, in turn, causes me to lay her off, but even worse, it costs me thousands of dollars every year -- perhaps that's why this waste of water at Jackass Creek when it's excessive is so disturbing to me and it has even a greater effect upon the local citizens, because the local people to whom I sell my hay are forced to go outside of the area to purchase hay and have it trucked in at 15 dollars extra per ton, plus they pay a premium for the quality of hay that I grow of anywhere from five to 15 dollars per ton

more than I charge.

Q. And your ranch is operated primarily as a hay ranch?

A. Yes. Exactly. Hay and grain, but primarily for dairy equality alfalfa hay. We produce that type of hay.

Q. When, typically, do you lose access to the irrigation water through a season?

A. For the first six years I really never did, except during a portion of either July or August until Double Diamond shut down their booster pump and their Porter Creek usage, at which time I regained the water, along with the number two priority, the Wolfgrams, and in recent years -- this past year my water was shut off on May 22nd, prior to really completing the first cutting irrigation and for the past several years my water's been shut off either in May or June. In fact, in 1988 it was shut off about the first part of July, the 1st or 2nd, I don't recall exactly.

Q. The water records would show your usage?

A. Yes.

Q. water master records?

A. Yes. I believe it was shut off on June 30th in 1988.

MR. EISMANN: Mr. Hearing Officer, we are about to

conclude, but I need to have a recess so I can visit with my clients a little bit before we conclude.

MR. SPACKMAN: Okay. It's about time. Recess for about five minutes.

(A recess was had.)

MR. SPACKMAN: Having avoided a near revolt from the parties here because I found the break room and I neglected to tell them where to go, I guess, for food, we are back on the record. Mr. Eismann, you were questioning your client. You may continue.

BY MR. EISMANN:

Q. Thank you. During -- let's go back as far as 1988, to and including the complete irrigation season of 1992. What sprinkler lines, if any, have you seen operate in the area which you have shown in red on Exhibit V and which is also depicted on Exhibit A, the aerial map?

A. I have not seen any.

Q. At nc time in that time frame?

A. At no time to my recollection have I seen any operating.

Q. And there is one line we have marked as exhibit -- as wheel line seven. Have you seen any -- have you ever seen it operate?

A. No, I have not.

Q. In that time frame.

A. Not during that time frame. See, I used to watch that line all the time, because it was a junior line.

Q. You mean number 12 right?

A. It was also used to irrigate number 12.

Q. Okay. As well as --

A. Right.

Q. Okay. Next in the spring when there is runoff and Porter Creek is running high, what waters are diverted by Double Diamond?

A. It varies with the spring. I mean a year ago -- not '92, but the spring of '91 I recall that Cleo turned his lines off about mid April or somewhere there, because we had a really good rain and at other times why he just pretty much opens the headgate and diverts water.

Q. When there is more than one -- or 1.4 cubic feet per second being diverted, what is the situation at Jackass Creek?

A. It starts to overflow and when it gets up to two cubic feet per second it has a substantial overflow around the clock in the spring.

Q. And that is as it is depicted in the video?

A. Yes.

Q. How can you tell whether the booster pump is running or not that you referred to?

A. When it used to run as you drive by it you would both hear it easily, since it's right by the road and it's a rather large pump, and you would see the meters turning.

Q. What's the last time that you recall that you went by that the booster pump was operating?

A. It's been several years ago, four or five years ago, I believe, to my recollection.

MR. EISMANN: That completes our direct examination of Mr. Dovel.

MR. SPACKMAN: Mr. Riddlemoser.

CROSS-EXAMINATION

BY MR. RIDDLEMOSER:

Q. Mr. Dovel, just a few questions. In this spring runoff when the water -- when Porter Creek is running heavy, do you get your full water right?

A. I don't take my full right, normally. I take whatever I need, yes.

Q. Okay. So, in other words, you're not short of water during the spring runoff, the early spring runoff?

A. Right. No.

Q. You can have all the water there that -- I mean you take and use all the water that you can; is that

correct?

A. Unless there is something wrong with the system, yes, sir.

Q. All right. And I noticed on the video here that a lot of the pictures that you were showing of the overflow in Jackass Creek was -- what date was that? May the 15th, as I recall, of '91. May 15th is during the time when Porter Creek is running pretty heavy, isn't it?

A. Some years, yes.

Q. Well, isn't that about as heavy as it normally runs during that period of time?

A. No. April is the heavy time.

Q. April is the heavy time.

A. In fact, I was shut off a week after May 15th this year.

Q. And when do they normally bring the water master in to regulate the water?

A. When three people request it and the assumption is, I believe, that when it's necessary to start to measure the water -- in other words, when the quantity of water no longer equals the demand or potentially can be seen that it's dropping and it won't equal the demand.

Q. But there in the -- during the spring runoff everybody up and down the line there have got water,

haven't they, that they are supposed to have?

A. Those of us who have been irrigating, the three of us, yes, we have --

Q. You have water?

A. Yes.

Q. So there isn't any complaint there, is there?

A. I don't know what you mean, but --

Q. Well, I mean you haven't --

A. Double Diamond is not depriving us of water.

Q. They are not depriving you of any water?

A. No. Yes.

Q. And, of course, Dobson and Oliver are number two priority right on that Porter Creek, are they not?

A. Yes. Yes, they are.

Q. And there is also a number four right of Mr. Rumsey's?

A. Yes.

Q. On Porter Creek?

A. That's correct. Yes.

Q. All right. And now regarding the gravel pit. And since the major reclamation plan has been completed, there has been work done to restore that area into production, has there not?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.
Q. Hasn't part of it been plowed?
A. Not to my knowledge.
Q. And part of -- the rocks been picked up?
A. Yes. That's true.
Q. And basically you heard Mr. Watts testify that that gravel pit area now, as it now shows, was about 20 acres, did you not?
A. No. I heard him testify that it shows in June of 1992 it was about 20 acres. Yes.
Q. 20 acres. All right. Has it increased in size since June?
A. Yes, it has.
Q. June of 1992?
A. Yes, it has.
Q. In which direction?
A. To the south and a little bit to the west. There is a new spur road on the south and an area for hay storage was created and fenced off. It's increased by a few acres. The size of the gravel piled toward the airstrip has increased in diameter. I don't know exactly how it was accomplished, but --
Q. Approximately what time during the year do they -- does the water master come on? I appreciate you said when three people wanted it, but what time,

generally, during the time -- the summer does the water master come on board to make the regulations?

A. Well, in '86 they would come on about mid July or somewhere around the first or second week in July. Recently they have come on in May and June.

Q. But then the water master regulates the flow?

A. Yes.

Q. That's what he's hired for?

A. Yes.

Q. The gates are locked?

A. Correct.

Q. And he turns into the points of diversion that water which, by decree, each party is to have?

A. He turns in the maximum volumetric rate of diversion that each party is supposed to have, unless they ask him for otherwise.

Q. Okay. And that would, then, continue for how long after he normally would come on? And I appreciate it can vary. How long after he normally would come on would it be there that you would not get any water?

A. About two days lately.

Q. Two days lately?

A. Yes. Meaning in recent years.

Q. Well, in other words, then, the water you needed to have been regulated -- they should have called

him earlier then?

A. That's your opinion, not mine.

Q. No. I'm asking you there. I mean if he comes on when he needs to regulate the water, he should have been called earlier.

A. Well, that's your opinion. I'm not going to say that.

Q. Well, I'm just trying to find out, because once he comes on everything's locked up and then he has to regulate it based on priority. I understand that.

A. Yes.

Q. Now in making these inspections of Double Diamond which you made with Ms. Shirley or Ms. Christie -- I guess Shirley Christie.

MR. LESTER: Christie Shirley.

BY MR. RIDDLEMOSER:

Q. Christie Shirley. I'm sorry. I'm sorry. With Ms. Shirley, were you normally with her all the time?

A. No, I was not.

Q. How much of the time that she was out doing this work were you with her?

A. During the initial period I was with her a hundred percent of the time for the first week, ten days, or two weeks, until I was satisfied that she was -- knew her job and I might also say that she did this for me in a

-- to a lesser degree in 1990 and -- but once I was satisfied that she knew what she was doing, unless I had some questions about something or if she brought something to my attention and she saw a situation where there was a very heavy continued overflow or something I might look at it or a situation that she didn't understand, but normally then I didn't go frequently with her.

Q. Well, the purpose of the water master was to regulate the water, was it not?

A. Yes. To deliver water in accordance with the priorities is his primary purpose, I think.

Q. That's his duty. Okay. And so at the point of diversion for Double Diamond that water -- he turns it and he locks it?

A. Yes.

Q. There isn't anything that Double Diamond can then do about it, except bust the lock or something else?

A. No. They can tell him that they don't need that much water in there and release some of it to me as was done historically so that I could irrigate my crop, so they could repair their ditch or the water master could stop people from taking water out of the Double Diamond ditch so they would get more of their quantity of water.

MR. RIDDLEMOSER: I don't have any further questions of Mr. Dovel.

MR. SPACKMAN: Mr. Eismann.

MR. EISMANN: I quit. We have no further -- we rest. We have no further witnesses.

MR. SPACKMAN: Okay.

MR. RIDDLEMOSER: We have done some talking. I'm going to ask that we go off the record. Not necessarily a recess. Give me two minutes.

(A recess was had.)

MR. SPACKMAN: We are recording again and I forgot to ask one question of Mr. Dovel. Mr. Dovel, throughout the testimony witnesses have referred to a booster pump that is a different pump than the river pump and I want to know which delivery line the booster pump is located on.

MR. EISMANN: Should I have him mark it on the map?

MR. SPACKMAN: That would be fine if the line is there and he can mark where the booster pump is. Maybe it's located on the map now and I've just forgotten.

MR. EISMANN: I don't think so. I don't think it's there.

THE WITNESS: How would you like me to mark it, just put a dot or --

MR. EISMANN: Put a circle.

MR. RIDDLEMOSER: Well, isn't the river pump already on there?

MR. EISMANN: Yeah. But this is different. Put an

arrow off and put booster pump.

THE WITNESS: It's located in line -- in the mainline coming down, but it has recently been bypassed.

MR. SPACKMAN: Coming down from where?

THE WITNESS: From Jackass Creek from the origin of the pipe on at point B. Correction. Point -- yes. Point B.

MR. SPACKMAN: So the booster pump was located or is located in the Porter Creek line --

THE WITNESS: Exactly.

MR. SPACKMAN: -- not the line coming from the river.

THE WITNESS: That's correct. Yes.

MR. SPACKMAN: And it's upstream of the connection or the junction of the river pump line?

THE WITNESS: It was until recently. There has been a different pipe installed recently.

MR. SPACKMAN: But it was located --

THE WITNESS: That's correct. Yes.

MR. SPACKMAN: -- up above the junction --

THE WITNESS: Yes.

MR. SPACKMAN: -- between the river pump pipe and the Porter Creek?

THE WITNESS: Yes.

MR. SPACKMAN: All right. Okay. That helps me.

Any further questions of Mr. Dovel?

MR. EISMANN: I have none.

MR. SPACKMAN: Thank you, Mr. Dovel.

Mr. Riddlemoser.

MR. RIDDLEMOSER: I think we are finished.

MR. SPACKMAN: Okay. The parties have rested. I want to go through the exhibits quickly to be sure that we don't have some sitting out there. Mr. Lester, I think you mentioned that Exhibit V-1 had not yet been admitted and I don't know whether that's an oversight on my part, your part, Mr. Eismann --

MR. RIDDLEMOSER: V-1?

MR. EISMANN: It was admitted.

MR. RIDDLEMOSER: The big blow up of the map. That went in. I thought we -- that went in.

MR. SPACKMAN: All right. And I may have said that it was admitted with the first page of V and that was mixed up, so V-1 is admitted, received into evidence.

Are there any others, Mr. Lester, that you have a question on?

MR. LESTER: No.

MR. SPACKMAN: Okay.

MR. EISMANN: Just for the record --

MR. SPACKMAN: Yes.

MR. EISMANN: -- Mr. Spackman, there is no Exhibit

N or O or P, so when you look for exhibits, don't assume that those are missing.

MR. SPACKMAN: And that corresponds with your records?

MR. LESTER: Right.

MR. SPACKMAN: Okay. Let's talk about briefing schedules. I didn't ask about closing arguments. I'm assuming the parties don't want to verbalize those at this hour. Your stomachs are crying louder than heads, probably, at this point in time. Do you want to submit briefs? And I will discuss with you some issues that I see if you want me to do it.

MR. EISMANN: What I would like to do is be able to submit a brief setting forth our analysis of the evidence and citing to you, for your consideration, any legal authority we'd like to have you consider.

MR. SPACKMAN: Simultaneous briefs, gentlemen?

MR. EISMANN: I don't think -- so many times those miss -- miss in the night. I would think -- he's the claimant, let him open, we will respond, he can make --

MR. RIDDLEMOSER: And we'll respond. I want the opportunity to come back to you, because there are some -- I think the burden of proof on certain issues, some with me, some I think is with you, so then we would have the right to -- okay.

MR. SPACKMAN: Okay. What kind of time do you want? What kind of time do you want?

MR. EISMANN: You make that sound like a sentence.

MR. SPACKMAN: They never ask that, do they?

MR. EISMANN: First, Jack, how long do you want to put your first brief in?

MR. RIDDLEMOSER: I'm going to -- let's see. I would want 20 days.

MR. EISMANN: Let's look at a calendar and get a date.

MR. SPACKMAN: I didn't bring one with me. If somebody has one --

MR. EISMANN: Yeah. I have got one here. Today is 11th. So that would be the 31st, unless that --

MR. SPACKMAN: Let's call it April Fool's Day.

MR. RIDDLEMOSER: Let me see what day April is. I didn't --

MR. EISMANN: April 1st I believe -- let me see here. April 1st is a Thursday, Jack.

MR. RIDDLEMOSER: April 1st is Thursday.

MR. EISMANN: Right.

MR. RIDDLEMOSER: That's three weeks.

MR. SPACKMAN: Okay.

MR. RIDDLEMOSER: That's in effect. All right. My brief April 1.

MR. SPACKMAN: You want a similar period?

MR. EISMANN: Well, let me tell you what I have got. I have got kind of a particular problem. I start a preliminary hearing in a murder case the 5th of April that goes for 15 days, but that's what it's charted for and during that time and for a few days before that I'm not going to have time to do anything, except concentrate on that issue, but I can have my staff organize things a little bit, but I have got to put the finishing touch on it. Would you like to maybe get to -- or to be feel comfortable maybe April 30th, if -- but that's the reason. It won't take 30 days, but I have commitments I can't do anything about.

MR. SPACKMAN: Let me tell you one of the things that I'm concerned about. I haven't heard the applicants voice this yet, but there may be -- may be an issue on the part of the applicants about what they can farm and what they can do this year. I don't know, Mr. Rumsey --

MR. RUMSEY: Are we off the record here?

MR. SPACKMAN: We are still recording.

MR. RUMSEY: We have already farmed the area around the pit. It's already been plowed and we are picking up rocks.

MR. SPACKMAN: Okay. Well, now we are into testimony again, but --

MR. RUMSEY: Yeah.

MR. SPACKMAN: But the real issue I guess here is if I extend the briefing period and the decision-making period until the middle of July, that doesn't help you much and I'm willing to push the deadlines a little bit, so that I can at least write a decision that tells you yea or nay, that tells you what you can and can't do here during this irrigation season, so if there is any way we can push those things up, I'm willing to do that and try to expedite a decision, so I don't want the parties to feel -- I mean I'll give you as much time as you need.

MR. EISMANN: To assist in that regard, we don't -- I sure -- this doesn't sound like a big concession, but I'd like to have -- I think I can get it done by the 26th or something, but I have got these other days blocked out that I can't do much about.

MR. SPACKMAN: Okay. What I want to do is just set the dates informal, I guess. I hate to see them be rigid anyway, so let's do it on the basis of, what, multiples of seven? Is that what the courts are doing these days?

Now 21 days, Mr. Riddlemoser, 21 days, Mr. Eismann. If it's a few days late, I won't quibble, so, you know, 21 days gives you only until about the 22nd or 23rd. If it's the 26th, that's no problem.

MR. RIDDLEMOSER: And 14 back. All right.

MR. SPACKMAN: If you want to respond.

Now let me talk just briefly about issues and I think this needs to go on the record as well. Sometimes there has been a question come up about whether a particular issue was even identified by the hearing officer.

I think one of the major issues before me today is one raised by Mr. Riddlemoser and that is can the department review the entire water right and if you want to raise that as an issue -- there as a legal issue, I'm happy to review that particular legal question.

Because the application as proposed does propose the transfer of water from 22 acres to 22 acres, the only problem is the rest of the right also included in the application of transfer and I think as a matter of course the department has always looked at the entire right and not -- has not started splitting the right into fragments, but I don't want to foreclose that opportunity, Mr. Riddlemoser.

I think one of the major issues regarding forfeiture is the five year period of nonuse and there is a legal question and that is if, in fact, I believe -- and there is some question of fact, I suppose, but if, in fact, I believe that there was no irrigation in 1988, there was no irrigation in 1989 of the gravel pit area,

1990, 1991, and 1992, that's five years, but when I interpret the statute, does that mean five years of nonuse and when the sixth year goes by and there is no use it's forfeited or does the mean that the irrigation needs to resume in the fifth year? I'm not sure that issue has been resolved, but all the testimony leads me to believe that there was use of that water prior to 1988 on those lands. There has been no testimony to show that there was not nonuse on those lands prior to the summer of 1988, so there is a question about when that five year period expires.

I think there is some questions about whether the department should be reducing, if -- even if there is a non -- well, if I find that there is a nonuse of water, either in quantity or in the number of acres irrigated, whether the department should be reducing either of those particular parameters or components of the water right based on the information that's come in.

Now if there are other issues that you want to identify at this time, you know, you're welcome to do so. I want to talk about the respective burdens for a minute. You raised that question, Mr. Riddlemoser.

The burden is upon the applicant to establish the criteria that are set forth in Idaho Code Section 42-222. The issue of forfeiture and the burden to

establish forfeiture is upon the party alleging forfeiture, at least that's my understanding. It's what I would term an affirmative defense and it must be established by clear and convincing evidence.

So those are the tests that I guess I need to apply in respective burdens on the parties.

Now are there other issues that you want to discuss?

MR. EISMANN: We would want you to remember that your application asks the question, which was answered here, have you continuously used this water right for this period of time and I would assume that all of their information is contained in the application. All of the allegations and all of the statements made in the applications they must show occurred, but we can brief that issue also.

MR. SPACKMAN: Anything else we need to discuss?

One other matter. I will look at information that's contained in the file -- in this file and I assume that the parties have had a chance to review whatever is here. I will also review the water master records, including -- I will attempt to find the 1989 records.

MR. EISMANN: If you find that, would you let us know?

MR. SPACKMAN: I will do that and I will try to

search within the next week or so and, again, try to locate those. I don't know that we will find them. Steve looked extensively and I think some other people have.

I don't know at this point in time of any other information which I will review. If there is anything else, I will tell the parties that I'm looking at a particular document or information.

MR. EISMANN: We'd like to have identified in the record any documents that -- in which you do refer in some form or another.

MR. SPACKMAN: That's important and I would give you copies of those documents. I don't like to go in and review those kinds of things without some opportunity for the other parties to -- or the parties to look at those.

Any other matters? I appreciate your help and patience with me. I don't profess to be the best practitioner, but, again, I appreciate the candor of the attorneys and the parties here.

With that the record will close.

(Whereupon the hearing ended at 7:45 p.m.)

* * * * * * * * * * * * * * * *

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
County of Ada)

I, M. DEAN WILLIS, Certified Shorthand Reporter and Notary Public in and for the state of Idaho, DO HEREBY CERTIFY:

That said hearing was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting by myself, and that the foregoing transcript contains a full, true and verbatim record of said hearing.

I further certify that I have no interest in the event of this action.

WITNESS my hand and seal this 26 day of March, 1993.

M. DEAN WILLIS, CSR and
Notary Public, State of Idaho.

My Commission expires: 9-12-98

3/9/94 Double Diamond Hearing

Gary S. - H. officer = GS

Jack Riddlemaser Atty. = JR
Don Rumsey Applicant = DR

Richard Eismann Atty. = RE
Georg Dovel Protestant = GD

M. & Mrs. Hess - interested parties in attendance

Tape #3 cont. from last hearing in 1993

ITEM	Start	Stop	Comments
Preliminary info	301.0	320	start @ 1/2 way thru Side 1
JR direct DR	320	537	Appl. Exhibit #3 (4 pgs.) admitted into evidence ✓
			where #3 = 4 pgs. diagrams @ D. Diamond system, Porter Ck. + Payette R.
RE cross X DR	538.7	639.4	End tape #3
	20.5	186.7	Tape #4 side A
GS cross X DR	187.3	274.1	241.5 - 272.1 comments @ test of system
RE recross X DR	274.2	277.0	
GS recross X DR	277.0	285.0	wheat lines & land lines

ITEM	START	STOP	COMMENTS
RE direct GD	288.0	549.1	Prot. Exhibit AA ✓ admitted
			BB ✓ CC ✓ DD ✓ } photos

where AA = copy 1993 WM records (≥ July 28, 1993)
BB = " 11/2/92 color photo west of gravel pit
CC = " " " " Reclaimed land S & W of pit
DD = " 8/11/92 " " "24" spill headgate" on * / ditch where Drakes' took "courtesy water" (alleged)

JR doubts relevancy of BB-DD but did not object to admitting these.

JR CROSS X GD	550.4	558.0	1993 irrig. info
RE Redirect GD	558.3	564.0	" " "
JR RECROSS X GD	564.1	566.1	
GS CROSS X GD	566.5	601.9	1993 # lines used, booster pumps, irrig on pit import area < 1988, River pump Role in Porter Ck. spills & Jackass Ck overflow, pump or valve Role in same
GS RECROSS X DR	604.0	615.7	1993 wheel lines, July 1993 Porter Ck Hay on Reclaimed land

ITEM	START	STOP	COMMENTS
RE Recross & DR	615.8	621.3	Same topics as above
RE motion e test	622.5	648	Requests test of system
GS "summation"	648.2	665	test, criteria, timing, etc.

End of Record

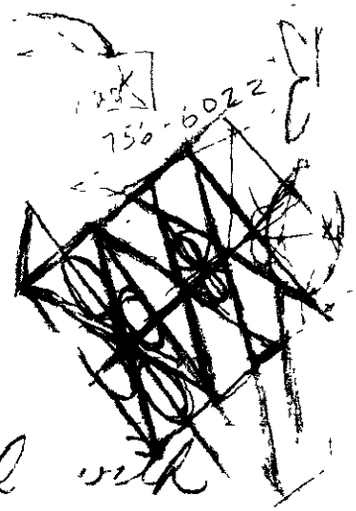
Post-hearing

SL - suggests if IDWR hands-on role in test:
- Jeff R. or other qualified person to conduct measurements → a neutral party.
- Non-interference of other water users if conduct test.
- Can assist IDWR staff in site visit

SL

Glen S. - may have new staff to assist in test measurements

Don Ramsey - has new



Double Diamond, Inc.
March 9, 1994

Donald Kumsey
Horseshoe Bend resides in
Double Diamond partner acquainted with
irrigation system

Exhibit # 3.

sheet 1 - shows length of the open ditch
2 diversion box above box top
of box.
3 - diversion box on top of Jackass
creek shows separator 5" or
5" pipe
4 - all the fields plus the gravel
pit shows location of booster
pump

Field layout is not drawn to scale.
Illustrates everything
pages 4, 3 & 2 can be used as illustrative
purposes -

Can run all sprinklers on place with 60 hp
pump

Box has been there for 60 years

Booster pump used when a shortage of water in Porter Creek - shut off when not in use
No Porter Creek water in

Bought property since 1968 - no change in box other than the new screen
6

All sprinklers running if operating at capacity - Think nozzles are rainbird brand -
Never took a pressure reading on the heads -

Started excavating at the north end where the narrow portion - and proceeded south

Early part of 1988 - irrigated all of it
1987 everything was irrigated -

Barley planted in line 44 and line 24
Crop was harvested
~~All~~
1993 everything irrigated except gravel pit area
No changes in 1993

Added weir on ditch 8 years ago -
1975 put in 12" mainline
Installed booster pump in in 1975 -

Water Resources shut off the courtesy water. It's no longer available.

Eismann X exam

Who took curtesy waters

Riley Woods. Drakes & Pomeroy.

↳ 1 "o" water, 1" pipe out of ditch — headgate took a lot of waters — 1" pipe diverted waters with.

replaced 50 hp w/ 60 hp rivers pump in 1988 or 1989. probably spring of 1989.

installed booster pump in 1975

peerless pump (booster) 40 hp pump & motor.

Intake side of boosters is a 10 inch

Outlet side of boosters

separate meter for pump. demand meter?

power records would show the use

Separate meter for 60 hp pump - doesn't know what the meter is.

Meter would be in Cleo Cochran's name

12" discharge out of the 60 hp. to a 12" plastic pipe

12" steel to 12" PVC pipe

Pipe has been there since 1968.

6 inch pipe from Jackass Creek is not rusted on the outside.

Plastic pipe - schedule 40 - 200 ± psi rating

Barley crop was irrigated in early July. He didn't know of any other irrigated. Told it was.

1988 - there once a mo. (at the ranch)
1989 "
1990 "
1991 visited every other month
1992 "
1993 here most of the year ~~once~~ visited ranch once every two weeks.

Never taken a pressure reading on sprinkler heads or on any of the mainlines.

Not purchased any nozzles since 1986

Measured gravel pit 2 years ago. also measured in Dec. 1993.

PIP vs IPS pipe difference in diameter

All valves are gate valves.

Water not flow from 60 hp pump back to Payette River.

Never measured water as it goes into the box.
Never estimate ditch loss. He guesses at least a 30% loss.

Has observed wasted water (overflow) where screens are not plugged - changing sprinklers or plugged w/ moss.

Irrigate 192-193 acres with all rights #1 & #2.

Irrigate 171 acres with only #1 right & without the gravel pit.

4" pipe in wheel lines 3" pipe in handlines.

Porter Creek water delivered to farm in July, 1993. - Rumsey assumes but doesn't know.

Without using booster pump can run all lines

250 heads w/ the booster pump

23' head could operate OK w/out booster pumps.

Need 40 psi for a good operation

Hoped sprinkler would discharge 5 gal/min

Start Payette river pump. regulate valve
6 inch discharge / don't pump back up
the Porter Creek line.
Optional use of the booster pump
No effect on the sox at Porter Creek

Pressure is 55 psi at junction of
Payette & Porter Creek to back waters up
Payette River pump does not boost Porter Creek
waters.

Doesn't Know
Booster pump was used in 1985 -
Uncertain about booster pump use in 1985.

Eismann's Examination

George Dowell 1993 observations.
Not irrigated in 1993. all lands were irrigated
As testified to
One would assume ~~Pivots~~
Gravel pit area was not irrigated with Porter Creek water - assumes irrigated with Payette River water
First part of July - no water in the ditch -
Calculated 1.0 cfs capacity plus 20%
so 1.2 cfs is the capacity.
Calculation is without

Has not observed booster pumped operated - 1986 to present -
Meter base was removed in 1986.
Replaced meter base in 1993
Overflow.
If more than 1.0 cfs is diverted at POD
There is overflow.

Examined nozzles
Sprinklines were 9/64" nozzles
were some 5/32" flow control nozzles
PIP smaller ID

In 1993 fewer Porter Creek lines used to irrigate than in previous years
Staggered harvest. Less Porter Creek water used.

- Were all lines ever operating at once
- What about irrigation ~~over~~ of the gravel pit area
- Can you testify with certainty - line 44 and 24 were not used.
- You testified than ~~S~~ river pump better manager reduces waste?
  Ditch loss may be as little as 15%

Maximum ~~sprinkler~~ 148 July of 1991 -
Whenever more than 125 used - notable difference in pressure.

Exhibit ~~BB~~ ECC Nov. 2, 1992
Portion of reclaimed land SW of gravel pit.
Fields 44 & 24

Once two waters are commingled
Saw 25 operating
Did not see 44 operating -

No Porter Creek waters in DD ditch at time he observed
Didn't see it.

Double Diamond Transfer

Applicant: Double Diamond Inc.
(Donald Rumsey) represented by Jack Riddlemoser

Protestants:
Horseshoe Bend Hydroelectric Company
David Hirschi
Grounds: effect on power project

George Dovel
presented by Richard Erismann
Grounds: injury, enlargement, public interest
-forfeiture

65-03103 } Porter Creek
65-00746 }
65-02540 } Payette River
65-10747 }

1 — dated — aerial photograph

1 — aerial photo

1 — watermaster ... [illegible]

1 — water measurement manual

1 — [illegible]

(map questions admitted)

I summary of water usage
J picture of a well measurement
K. measurement of Jackass
L. wheelless testimony
M. video referred to

K-S instruments.

Hearing

Riddlemoser

what are the numbers

#1 one right 65-03103

#12 65-10746

There is a gravel pit and a pond

Transfer # one rights -

transfers - #1 rights from gravel pit to ~~#12 rights~~ lands irrigated by the gravel pits

Do not change the point of diversion

Area has been irrigated

TF

Donald Rumsey

Lives in LA California partner in Double Diamond Inc.

#1 right isolated in one area

#12

Gravel pit E 22 acres

Can't identify location of the gravel pit

Gravel pit is in section 26

Hawkins field should get

Area labelled #1 is where the #12 right is now located

Point of diversion has not changed
Gravel pit been irrigated with #1
It was an irrigated alfalfa field —
When was it a gravel pit
Other water rights are the Payette River rights
Can water any parcel

when was it a gravel pit

x Exam -

Partner it was a corporation - filed as a corp -
How much time on the ranch one week per month comes as often as he can
Cleo Cochran is the farmer of the land
Doesn't manage irrigation water
Gravel pit constructed in 1988
Gravel used to build highway from HB to Boise

Steve Lester Water right supervision
worked 6 ½ years for the Department
Acquainted with the application

Gravel Pit -

x Exam

Decreed water right does not show right
in lot 4 — 65-10746 ~~[illegible]~~
Is the reference incorrect.

Who files?

In Lester's handwriting prepared & submitted by a Mr. Madriatta ? who was the - Lester was there

Completed app failed in April 1992
Not surveyed the property
List
Is there a difference between orthophoto

How often on Double Diamond during 1992 -
Probably ½ dozen visits to Parker Creek
Most times only passing through
Visited early in May
Met south of gravel pit on one occasion
Wanted to see if #3 was being reclaimed

No 1 right was reduced - because of gravel pit operation -
Total GP = 56 acre
1st reduction GP at max. 52 acres ?
1.03 cfs reduction - 1990 reduction ← only by #1 right
~~No reduction~~ in #12 water right
Small reduction
.08 cfs and 4 acres reduction 1990
Reduction held for 1991 & for 1992
pit had been partially reclaimed
#1 reduced by 22 acres (0.43 cfs)
#2 was fully restored (eligible at least)

No measurements of prt in 1992.

3A is the corrected

Redirect

Rumsey measured with a wheel placed on map - & calculated.

X exam Leased gravel area to DOT

U - Exhibit U. Protestants - This was admitted Lease was Atoben

Applicant w. Ø

Protestants -

Cleo CocKrum

Farmer - leases the ground. Share crops the land since the summer of 1986 Familiar with gravel operation Doesn't remember the start of operation

How many acres eliminated a little bit at a time. How many weren't farmed ~~Can't~~ Can't remember how many did not farm in 1992.

Irrigation ~~system~~ how is water delivered Open ditch 2 miles of open ditch Then in a pipeline -

At point B can divert into 2 pipes one to Jackass one to the farm

Overflow controlled by gravity -

Pump from Payette junctions into the Potter Creek delivery pipe -

Valves on pump - foot valve & a manual gate valves

Pump act as a ~~[illegible]~~ booster?

Gravity system unless pumping from the river still gravity

C is where the pump from Payette comes in

Black line is mainline for Porter Creek water

Irrigate w/ wheel lines & hand lines

7 to wheel lines

red lines are wheel lines in most southerly position or most easterly position)

Did not use #7 in 1992

used #17 in 1991 in a regular rotation

Green (outlined) X-hatch are handline irrigated

Doesn't count the # of heads

9/32 nozzles on wheel lines

or 9/64"

1987-92 no significant change in orifice size Handline size was also 9/64"

Any pressure readings @ end of line -

will measure end of pressures

Quantity of Porter Creek water determines # of sprinklers operating - Uses them or he does not. Use Porter Creek water first

Are there leaks - just where it crosses Jackass Creek. Uses these immediately

Rights on Snyder Creek water.

Curtesy water taken from the ditch is called "curtesy water." Those people take this.

Not much maintainence from well to the Dovel property. Hand maintenance.

He orders water from the watermaster.

Changing line may caused discharge to Jackass Creek.

Double Diamond diversion dam below Dovel's. Stop boards & canvas's

Occasionally leaks.

At least once a week.

x Exam Riddlemoser

Christie Shirley

Employed by George Dovel capacity of irrigation 89-92.

K to provide crews to set up sprinkler changes

Employed 5 people each year.

When water is no longer available - they are unemployed

Doesn't remember seeing # 7 in 1991.

Monitoring irrigation in 1991 (irrigation by Double Diamond)

Lives south of DD ranch. Travel north

Reduced to writing - Drove it 3 times per day each day, recorded observations.

Also measured pressures & check nozzle sizes

Did not measure orifice size Dovel measured the orifice size

- Exhibit J - measuring Double Diamond waters August 1 photograph.

Exhibit G is her diary of 1991 irrigation use - Daily reading 3 times a day Measured as best she could.

H S stands for handline 5 heads
weir reading is 0.49 information.
couldn't read how much water going
into box -
measured 19 psi -
Didn't convert the numbers on

July 7, 1991 3:30 pm. 5 wheel lines running
3 handlines & river pump was running
1/4 on the weir

Part 2
200 gpm in Jackass Creek -
Stopwatch & a bucket
The Jackass is muddy

July 30, 1991

July 31 look at this overflow is
approximately 90 gpm

August 6 Never observed no. 7

Keith Nothnagle Transportation Dept.
Dist. 3 geologist Is in charge of records
of Horseshoe Bend project.
Exhibit W
Site plan for a gravel lease

Exhibit U is a copy of the gravel
Work began
Lab tested June 20, 1988
Drain rock in stockpile would have stripped
overburden begun screening process.
Doesn't know quantity of rock in the stockpile
When did operation cease
Release satisfactory reclamation 4/27/92
Full restoration not complete at their request
Seeding was not done wanted to change
the reclamation plan.

Resumption of Kristy Shirley's testimony
Part 1 page 5 an error
should be .06 rather than 0.6 for the
Dobson entry
Page 1 water measurements

O.D. refers to Oliver Dobson in her notes
Page 5 calculations of Dovell
Page 7 bottom of the page

Page 14 Aug 9, 1991
11:56 a.m.
Page 27 Sept. 9, 1991
Dovells calculations 6 inches - } not
of water wasted 65 inches } her calculations

Sept 10 entry in diary all Dovells

Evan by Riddlemoser
All the record written in 1991
Paid for the work she did by Dovell
Hired to take weir readings at the headworks
Purpose differences in what was
supposed to what was said
Reading by watermaster is the same
as her readings

Watts (Don Watts)
636 (a Cassia) Licensed engineer civil & structural
Licensed since 1968 BS Civil U of I
no other degrees Owns A&B Engineering
Teaches classes at Boise State
Worked with water resources - determine
water flows

Exhibits 1 & 11

Area labeled a 22 does not appear on V1

How did he calculate the areas - Used aerial photography

Acreages are accurate within 2% of the acreages

Margin of error ± 5%

May all be a little high then a little low 2% higher than the ASCS map

Boundaries are government lots - V1 shows the section corners

sprinkler head	size	pressure	nozzle rating
9/64 opening	Nelson head	30 psi	3.15 gal/min/nozzle

Flow control nozzles

Gravel pit was 21 + a fraction road area into the gravel pit - 9/10 acre Subject to error - road area not accurate

Gravel pit itself is only 16 acres rather than 22 acres

One was prior to development - one was after development

Dovel (George Dovel)

Property has a water right -
#6 and #7 on Porter Creek where does
he divert ~~From~~ His diversion is above Double
Diamond about one half mile.
Double Diamond system -
Earther ditch for two miles -
Concrete collection box
Apply #1 priority thru six wheel lines
Draw in hand lines & wheel lines (Cochran)
He agrees with the placement -
Has not observed no 7 operating for
approximately five years
During irrigation season observed operation
twice a day
Page 1 - Part 1 - reading of 36 psi
he measured a pitot gauge -
Used his pitot gauge
He frequently replaces the gauge
Checked gauge
Page 2 he measured 19 psi
Page 5 checked weir 2/10 inch of crest -
3 foot weir 0.898 cfs
page 7 lower right hand corner his entries
Page 27 his entries in the entirety

Video photographs in 1991 -
40 hours of video tape produced tape of

Double Diamond

Pressure readings.

Measured at the bottom & the top of the line - Pressure varied.

5 wheel lines running 32 psi was the highest -

Head exists (exceeds 100 feet) between Jackass Creek & downstream mainline

Double Diamond can divert 3.82 cfs (191 inches)

1988 - never delivered full right

1990 & 1991 2.79 was delivered after removal

125 nozzles in all six wheel lines

21 nozzles/line (wheel)

Computer 21 nozzles/wheel line

Seal is broken - line drains itself

This happens when flows are low

Point C is the Jackass Creek overflow -

Exhibit C

4 cfs - diverted on the 4th

May 15, 1991

There is a Snake Creek boundary
Exhibit C is in evidence
Gravel pit in 1988. did not walk.
but observed it across the river
Majority of it was not farmed —
Scarred a large portion off
43 acres not farmed in 1988
Never farmed between Payette River &
the airstrip.
50 acres not farmed in 1989 (irrigated)
55 acres (at least) not farmed in 1990
60 acres ~~[redacted]~~ not farmed in 1991
~~92~~
60 acres not farmed in 1992

~~Exhibit~~ X Admitted
Portrays existing gravel pit
First gravel pile in 1988

Most nozzles were 9/64"
Some have been changed to 5/32"
Majority were 9/64
12 to 14% were other than 9/64"
85% were 9/64"
Some flow control nozzles
Typical is ~~"~~ sprinklers 38 39 sprinklers

190 gal/min. thru 3 lines & gravity head

31 psi
When more than 1.4 cfs is turned into line
If turn in more than 2.0 cfs - there
is a continual overflow
Most water
Measured 50-60 inches and
estimated this much
Doesn't take into account delivery
losses -
Bo

Other people take water from the Double Diamond
Ditch 3 people take water stock, dom. & ir.
no decreed right - wanted 1" per person -
applied for it
Operates as a hay ranch
When does he lose access -
last year shut off on May 22.
most years shut off in May or June.

~~Bo~~ No sprinkler lines operate
Has not seen #7 operate

Booster pump operating - 25

Riddlemoser - April
Eseman -

2 of
located.
on which
lane?

X · Exam in spring

Big overflow

April is heavy runoff for Porter Creek

Watermaster on when 3 people request

Double Diamond doesn't deprive

Rocks have been picked up

Increased in size by a few acres

Usually called on in mid July Maybe July 1 - but in drought years

Watermaster called on - Dovel only receives water for two days.

Redirect

Notice, SC, SF figs.

Double Diamond Transfer Hearing

Day 1 3/8/93 1-5:10 pm S.O.

Day 2 3/11/93 1-3:10 pm DEQ & SO.

Jerry S - H. Off.

Steve L cassist.

Appl. Obt. Diam. resp. by Jack Riddlemoser

Protest - Jerry Dovel " " Richard Eisenhuth

H. & Hy. Elect. - did not show up

EXHIBITS

			Admitted into Evidence
Department	#1	Photocopy of Water dist map (partial)	✓
	#2	" " Amended application	✓
Protestants	A	Color photo of fields in question - blowup	✓
	B	B/W " copy of ASCS fields in front (2 pg)	✓
	C	Dovel's summary of D O Ranch fields, irrig. areas	✓
	D	Copies of selected Watermaster records	✓
	E	" " WI Hay Meas Scotch relations	✓
	F	Aerofoto. spindle chart	✓
	G	"Aquatic Studies" diary (2 booklets) 1991	✓
Relevancy questioned by applicant		(Also 5 redacted Reader copy; what this is for G)	
	H	Summary of WIM delivery records	✓
	I	" " Water usage	✓
	J	Photos of river measurement	✓
	K	" " Water at Jackass Ck., 2 photos	✓

cont'd p 2

Exhibits - continued

L - Portion of wheel line ✓
M - Bound Exhibits - compilation from 22-10 thru 4 ✓
" index, made into ≈ 15 r.w. videos
N - 3-P not submitted N/A
O - Figs 304-305 of Regatta Heroes, copy of ✓
P - Portion of dial caliper (for nozzle sizing) ✓
Q - " " pressure gauge + pitot tube ✓
R - " " staff gauge ✓
S - copy of Materials Lease for gravel pit ✓
T - 4 pgs 2 computer generated maps ✓
2 acreage figure summary
U - Blow-up + case (3) of 11" mag of fields + portion ✓
V - copy of Tim Vogt map re gravel pit ✓
W - 3/9/93 photographs existing ~~pond~~ gravel pit area ✓
X - " " , 3 photos walking, land not farmed ✓
but converted to gravel pit
Y - 11/24/92 photographs of pit taken from west access ✓
road

(original / withdrawn at pre-trial conf. / replaced by)

All exhibits admitted into evidence, relevancy of some are questioned.

Search for 1993 KSB with chain of 1 - cannot locate at this time at region or S.O.
- possibly held at district court re: case # 92988 (Fourth Jud. Dist., Ridge Co.) ?

this has been found in vault late 1993

Tape Count for Witness

3/5/13

TAPE #1 Civil Suit A start at 015.0

Item	start	stop	comments
Judge Ridlemoser = JR.			
Richard Crimmins = RC			
JR. Opens	23.5	33.3	
JR calls Dion Ramsey	35.0	104.2	Dion R. for DBL Division, cross start 53.8, going interjects 97.0, direct, cross, redirect
JR calls Stan Latin	— going has count —		JR rests case
JR recalls Dion R.	220.1	288.3	
RC calls Chris Cockerum	289.5	461.5	Class C - shore cap arrangement of DBL Division, cross 444.6, redirect 453.7
RC calls Christie Thursby (mostly testifies from or @ Exh J)	464.1		Juried by Board, docket sheet count but ± 15 end of tape
TAPE #2 Civil Suit A start at 102.0			
RC calls Keith Nettington	102.1	33.8	allowed to interrupt C. Shirley testimony due to KN schedule, no cross X, excused
3/11/13 I.D.T. Ext. 3 Gavel out, boards keeping			

— Continued —

Tape counter reset

Item	Start	Stop	Comments
RC cont. w/ Cindie Starley	137.3	161.8	Norman testimony from Ent. J cross x 14.2 redirect 5.7 recross x 18.3
Examination Jury + attorneys re relevancy of evidence	161.8	166.0	
RC calls Dr. Watts in re: gas that canned photo was taken, based his computer maps on photo	166.0	302.3	Engr + Surveyor hired by Bond cross x 243.2 redirect 270.8
RC calls Jorge Uscal	305.6	to end of page = full range	
Tape #3 Roll 1 Take A	Start at 000.3		
continues	238.0 246.4		cross x 195.9 Jury's quest. 259.1
5/11/93			
Jury dismissed, review of attorneys	272.7	294.4	end of record

Issues

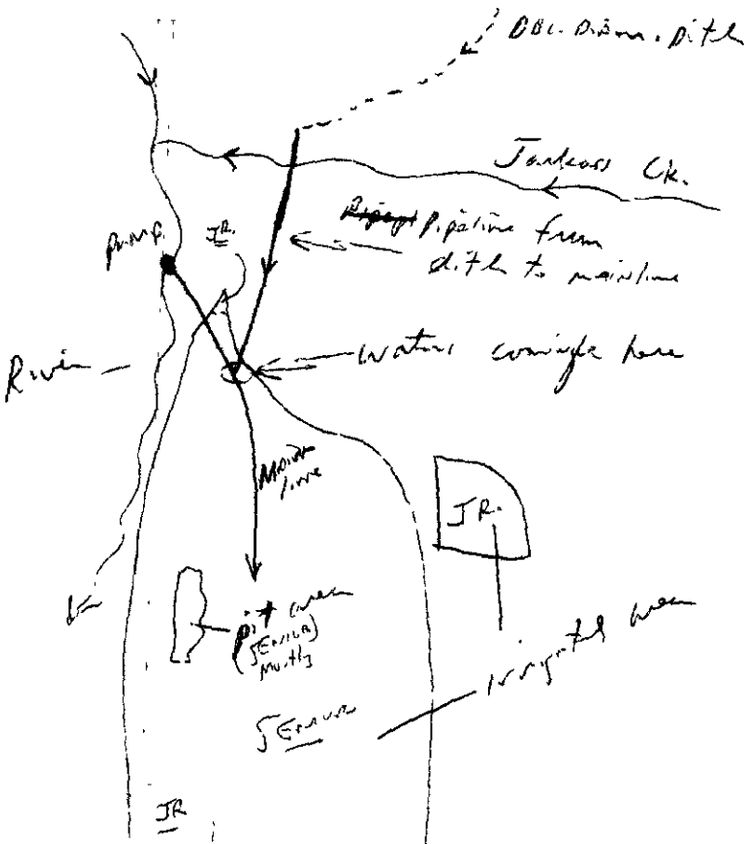
- Forfeiture found ? none apparent from evidence ?
- expansion " ? not if Watermaster has adequate control (note. Deputy Wm for Payette R. 1992 was also Wm for Porter Ck. & is returning in 1993)

/

Could have controls in Porter Ck & Payette pipeline to regulate deliveries & pond to prevent expansion

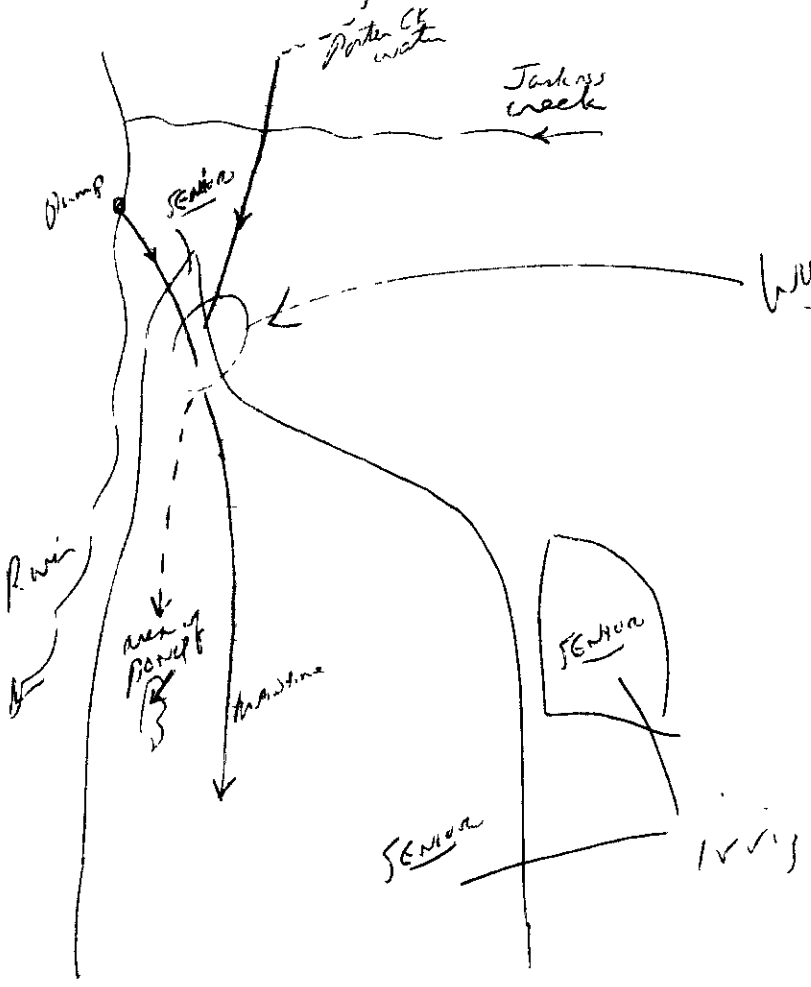
- Injury ? Depends, not with ~~good~~ good controls for Wm
- public interest ?

- Schematic - currently from Porter Ck. & mix to field.



Pre-transfer approval

If transfer approved - need to control water going to ponds vs water going to irrig



would need to re-engineer this with by-passes or with with which controls so could measure & control Creek flow river water quantity going to pond

pond area would be filling Porter Ck. water

Christie Shirley

hired by George Dowd who trained her to make weekly rounds etc.

Calculations of her observations made by George.

Kept diary 3x/day checking weirs, headgates (?), sprinkler lines, overflow at Jackass Creek.

Sometimes rain, into town while there.

Repeated readings & times specific days to show process. from her diary

Gerry - waste not going to land of forfeiture or other owner (linked etc) in transfer
- look at entire W.R ~~—~~ entitled to 22 acres worth

RE - waste can offset WR
- thinks #1 p/d cannot accommodate full #1 WR

JR - waste not issue, 22 Ac. is issue, not whole WR

Keith Nottingham - testified re IDT record re gravel pit area - total reclamation not done at owners request (did not need area)

Dow Watts - computerized map prepared showing irrig acres in large field, based on aerial photography of ~~unknown~~ yrs.
- has not been to site
- ~~grave~~ gravel pit area ≈ 21 acres in its entirety (piles etc)
- acres on his map within ± 2% of DSCS values with ± 5% margin of error
- exh V is V_1, Numbering system # on V_1 = # on V plus 1 (V_1 36 = V 35)
- just prepared 1st pg of exh V (= V_1) not other 3 pgs.

Exh. V/V_1 does not indicate if more irrigatable acres were calculated, just irrigated acres of that unknown year

George Duval -

- irrig # 6 & 7 (Ranch in Weber District).
- his pld above Dr Diamond's #1 pld.
- describes #1 WR diversion & delivery.
- found #7 windmill (on Exh A) not operated ≈ 5 yrs.
- Confirms that calculations in Exh. J are his.
- 1991 video - has ≈ 40 hrs of; condensed to 1 45 min. tape.
- Exh H 88-90 91-92 WR records, summary by George of these deliveries
- Exh I prepared into by George - simplified list of info in Exh J by day & time for 1991.
- Exh K & L
- Exh. M tape: video of 1991-1992-1993 tapes, video viewed w/o sound & George narrated.
- Considerable other testimony re waste, measurements, etc

(Testimony re overflow, esp: 5 gallon bucket measurements highly inaccurate in these circumstances)

- his est of area not irrig related to gravel pit:

yr	condition
1988	pit area mostly non-irrigated
89	" " " " ≈ 50 acres
90	" " " " " 55 "
91	" " totally " " 60 " (65-70 acres?)
92	" " " " " " "

Kimsey -

To the best of his knowledge land to which no. 1 right is appurtenant has been properly irrigated -

Rumsey said

Gravel pit began in 1988

Rumsey testified 22 acres -

Lester Lester did not know whether or not the land was reclaimed when met out there with the water master

52 acres 1.03 cfs max reduction

No. 12 ~~water right didn't have anything to do with the gravel pit~~ - corrected -

4 acres of no 12 right reduced

Lester testified later

Gravel pit partially reclaimed in 1992

no 12 water right fully reclaimed

Did not determine 22 acres - but did not discredit -

On site look - remaining after reclamation

Rumsey - Rumsey measured 22 acres

Cochran Both water running together - river pump acts as a booster pump

Eiserman - courtesy - water is 2" (Cochran says yes

not right at time of 1992 he remembers

Shirley - Did not see No. 7 in 1991

Nottingham

Stockpiled June 1988

stripped overburden before June 1988

but nobody knows when according his testimony

Full restoration seeding was not completed

but -

Nottingham not sure whether topsoil was replaced or not. changed reclamation plan.

Dovel

#7 line has not been used for approximately five years

Full 2.79 cfs was diverted in 1990 & 1991 - to which entitled.

2.1 cfs 4.14 on the staff gauge.

Additional road - has been in gravel pit in excess of five years.

Dovel only lived there 9 years -

Dovel testified first gravel pit in 1988.

2.0 cfs always an

Most water delivered & applied to fields
most has personally measured 50-52 inches
most estimated has been as high as
60 inches to give several factors some
credibility he could not factor in
such as worn nozzles & so forth -
two many large sprinklers in the system

Been a waste of water for 11 years
Maximum diverted - 2.1 cfs

30% fluctuation in flow

Double Diamond - when Porter Creek couldn't supply full water - shut off & irrigate with Payette River water -

First 6 years ~~it was shut off~~ never really was shut off (Porter Creek)

~~Booster~~ pump not operated for 4-5 years -

Rocks have been picked up

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-010747, AND 65-02540, IN THE NAME OF DOUBLE DIAMOND, INC.

TRANSCRIPT OF HEARING

VOLUME I
PAGES 1 - 128

March 8, 1993
1301 N. Orchard St.
Boise, Idaho

Reported by:
M. DEAN WILLIS

Prepared for:
RICHARD B. EISMANN
(COPY)

CAPITOL REPORTERS
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Boise, Idaho 83701
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Front only
APR 25 1995

BE IT REMEMBERED that the above-entitled matter came on for hearing before the Department of Water Resources of the State of Idaho, at 1301 N. Orchard St., the City of Boise, State of Idaho, commencing at 1:00 p.m., Monday, March 8, 1993, before before GARY SPACKMAN, Hearing Officer.

A P P E A R A N C E S

For the Applicant:	Jack C. Riddlemoser, Esq. Attorney at Law 712 E. Fairview Ave. Meridian, Idaho 83642
For the Protestant:	Richard B. Eismann, Esq. Eismann Law Offices 3016 Caldwell Blvd. Nampa, Idaho 83651

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MONDAY, MARCH 8, 1993, 1:00 P.M., BOISE, IDAHO.

MR. SPACKMAN: This is the time and place for a hearing regarding application for transfer filed by Double Diamond, Inc. Would you grab the file, Steve. I had everything but the file in front of me.

The application for transfer was filed by Double Diamond, Inc., and it proposes the transfer of several water rights to diverted Porter Creek. Numbers are 65-03103 and 65-10746 and also two water rights diverted from the Payette River, 65-02540 and 65-10747 and rather than my reciting the representation of the transfers or the application for transfer, Mr. Riddlemoser, if you, representing the applicants, will explain the intent of the application and I'm sure you're planning to do that.

MR. RIDDLEMOSER: Yes. I would. Basically this is an application to transfer --

MR. SPACKMAN: Why don't you wait.

MR. RIDDLEMOSER: I'm sorry.

MR. SPACKMAN: I prompted you and what I wanted to do was go through the rest of the recitation, then I'll

allow you to do that --

MR. RIDDLEMOSER: Very well.

MR. SPACKMAN: -- as part of your case in chief.

The application was properly published and I note that there was an amended application filed after the original.

Protest to the application were received from the Horseshoe Bend Hydroelectric Company and from George Dovel.

Double Diamond, Inc., is represented today by Jack Riddlemoser, attorney at law.

George Dovel is represented by Richard Eismann, attorney at law.

Horseshoe Bend Hydroelectric Company is not represented today. Our records show that Horseshoe Bend Hydroelectric Company received notice of this hearing and their failure to appear today will be interpreted as a waiver of their opportunity to participate as a protestant in this matter.

We discussed various exhibits which may be submitted by the parties.

The applicant has prepared one exhibit. It has been marked as the Applicant's Exhibit Number 1. It's an aerial photograph offered for purposes of illustration only and the parties have stipulated to its admission.

(Applicant's Exhibit 1 admitted.)

Protestant George Dovel has prepared several exhibits and they have been marked alphabetically and the parties have stipulated to the admission of Protestant's Exhibit A, which is a color aerial photograph; B, which is a xerox copy of an aerial photograph; D, which is water master records prepared and submitted to the -- prepared by the water master of the water district covering Porter creek and submitted to the Department of Water Resources and contained within its records.

(Protestant's Exhibits A, B and D admitted.)

The parties have exchanged copies of the water master records. The records are admitted into evidence with the qualification that parties may raise questions later regarding the interpretation of the records and perhaps their legibility.

We also know that one of the years of record, 1989, is missing. There have been substantial efforts to locate the records and we have been unsuccessful in doing so. We will continue to look for the '89 records and will also be reviewed and, if found it necessary, and distributed to the parties for review.

Exhibit E is a water measurement manual or a copy of one, which is a publication of the Department of Water Resources. It's admitted into evidence. There

really is no need for its actual admission, because it is a document prepared by the department and is a technical publication referred to generally by department personnel.

(Protestant's Exhibit E admitted.)

And also all of the other documents marked as exhibits by the defendant will need to be offered in the course of the hearing itself.

My records show that the protestant Horseshoe Bend Hydroelectric Company protested on the grounds that the application may affect an ongoing power project in the Horseshoe Bend area, but, again, Horseshoe Bend Hydroelectric Company is not in attendance today and my records show also that George Dovel objects to the application on the basis of injury and enlargement, Local public interest, and forfeiture.

Are there any other matters that I need to read into the record, gentlemen?

Mr. Riddlemoser?

Mr. Eismann?

MR. EISMANN: Nothing that occurs to me.

MR. RIDDLEMOSER: None occurs to me either.

MR. SPACKMAN: I will allow each of you to give a brief opening argument, either now or at the outset of your evidence. I would prefer the latter, if that's permissible. Mr. Riddlemoser, Mr. Eismann, is that

acceptable?

MR. EISMANN: That's fine.

MR. SPACKMAN: Mr. Riddlemoser, you may begin presenting evidence and call witnesses.

MR. RIDDLEMOSER: All right. Do you want a brief opening now on what we intend to show to start with?

MR. SPACKMAN: That would be fine. I think it would be helpful.

There is one thing that I forgot to do. There is a roster of attendance. If I could pass that around and have the parties sign it. I neglected to route the roster at the beginning of the hearing.

Perhaps as they are signing that we can move this microphone up near you, Mr. Riddlemoser. I think it would pick your voice up a little better, if you're willing to help us or Mr. Lester can grab it, either one.

I think your microphone should be located near you as well, Mr. Eismann.

You may go ahead, Mr. Riddlemoser.

MR. RIDDLEMOSER: Okay. This application is to transfer portions of two water rights, being a number one right identified as 65-03103 and also a number 12 water right identified or portions thereof identified as decree number 65-10746.

On this property, which is owned by Double

Diamond, is a gravel pit and a pond which consists of 22 acres. The purpose of this application is to transfer the number one water rights, which are located on the gravel pit and pond area, to number 12 rights to areas previously served -- excuse me -- by number 12 rights. In other words, we are going to, by this application, seek to transfer number one rights from the gravel pit to number 12 rights, which are in the surrounding area to the gravel pit. The number 12 right will be then be transferred back into the gravel pit.

The result of this would be that the number one rights under this decree, which is 65-03103, will all be down in the same general area, served by the same ditch, served by the same point of diversion, and the 12 rights there will, as I say, be transferred into the gravel pit area and basically, as I say, that is the purpose of this application here.

In looking at this we do not change the point of diversion. We do not increase any amount of acres being irrigated. We will show that the 22 acres inside the gravel pit area, which is the number one right, have been previously irrigated with number one water.

We will also show that the number 12 -- the area which encompasses the number 12 right that we are substituting for has been irrigated with number 12 water.

We feel there that the water rights there are current, have been used properly, have, therefore, not been forfeited. This is not changing any use of the water, merely transferring the location of use and with that I think we are ready to proceed.

MR. SPACKMAN: Thank you, Mr. Riddlemoser. You may call your first witness.

MR. RIDDLEMOSER: Call Mr. Rumsey.

MR. SPACKMAN: Mr. Rumsey, if you would take a seat at the end. We will isolate you.

DONALD RUMSEY,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIDDLEMOSER:

Q. Mr. Rumsey, will you state your name for the record?

A. My name is Donald Rumsey.

Q. Where do you reside, sir?

A. I reside in Los Angeles, California.

Q. And you are -- are you an owning stockholder in Double Diamond Ranch --

A. I am a partner.

Q. -- in Boise county? Or a partner in Double Diamond?

A. I'm a partner in Double Diamond Ranch.

Q. And you are the same Donald Rumsey that signed this amended application for transfer of water right?

A. Yes, I am.

Q. And, basically, Mr. Rumsey, what is the purpose of this application?

A. The purpose of the application is to get the number one water right isolated in the one area and not be using number 12 water right for the purpose of irrigating the fields where there has been a problem in the past with separating the water, so we didn't run number one water on number 12 water rights.

Q. What is the distribution point of this number one water right, which comes down to the -- well, let me back up and ask one other question.

Basically, what's the water rights number in the area covered by the gravel pit?

A. Number 12. Do you mean at the present time?

Q. At the present time.

A. Number one.

Q. And you propose to transfer what to that?

A. I would propose to transfer our number 12

right to the gravel pit.

MR. SPACKMAN: Could I interject just for a minute, Mr. Riddlemoser? This is probably a matter that's very familiar to everybody else and I'm vaguely acquainted with the numbering system, number one and number 12, and I think that it's probably referring to the priorities of the rights on Porter Creek --

MR. RIDDLEMOSER: That's correct.

MR. SPACKMAN: -- but a reviewing court and even myself being unacquainted with the area, doesn't -- I'm not certain of that, so perhaps for the record you could elaborate with Mr. Rumsey, perhaps have him explain the order of priority.

BY MR. RIDDLEMOSER:

Q. Let's refer to decree number 65-03103. Is that what you're referring to as the number one priority right?

A. That is the number one priority right.

Q. And there is one other decree involved and that's 65-10746?

A. That's the number 12 right.

Q. That's the number 12 right. Now you're talking these rights are priority rights on Porter Creek in Boise county, Idaho?

A. That is correct.

MR. SPACKMAN: And there are ten -- excuse me. There are ten intervening rights in between that must be filled before the number 12 right is deliverable?

THE WITNESS: That is correct.

MR. SPACKMAN: Thank you. Mr. Riddlemoser.

BY MR. RIDDLEMOSER:

Q. How large a partial, Mr. Rumsey, is this gravel pit area?

A. 22 acres.

Q. Mr. Rumsey, handing you Applicant's Exhibit 1 --

MR. SPACKMAN: If it's convenient, Mr. Riddlemoser, Mr. Lester could run that around.

MR. RIDDLEMOSER: Well, okay.

MR. SPACKMAN: Whatever is convenient.

BY MR. RIDDLEMOSER:

Q. -- which has been admitted for identification purposes only. Basically what is the location, in section 26, of this gravel pit area?

A. The gravel pit area sits basically in the center of the main field. Now what section that's in --

Q. Can you identify the -- for the record what quarter quarters those -- the gravel pit is situated in?

A. I can't. I can't.

Q. Okay.

A. Some of that I can't even read it.

Q. Handing you Exhibit Number B. Does that help you to identify where the gravel pit area is?

A. In what section?

Q. 26.

A. It's in section 26. That's correct.

Q. Now, Mr. Rumsey, there is land, as you understand, with a number 12 water right in that general area also; is that correct?

A. That's correct.

MR. RIDDLEMOSER: Mr. Eismann, if I might have that aerial right there.

MR. EISMANN: May I interrupt just a moment?

MR. SPACKMAN: Sure.

MR. EISMANN: Could I have permission to kind of look over Mr. Rumsey's shoulder, so that I can understand his testimony as he is testifying?

MR. RIDDLEMOSER: No problem.

MR. SPACKMAN: You're welcome to stand by the witness. I want to operate as loosely as we can and I want to remind the parties, however, that we are recording and that you need to stay on location near a mike somewhere.

The other fears I have with the photograph on the flat table surface at the other end of the table is

the two attorneys and the witness may understand, but the hearing officer may not, so I hope that you will somehow try to exhibit the photograph to me in some way as he testifies.

BY MR. RIDDLEMOSER:

Q. Now, Mr. Rumsey, where, on this map, if you can tell, are the fields that you desire to transfer the number one water right to and the number 12 water right, from that field back to the gravel pit? Can you point out the areas on this map?

A. The field on the east side of the road near our hay shed, 11 acres -- we call it the Hawkins' field -- that's to be transferred. That's number 12 going to go to number one.

Q. All right.

A. We hope to go to number one. This area down here -- the nine acres sit at the south end of the airport and I'm not --

MR. SPACKMAN: May I interrupt again? Mr. Rumsey is referring to the map, but I can't see it and I think it's essential that I see the map. Could we possibly mount it on the tripod or something so that we can refer to it.

MR. RIDDLEMOSER: That's fine. And I also want to put an A or B or whatever out on there, if that's what we

can --

MR. EISMANN: Well, we anticipated this was going to be a problem of identification and I didn't find any good pen that doesn't -- isn't going to smear a little bit, but we have three colors here and maybe it would be helpful if he would outline -- but you got to let it dry, you understand.

MR. RIDDLEMOSER: All right. All right.

MR. EISMANN: Outline what he's referring to as the field east of the side road and maybe we need to give it a number.

MR. RIDDLEMOSER: That's what I'm thinking.

MR. SPACKMAN: Let's go off the record just for a moment.

(An off-the-record discussion ensued.)

MR. SPACKMAN: Okay. We are recording again. Mr. Riddlemoser.

BY MR. RIDDLEMOSER:

Q. All right. Mr. Rumsey, then would you point out on that exhibit, which is Number B, the parcel that desire to transfer the number one right to and also the number 12 right from that back to the gravel pit?

A. Okay. The number -- the 11-acre field is right there. That's the Hawkins' field.

Q. All right. Can we then identify that with a

number -- number one?

A. That's number one.

Q. All right. Do you want to mark number one up there?

A. You want me to put it right on the map?

Q. Yeah. Yeah. Just put it right there in the middle.

A. Okay.

Q. Why don't you just then outline it in red.

All right. Is there another parcel that you desire to transfer the number one right to?

A. This is -- we are transferring to this.

Q. Transferring to that.

A. Okay.

Q. All right.

A. I believe this is a one-and-a-half acre piece up here at the end and that would be -- what number would you want there?

Q. Put a number two there.

A. Okay. Then there is a nine-acre piece tract -- piece of land down here and I'm not too sure of whether it's right here or it's down here, so I don't know what the proper location of that is. I believe it's in this area right here. I think that's it, but I'm not sure.

Q. All right.

A. But there is nine acres there.

Q. Mr. Rumsey, at the time that you prepared this application were you given assistance in its preparation?

A. Was I given assistance in preparation?

Q. Yes.

A. Yes.

Q. Who assisted you in the preparation of this?

A. Well, I had a gentleman called Mr. Madarieta help me.

Q. Yes. Who helped you prepared the application itself?

A. I think you were involved in it.

Q. Anyone else? Did Mr. Lester help on this; do you know?

A. Mr. Lester assisted us.

Q. Now the water comes to this property from Porter Creek; is that correct?

A. That's correct.

Q. And the diversion point to make this transfer does not change on Porter Creek; is that correct?

A. Does not change.

Q. Have all these -- these two water rights been used properly, to your knowledge, during this last period of time and so forth, as far as you know?

A. To the best of my knowledge they have been used properly.

Q. Has the property, which is covered by the number 12 right, been watered with number 12 water --

A. It has been watered --

Q. -- to the best of your knowledge?

A. To the best of my knowledge it has.

Q. Is that the same with the parcel there which has a number one water right? Has that been watered with number one water, to best of your knowledge?

A. To the best of my knowledge it has.

Q. Has this property, which is involved in this transfer, the number one right in the gravel pit particularly, what was that before you made a gravel pit out of it?

A. It was an irrigated alfalfa field.

Q. And how long had it been irrigated?

A. I don't know. At least 25 years, maybe.

Q. Okay. Been watered continuously during that period of time?

A. Yes, sir, it has.

Q. Now as a result of this application for transfer, the number of acres irrigated is going to be the same as far as the number one water right is concerned?

A. That's correct.

Q. You're transferring acre for acre?

A. Acre for acre is correct.

Q. Now is that true there with the number 12 water right?

A. That is correct.

Q. Are there other water rights that you have that also serve this same area?

A. We have the Payette River water right -- water rights. I think there is two rights there, but I'm not sure.

Q. Two rights in there from the Payette River?

A. I believe so, yeah.

Q. And that can be used to water which parcels?

A. It can water any parcel. Any part of it.

MR. RIDDLEMOSER: I see. I have nothing further of this witness at this time.

MR. SPACKMAN: Mr. Eismann.

CROSS-EXAMINATION

BY MR. EISMANN:

Q. Thank you. Mr. Rumsey, you indicated in your -- early on in your testimony that you were a partner in Double Diamond?

A. Yes. That's correct.

Q. Is it a partnership?

A. It is a partnership.

Q. Was it a corporation?

A. It was a corporation.

Q. And that's recently been changed?

A. Not recently. I think it's been about five years ago it was changed.

Q. Your testimony is that you're in Los Angeles. How much time do you actually spend on the ranch?

A. I probably spend about one week a month.

Q. Is there some week each month that is -- that you select for that or is it just whatever is available?

A. It's whatever my schedule will allow I will come up.

Q. Who actually sees to the operation of the lands that are irrigated depicted on Exhibit A, which is the aerial photo to your right?

A. Cleo Cockrum is the farmer on the land and he pretty well keeps me advised on what's going on.

Q. Do you participate in any way in the management of the irrigated water?

A. I don't.

MR. EISMANN: Mr. Hearing Officer, I'm not sure of your proceedings, but, for instance, if this were a court proceedings we would probably at this point in time elect no further cross-examination of Mr. Rumsey, but we would

reserve the right to call him if we felt it was necessary as a witness in our case in chief. Is that permissible under your procedure?

MR. SPACKMAN: Yes. And I also have no objection if it's -- the parties agree that if the -- in cross-examination the person examining wants to ask questions beyond the scope of direct examination, so that all of the information comes in in a block, I have no objection to that kind of questioning either, but I would want a stipulation from the parties. Do you wish to ask no further questions of Mr. Rumsey?

MR. EISMANN: Well, on that basis our position is that it would appear that Mr. Cockrum maybe has the most current detailed information and so it wouldn't serve any purpose at this time to go through a lot of material that maybe Mr. Rumsey doesn't have information on, so I would complete -- call this complete cross, reserving the right to call Mr. Rumsey if we feel it's necessary in our case in chief.

MR. SPACKMAN: I sure appreciate your efforts to save us some time. Just a moment, if you will, Mr. Rumsey.

Redirect examination of Mr. Rumsey?

MR. RIDDLEMOSER: Nothing at this time. I would reserve the right, too, of course, if they call him I have

the right to examine him, so --

EXAMINATION

BY MR. SPACKMAN:

Q. I want to ask a couple of questions and it may open more questions, but, Mr. Rumsey, I am looking at the aerial photograph and it's labeled as Protestant's Exhibit A and I see some green areas and the area which you marked as number one is not quite as green. I also note in the middle of the green areas there is a white area. What is that?

A. That's the gravel pit that we are discussing.

Q. Okay. All right. And you may have identified that earlier on the map and I just didn't see the map, either this one or the Applicant's Exhibit 1. And when was that gravel pit constructed?

A. I believe it was '88, but I'm not sure. How long did it take them tc build the highway? About four years? So it's probably been close to five years that they started construction of it.

Q. The purpose of the gravel pit was what?

A. For the new highway that went through. The state bought the gravel out of the pit and they put the new road from the top of the hill into Horseshoe Bend.

MR. SPACKMAN: Okay. I don't have any further

questions.

Mr. Riddlemoser, anything --

MR. RIDDLEMOSER: Mr. Rumsey, if you will, why don't you step up with that pen and outline the gravel pit area and I think that we discussed it generally without marking it there.

And if you like, why don't you just put an X in the middle of that on the white mark there someplace and show that that X is identifying the gravel pit area.

MR. SPACKMAN: More questions, Mr. Riddlemoser?

MR. RIDDLEMOSER: Nothing further. I just wanted to clarify that at this time.

MR. SPACKMAN: Mr. Eismann, any follow-up?

MR. EISMANN: No. Thank you. With the reservation that I have indicated.

MR. SPACKMAN: Sure. Thank you, Mr. Rumsey.

Next witness.

MR. RIDDLEMOSER: Call Steve Lester.

STEVEN LESTER,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIDDLEMOSER:

Q. Mr. Lester, state your name for the record, please.

A. My name is Steven Lester.

Q. And where do you reside?

A. In Boise, Idaho.

Q. And what's the nature of your work or profession, sir?

A. I am a water rights supervisor with the Idaho Department of Water Resources.

Q. Now how many years have you worked for the Idaho Department of Water Resources?

A. Approximately six and a half.

Q. And basically what do your duties consist of?

A. For the most part I deal with water rights and issues related to water rights, such as water districts.

Q. Are you acquainted with the application for transfer of the water rights involved in the proceedings now before this board?

A. Yes, I am.

Q. And did you assist in the preparation of the application itself?

A. Yes, I did.

MR. RIDDLEMOSER: I'm going to have to mark this one.

MR. EISMANN: Is that the amended application?

MR. RIDDLEMOSER: That's the amended application.

MR. SPACKMAN: You want to mark that as --

MR. RIDDLEMOSER: I want to mark that as an exhibit. What's that, our Number 2? Applicant's Number 2?

MR. SPACKMAN: This is the amended application. I will mark it, but it's part of the record.

(Applicant's Exhibit 2 admitted.)

MR. RIDDLEMOSER: Part of the original file. That's right.

MR. SPACKMAN: Okay.

MR. RIDDLEMOSER: So however you want to handle it, sir.

MR. SPACKMAN: Mr. Riddlemoser, I just intend to view the application as part of the record and I will use the information that's on the application and any of the attachments, too, as a part of the record, so it may not need to be offered, unless there is something else that

you --

MR. EISMANN: If it's a true and correct copy of the application we have no objection to it being marked and admitted as an exhibit.

MR. RIDDLEMOSER: As far as I know. I want to talk to Mr. Lester just about it. I realize that it's there.

MR. SPACKMAN: Sure.

BY MR. RIDDLEMOSER:

Q. Mr. Lester, handing you what's been marked Applicant's Number 2, which appears to be the amended application of this transfer of these water rights. Are you familiar with that?

A. Yes, sir, I am.

Q. And what I'm interested in, Mr. Lester, is having you state from that application and your knowledge of the area in what location is that gravel pit located, the 22 acres which were handled in there as the gravel pit area? Can you tell from that application?

A. Yes. Were you asking me to point it out on the exhibit?

Q. No. I'm asking -- I'm going to ask you first to --

A. Okay.

Q. -- locate it by quarter quarters.

A. Yes, I am familiar with it. I have to find

the proper attachment here in the application to attachment B. Okay. Yes. I have that information in the application.

Q. All right. And can you state from that where -- in what quarter quarters this gravel pit area is located and approximately how much area is located in each quarter quarter?

A. If I understand your question correctly, you'd like me to explain where the gravel pit is located by quarter quarter description.

Q. That's correct.

A. And in section 26 the gravel pit appears to be located in the northwest northeast, the southwest northwest, the northeast northwest, and the southeast northwest and let me refer to the map in the application to see if that -- that appears to be the proper description.

Q. And all of that's in section 20 --

A. Section 26.

Q. '6?

A. Yes.

Q. Township seven north, what, two east?

A. Range two east. That's correct.

Q. All right. Now based on that application where was the property which consists of the gravel pit

area proposed to be transferred to?

A. I'm not sure I understand the question. The water rights that were on --

Q. The water rights that are -- on the gravel pit area --

A. Right.

Q. -- were to be transferred.

A. Okay.

Q. And where did those propose to be transferred to?

A. Okay. I understand your question now. The water rights on the land that's described in the application as the site of the gravel pit were to be transferred to other lands to the north, to the east, and to the south of the gravel pit, whereby the senior Porter Creek water right would be moved from the gravel pit to the site where the junior Porter Creek water rights are now found.

Q. And what is the location of those parcels that the water is proposed -- the water right is proposed to be transferred to?

A. The senior water right, which we have been calling the number one right in this hearing, was proposed to be transferred to the northwest southeast of section 23, the northern tip of the field, and to the northeast

northeast section 26, the field that I believe the previous witness referred to as the Hawkins' field, I believe it was, on the other side of the county road and also to a small portion of the field south of the gravel pit and that would be in the northeast southwest of section 26.

Q. Now if you would approach this exhibit, which is I think B, and point out that area where the number one water rights from the gravel pit are proposed to be transferred to.

A. The number one water from the gravel pit, which is shown in this center part of the field with the X in it, that was proposed to be moved to the north to this -- this tip of the field at the north. It was also proposed to be moved to the Hawkins' field over on the east side of the county road, which is outlined here in red and it was also proposed to be moved to -- I believe it's about nine acres in this general vicinity down here to the south of the gravel pit.

Q. Gravel pit area?

A. Yes.

Q. And based upon the application and the records of the Idaho Department of Water Resources is all the ground within the gravel pit area, as we have identified it, is that all number one priority rights

under decree 65-03103?

A. Yes. That's correct.

Q. And what is water rights of the other three parcels that it purports to transfer with?

A. The water right of the land that's proposed to move the number one water to --

Q. To. Right.

A. -- is water right number 65-10746, also known as the number 12 right in the water district.

Q. And it also purports to move the number 12 water in these three parcels into the area now known as the gravel pit?

A. Yes. That's correct.

Q. From that application, Mr. Lester, can you give the legal descriptions as to where -- of these three fields that the water right is to be transferred -- number one water right is to be transferred to and the number 12 water right transferred from, which goes back into the gravel pit?

A. Would you like me to give the legal descriptions of that?

Q. I would like to have you set out there what quarter quarters and how much -- how big is the parcel and so forth, if you can tell.

A. Okay. Just one second while I take a look at

the file here. As I understand your question, you're asking me to identify, by quarter quarter and number of acres in the quarter quarter, the location of the number 12 rights --

Q. Right.

A. -- from which water will be moved into the gravel pit.

Q. Right.

A. Is that correct?

Q. Right. And also be the same as moving the number one right, too. Transferring the number one right to that area.

A. Right.

Q. Okay.

A. Well, I will start at the north and work down. At the northern end of the field in the northwest southeast of section 23, also known as government lot four -- let me see if I'm looking at the right water right real quickly here. Okay. Excuse me. I was looking at the Payette River water right. I need to be looking at the Porter Creek water right number 65-10746 and turning, again, to government lot four, northwest southeast section 23, the decreed water right does not show any acres in that quarter quarter, but as water district records will show, if I'm permitted to refer to those at this point --

MR. EISMANN: We would object without the production of the record at least the witness is talking about.

THE WITNESS: Well, let me just say that the decreed water right for the number 12 right does not show any acres in that northern tip, which is described in the decree by government lot and not by quarter quarter. So I will continue.

BY MR. RIDDLEMOSER:

Q. All right.

A. Moving down to the southeast to the area of the Hawkins' field in the northeast section of 26, there are 11 acres decreed in that water right and moving down to the south of the gravel pit in the northeast southwest of section 26, there are nine acres listed in that water right.

If I could return to that northern tip to clarify what I was trying to say earlier without referring to other things. The decreed right that we are speaking of shows two acres irrigated in the northeast southeast of government lot four in section 23. Yes. That's what I wanted to state.

Q. Now if you can, will you come and approach the exhibit and mark out this nine acres that you said was in this southerly portion south of the gravel pit?

A. Yes. I will do that. It's a little difficult to do with a high degree of accuracy on that, but I will just do my best to approximate where it is, where the nine acres are.

Q. That's fine.

A. I believe it's in this vicinity right about in here, generally to the south of the gravel pit. It might be a little farther down, I'm not really too sure, but it's probably a little farther down. I can't really tell in comparison to these maps, but it's either immediately -- it's definitely immediately to the south of the gravel pit. It might not be quite that close as I have shown it here, but in this general vicinity.

Q. But the legal description shows that it is in the quarter quarter which you testified to? The nine acres?

A. Yes. It's in the government lot three --

Q. Three.

A. -- of the northeast southwest section 26.

MR. RIDDLEMOSER: Okay. I have nothing further of Mr. Lester.

MR. SPACKMAN: Mr. Eismann?

CROSS-EXAMINATION

BY MR. EISMANN:

Q. Mr. Lester, you have put a squiggly on the map, but you didn't do anything that's going to identify it. Would you be kind enough to step up there and put number three, please, in the center of it?

A. I sure will. Why should I put number three now?

Q. We have number one and number two, as you know, from throughout the hearing.

A. Oh, I see. Okay. You're not referring to water rights then?

Q. No.

MR. SPACKMAN: That's a good distinction. For the record, the numbering on the map on the exhibit does not correspond to the numbers -- or the numbers referring to priorities of the various rights delivered or diverted from Porter Creek.

THE WITNESS: I have placed the number three on the area south of the gravel pit.

BY MR. EISMANN:

Q. You have before you the application of Double Diamond in this case?

A. Yes. I have a copy in front of me.

Q. The amended application?

A. A copy of the amended application.

Q. Which is, I think, Applicant's Exhibit 2; is that correct?

A. Yes. That's what's written on here.

Q. Was that completed in your handwriting?

A. Yes. That's correct.

Q. And who was present when you filled out that application?

A. The application was prepared based on the information that was submitted to me by Mr. Madarieta when he came to my office and told me that he was representing Mr. Rumsey and was interested in preparing that.

Q. The question was who was present. Do you understand the question?

A. Okay. Yeah. I understand the question.

Q. All right. Who was present?

A. Myself.

Q. And was Mr. Madarieta the source of your information?

A. Yes, he was.

Q. And when did you prepare that?

A. The exact date -- I can't tell you the exact date, but the completed application was received at the western region office, meaning that the applicant had signed it on April 2nd of 1992. I prepared it a little

bit prior to that and I'm estimating February to March of 1992.

Q. With respect to the locations of these fields and the acreages, you have not surveyed those; is that accurate?

A. That's correct.

Q. And the information that you have as to acreages you said came from a decree?

A. Yes. From the Payette River decree.

Q. And if I my understanding is correct, field number two has no decreed water right?

A. No. That's not correct. But what I was trying to say was that the decree lists the Porter Creek water right in that field by government lot and not by quarter quarter and in the Department of Water Resources data base, whereby we try to also list things by quarter quarter, the quarter quarter, in my evaluation of the department records, is incorrectly identified. The government lot is correctly identified, the quarter quarter is incorrectly identified, and the conclusion that the department reached is that there are water rights for Porter Creek in that what we call number two on the diagram.

Q. Is there some record of this decision you're referring to of the department?

A. There is a memo to the file that discusses this, yes.

Q. There has been no corrective action taken either to amend the decree or to amend the water right; is that correct?

A. That's correct. Well, no, I guess I would say that's incorrect. This transfer application also seeks to correct the record by setting this straight.

Q. But prior to this transfer application there was no action taken, an order of the department, or an amended decree of a court making the change that's proposed here; is that accurate?

A. Well, I think we are kind of mixing what the decree says with the department's further elaboration of the legal descriptions, so I'm not sure how to really answer that, if I could be truthful.

MR. SPACKMAN: Let me add something at this point. My understanding of these legal descriptions, Mr. Eismann and all the parties, is that the lot descriptions -- the description of the government lots and survey is the property description -- legal description of where the water right is located. Any descriptor placing it within a 40-acre tract is, for purposes I think in the department's records, of locating it generally within a particular section, but if the decree describes the water

right located within a government lot -- surveyed government lot, that is the correct legal description. It needs no other descriptor and I -- from Mr. Lester's testimony I understand that it is -- the decree properly locates it within lot three.

BY MR. EISMANN:

Q. Is that your testimony?

A. I would really have to look at the whole workup on this government lot thing. I think the bottom line of this is that there is an error in interpretation of leaping from the government lot to the quarter quarter.

Q. Do you know whether or not --

A. I'd have to refer to the water right record, which I don't have in front of me, to see that.

Q. Do you know whether or not field number two is located in lot three?

A. It's in government lot four. I think I might have said government lot three previously. I don't really recall. Let me refer to the application -- the copy of the application in front of me. I could have -- if I said government lot three, I should have been saying government lot four.

MR. SPACKMAN: I may have mixed it up.

THE WITNESS: I think I'm confusing field numbers or something. Government lot four is the location of the

Porter Creek water right where on our diagram on the board field number two appears. Government lot four is --

BY MR. EISMANN:

Q. Does the decree refer to government lot three or government lot four?

A. Well, working by memory it's government lot four. I'd have to look at the decree, which I do have a copy of that here. According to the information that I have in front of me --

Q. That's information you prepared?

A. Information prepared from the decree. The Porter Creek water right that we are talking about, 65-10746, decrees two acres in government lot four in section 23 and I believe that I said government lot three in my earlier testimony and if I did that's a mistake. I should have been saying government lot four. So that -- I apologize if I caused some confusion there. I'm not sure if I have answered your question to your satisfaction, counselor. I would be glad to elaborate if you would like.

Q. Did you identify the number of acres in each quarter quarter that you assigned to the gravel pit?

A. I understand you to ask me if I personally made some determination of how many acres are covered by the gravel pit.

Q. No. You gave us for quarter corners in which the gravel pit area was located; correct?

A. Correct.

Q. Did you identify how many acres in each quarter corner?

A. Covered by the gravel pit?

Q. Yes.

A. I didn't personally identify that.

Q. Okay. Someone else did?

A. Yes. I made an estimation from the map and the information provided to me.

Q. Does the department regularly use ASCS aerial photos showing fields and acreages to determine acreages for water right purposes?

A. Yes.

Q. And that is considered satisfactory evidence of those -- of that -- of the number of acres in each field?

A. Under some circumstances, yes. Not -- I wouldn't use that blanket statement, but, yes, that's -- we do use those.

Q. Is that what was used in your look into this case, aerial photos of the ASCS office?

A. No. If I could elaborate on that. My understanding of my responsibility in this was to help the

applicant prepare an application based on information provided to me by the applicant and that's what I did, but that did not include myself going out and searching records and photos to determine things that it was up to the applicant to determine.

Q. Well, everything I have seen in this file so far is an early aerial photograph which was essentially from an ASCS aerial photo; is that correct?

A. Do you mean in the application itself?

Q. I mean in the file. You're familiar with the file in this case, are you not?

A. Well, we have both -- we have both ASCS photos and we also have ortho photo quads, which are also aerial photos that we are using. In this particular case the ortho photo quad is used in the application, not an ASCS photo.

Q. Have you compared the two?

A. I have looked at them. I haven't made a thorough comparison, no.

Q. Did you find any difference?

A. Not in my brief look at them, no. I wonder if I can clarify some of the discussion about the photos?

MR. SPACKMAN: If Mr. Eismann feels fine about your clarification, I will allow you to proceed, Mr. Lester.

MR. EISMANN: Well, I think what we are -- for our

point we are going to kind of have to have a question directed to the witness and let the witness respond to the question.

MR. SPACKMAN: Sure.

BY MR. EISMANN:

Q. Can you tell me how frequently you were on the Double D -- Double Diamond Ranch shown on -- a portion of it shown on Exhibit A in 1992?

A. In 1992 --

Q. Yes.

A. -- I didn't make very many trips to Porter Creek. I would just have to guess about a half dozen or so, without consulting my notes.

Q. Were you on the Double D -- Diamond premises at that time or did you just simply drive by?

A. On some visits I was on the property. Most of the visits in '92 I was not. I was passing through the property.

Q. Okay. And when you were there in 1992, other than passing through, can you give us a time frame when that occurred?

A. I'd really have to consult my notes to give you a good time frame, but I went up early in the irrigation season, which is around May, to meet with the water master, look at a couple things and --

Q. Were you on Double Diamond property at that time?

A. On at least one occasion, yes. We met on the -- south of the gravel pit.

Q. Where you have got the field number three?

A. That's correct.

Q. What was your purpose of meeting there?

A. We were looking to see whether the portion that we have identified on the exhibit, that number three, we were looking to see whether it was being reclaimed into irrigated land now that the gravel pit was receding from its maximum size and there was some discussion about whether that land would be reclaimed for irrigation and, if so, if we needed to make any kind of water master flags or anything around the field.

Q. So did you find that it was being reclaimed?

A. Well, it was premature to make a decision. We had some discussion about whether it would be. It wasn't right then, no. No.

Q. There was a time when because of the gravel operations that the basic right expressed in cubic feet per second or inches of the number one right of Double Diamond was reduced by a factor. Do you know what that reduction is?

A. Again, I'd have to look at my notes to give

you the real hard number.

Q. Do you have those here?

A. I do have those notes here, yes.

MR. EISMANN: I'd like to have the witness get his notes so he can tell us what occurred in that regard.

MR. SPACKMAN: Mr. Lester?

THE WITNESS: Yes. I will get those.

MR. SPACKMAN: Where are they located?

THE WITNESS: They are over here in one of these many piles. I will need a couple things.

MR. SPACKMAN: Let's go off the record a moment.

(An off-the-record discussion ensued.)

THE WITNESS: I'm sorry, could you repeat the question?

MR. SPACKMAN: We are recording again. I want to check and make sure. Okay. Mr. Eismann.

BY MR. EISMANN:

Q. There was a time when the number one water right of Double Diamond was reduced because of the gravel pit operations that Mr. Rumsey discussed. My question -- first question to you: What was the amount of that reduction?

A. The first reduction that was made -- and I don't have that date right here in these notes, but when -- it was determined the gravel pit was at its maximum,

about 52 acres, the reduction in the number one water right, 65-3103, was 1.03 CFS.

Q. And what about the other water right, the number 12, if the reduction was made there?

A. None, because the number 12 water right didn't have anything to do with the gravel pit, so it was not applicable.

Q. Okay. When was the reduction made that you're referring to of 1.03 cubic feet per second?

A. If I could back up a little bit. I have looked at -- I have just looked at my notes and you asked about the number 12 water right --

Q. Yes.

A. -- and there was a small portion of it that was reduced. I made a mistake, because part of -- part of what we have called number three on the exhibit was eaten up by the gravel pit and so the number 12 right I have -- my notes say as of 1990 reduced by .08 CFS and four acres due to the gravel pit.

Q. .08 cubic feet?

A. .08 CFS.

Q. Cubic feet per second?

A. Representing four acres.

Q. Four acres that -- and that was 1990?

A. That was 1990, so the 1.03 CFS reduction in

the number one right was also 1990.

Q. Was it reduced at an earlier date?

A. No. I don't recall that it was.

Q. Was it reduced in 1991?

A. Yeah. The reduction would have held for 1991.

Q. And 1992?

A. Yes. In 1992 an adjustment was made, because the gravel pit had partially been reclaimed and so the number one water right was -- the reduction became .43 CFS for 22 acres.

Q. 22 did you say?

A. For 22, yes.

Q. Okay. That's the number one --

A. The number one water right.

Q. Was there any reduction in the number 12 for 1992?

A. I believe the number 12 right was fully restored at that time -- eligible to be fully restored.

Q. So then according to the records you have, the notes you made, there was a reduction in 1990 for both the number one and number two right that was continued into 1991 and it was -- there was an adjustment made in 1992 to the number one right and there was -- the adjustment that had been made for the number 12 right was

discontinued?

A. Correct.

Q. The nine acres number three field, would you tell me again which quarter you have placed that in?

A. The nine acres that you just referred to would be in Government Lot Three of Section 26.

Q. That's field number three?

A. Field number three on the diagram would be in Government Lot Three, yes.

MR. EISMANN: Subject to what we have discussed before, that's all the questions I have of Mr. Lester, but we would, of course, reserve the right to call him if we felt necessary in our case.

MR. SPACKMAN: Thank you, Mr. Eismann. Redirect, Mr. Riddlemoser?

REDIRECT EXAMINATION

BY MR. RIDDLEMOSER:

Q. Just one question to clarify, Mr. Lester. You stated that in 1992 the number one right was reduced to .43 CFS, which affected 22 acres?

A. Yes.

Q. Now that 22 acres you determined was the gravel pit site?

MR. EISMANN: We object to the form of the question

as leading and suggestive.

BY MR. RIDDLEMOSER:

Q. Well, I will back up and ask you how did you determine it was 22 acres?

A. I'm just acting on the best of my recollection here, but I believe Mr. Rumsey -- or Mr. Madarieta it could have been -- indicated that the -- you know, a great deal of the gravel pit had been reclaimed and this was the portion of the gravel pit remaining, about 22 acres.

Q. That's what's contained in the Amended Application; isn't it?

A. Yes. That's the basis of the Amended Application.

MR. RIDDLEMOSER: All right. Nothing further.

MR. SPACKMAN: Mr. Eismann?

RECROSS-EXAMINATION

BY MR. EISMANN:

Q. Based on your answer to the last question, my understanding is you didn't make a determination of this; is that accurate?

A. That's correct. I did not myself determine that there were 22 acres left.

Q. You took somebody's word for it?

A. For the purposes of the water right application, yes.

MR. EISMANN: I don't have anything further, subject to what we have discussed.

EXAMINATION

BY MR. SPACKMAN:

Q. I didn't think I had any questions, but I have a question now. Mr. Lester, based on your last answer. You said that for purposes of the water right application you took someone else's word for the number of acres represented to fall within the gravel pit.

A. Correct.

Q. Correct? I think Mr. Eismann's question may have been related to your determination of 22 acres within the gravel pit after reclamation had occurred. Did you attempt to determine the number of acres remaining within the gravel pit after reclamation?

A. In a matter related to the water district, not in preparing this application, yes, I was involved in an on-site look at -- not a survey or anything very sophisticated, but an on-site look at what was remaining in the gravel pit, so that we could have information for the water master concerning the number one right, so based on previous work and previous determination about how big

the gravel pit was, then a visit was made to determine about what was left, and use that as a basis for water master information.

MR. SPACKMAN: Thank you, Mr. Lester. I was simply trying to distinguish between the two.

Mr. Eismann and Mr. Riddlemoser, if there are further questions I'll allow you to ask. Mr. Riddlemoser, I will allow you the opportunity first. I don't know whether it's significant or not, but I thought it needed to be clarified.

FURTHER REDIRECT EXAMINATION

BY MR. RIDDLEMOSER:

Q. Well, in making your determination, Mr. Lester, and particularly from the on-site inspection -- and you said nothing too sophisticated -- did you have any problem with accepting 22 acres?

A. No, I did not.

MR. RIDDLEMOSER: Nothing further.

FURTHER RECROSS-EXAMINATION

BY MR. EISMANN:

Q. When did you make your on-site inspection?

A. I don't have that information with me, but it was probably in May sometime.

Q. Of 1992?

A. Yes. Uh-huh. It was a follow-up to the application and to the preparation of the water master work in '92.

Q. Looking at Exhibit A, again, based on your inspection in May of 1992 and your other knowledge of the property, when would your best estimate be that Exhibit A was taken?

A. I really don't even have a guess as to that.

Q. Well, was the size of the gravel pit, as shown on Exhibit A, substantially the same on May -- in May of 1992 as is now depicted on Exhibit A when you examined the property?

A. Well, it looks a little bigger to me in this photo than I recall, but --

Q. Did you --

A. Don't know.

Q. Did you actually take any measurements of any kind when you were there in May of 1992?

A. No, I didn't.

Q. Are we left correctly with the impression that you were there, you looked at it, eyeballed it, and that was the extent of your effort to determine the acreage?

A. Well, in relation to office work, in relation

to inform that was brought in by -- I believe it was Mr. Madarieta, some photographic information where he -- he or somebody drew some boundaries on the photo that they brought in to help prepare the application, then the field visit followed after awhile and there seemed to be a general agreement between what was found -- without any sophisticated measurements in the field, though, just, like you said, a rough estimate.

Q. Now based on your estimate, what was the most acres the gravel pit ever attained for use of the gravel pit, stockpile area, and that sort of thing?

A. I estimated it at 52 acres.

Q. And that was in 1990?

A. I would -- yeah, I would assume it would have been. I'd have to look at my notes, but that makes sense that it would have been 1990.

Q. And you estimated the 52 acres was the number one right; correct?

A. Most of it. A small part of it was -- oh, well, in 1990 I guess it would have all been -- yes, all been number one right. Yes.

Q. And I think you told us that there was four acres or thereabouts in the number 12 right?

A. Later on, yes. Let me look at my notes. I'm not sure here. 1990 number one -- 1990. Okay. Number

one and number 12 both in 1990.

Q. Totalled what?

A. Apparently we have 52 acres of number one and four acres of number 12, so that would be 56 acres, instead 52 acres, as the maximum estimate.

Q. How did you arrive at those acres?

A. With a compass and pacing, based on the ortho photo quad and compass and pacing for an approximate estimate.

Q. What of your years records do you have before you? What are you referring to? What years?

A. My personal records?

Q. The records you have referred to in your testimony.

A. Well, I have a copy from the decree and this other pile I hold in my hand is a compilation of several years of information to provide to the water master that I keep a copy of.

Q. What years are covered by that?

A. Be 1989 through '92. Well, up to now, up to '93. I don't have exhaustive records, but, you know, I have stuff representing those years pretty much, '89 through '93.

MR. EISMANN: Mr. Hearing Officer, I'd like the opportunity to take a moment and examine those records to

see if there is anything further I have got.

MR. SPACKMAN: I think that would be fine. It's about time for a recess anyway. Just a moment. Do you have any further questions, Mr. Riddlemoser?

Let's just recess and come back, because he may want to ask Mr. Lester more questions anyway. Let's recess for about ten minutes.

(A recess was had.)

MR. SPACKMAN: We are recording again. Mr. Eismann, after a brief recess have you reviewed the records of Mr. Lester and determined whether you want to pursue questions or --

MR. EISMANN: Yes. I have reviewed his records and I think he wants to make a correction as to the location of field number three. Is that correct, Mr. Lester?

THE WITNESS: Yes. I will go ahead and change the location of that on the diagram, if that's okay, or shall I do that?

MR. EISMANN: I think what we need to do is -- so that we have a complete record of what the testimony is as it relates to the record that's made, let's call that field -- if you will outline it, let's call it 3-A. Is that all right with everyone?

MR. SPACKMAN: Will you, please, explain the correction as you mark it, Mr. Lester.

THE WITNESS: Okay. Currently we have number three -- a field labeled number three immediately below the gravel pit and earlier what I was trying to indicate is where those acres are and they would be more to the south down in this vicinity. I'm not going to try to draw an exact thing, I'm just going to put it in here somewhere. They would be down in this far -- more southern corner and I will label that 3-A.

So it's approximately in that location.

MR. EISMANN: I have no further questions of Mr. Lester at this time, but, of course, again, reserving the right to call him if he has any additional --

MR. RIDDLEMOSER: I have nothing further and also reserve the right to call.

MR. SPACKMAN: Thank you, Mr. Lester.

Next witness, Mr. Riddlemoser.

MR. RIDDLEMOSER: I'd like to call Mr. Rumsey back under oath, please, as a witness.

MR. SPACKMAN: Mr. Rumsey, if you could be seated on the witness chair. You're already under oath.

DONALD RUMSEY,

called as a witness herein, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIDDLEMOSER:

Q. Mr. Rumsey, there has been some discussion about 22 acres in the gravel pit. You have been here listening to it, have you not?

A. Yes, I have.

Q. Who determined there was 22 acres in the gravel pit?

MR. EISMANN: We object to that. Who determined is irrelevant and it would be hearsay. This gentleman -- he has the appropriate knowledge to testify with reasonable certainty as to the acreage or he does not, so there would be no foundation for that.

BY MR. RIDDLEMOSER:

Q. All right. How many acres, in your understanding, in the gravel pit?

A. 22 acres.

Q. How do you arrive at that understanding?

A. I measured it with -- I rented a wheel and went out and measured footage and put it on a sketch and then I gave that to Mr. Madarieta and we gave that

information to Mr. Lester.

Q. You made the measurements to determine the 22 acres?

A. Yes, I did.

MR. RIDDLEMOSER: Nothing further. Reserve the right to recall if necessary.

CROSS-EXAMINATION

BY MR. EISMANN:

Q. Please describe how you did that, Mr. Rumsey.

A. I had a -- I rented a wheel, went around the periphery of the gravel pit and made a sketch of it, put the dimensions on it, and then computed it into acres.

Q. And I'm still not clear. You mean you ran it north, south, and east and west; is that what you're telling us?

A. Actually, we took the whole periphery of the pit east and west, north and south.

Q. Did you measure out a rectangle?

A. I measured up -- there is some jogs in it and I took those out.

Q. It's not a correct --

A. It's not a perfect rectangular field.

Q. What you have drawn in and marked as X, field X, on Exhibit A, does that represent the shape of what you

measured?

A. That's the approximate shape of what I measured.

Q. Did you measure any other fields, other than the gravel pit?

A. No, I did not. That's all I measured.

Q. Did you earlier at any time measure the gravel pit or the area that was devoted to gravel pit operations?

A. No, I did not.

Q. The gravel pit operations that -- you leased that area to the state of Idaho or the Department of Transportation?

A. I believe it was a lease. That's correct.

Q. Do you know when you did that?

A. No, I don't. I think it was '88, but I'm not sure.

Q. We have an exhibit that is marked Exhibit U, if the record would reflect. Jack, I have a copy for you.

Mr. Rumsey, your counsel provided what is marked as Exhibit U to me sometime back. Is that the Material Lease that resulted in the operations by the state or its contractor on your property which has been referred to as the gravel pit?

A. Yes. That would be correct.

MR. EISMANN: Mr. Hearing Officer, we would offer Exhibit U. Do you want to take a look through it, sir?

THE WITNESS: No. That's okay.

MR. SPACKMAN: Mr. Riddlemoser, do you need a moment?

MR. RIDDLEMOSER: No. It can be admitted.

MR. SPACKMAN: The document marked as Protestant's Exhibit U, for purposes of identification, is received into evidence.

(Protestant's Exhibit U admitted.)

BY MR. EISMANN:

Q. And with your reference now to what has been marked as Exhibit U, the lease -- or that document was dated in October --

A. '87.

Q. Yes.

A. Well, I was a year off.

Q. Well, we won't do anything serious to you for that.

A. Okay.

MR. EISMANN: That's all I have.

MR. RIDDLEMOSER: Nothing further from this witness at this time.

MR. SPACKMAN: Thank you, Mr. Rumsey. Next witness, Mr. Riddlemoser.

MR. RIDDLEMOSER: I think that the applicant will rest.

MR. EISMANN: Mr. Hearing Officer, we would call Mr. Cleo Cockrum.

MR. SPACKMAN: Mr. Cockrum, if you will approach the witness chair.

CLEO COCKRUM,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISMANN:

Q. Mr. Cockrum, please state your name, first, for the record.

A. My name is Cleo Cockrum.

Q. And where do you reside?

A. Horseshoe Bend, Idaho.

Q. And what is your occupation or profession?

A. I am a farmer.

Q. Pardon?

A. Farmer.

Q. And who do you farm for?

A. Myself.

Q. And do you lease the Double Diamond lands

that we have been discussing here in this hearing?

A. Well, I don't know whether you call it a lease or not, but I farm it on shares, yes.

Q. Share crop arrangement?

A. Right.

Q. And how long have you farmed it?

A. Since the summer of '86.

Q. You're familiar, then, with the gravel operations that went forward on the property?

A. Well, yeah. I was there while they were doing it.

Q. Okay. And they started those in 1987 or early '88?

A. Now when they started it's when they started. I don't know any dates. I don't keep records of it, so I don't remember.

Q. Can you think back and tell us when it was started?

A. No. I don't keep those kind of records. I don't keep a diary and dates don't mean nothing.

Q. What number of acres were eliminated from your farming when they started the gravel operation?

A. Oh, probably -- I don't remember now, but they was just -- they took a little bit each time, but they didn't take it all at one time, if that's what you

mean.

Q. Do you know how much -- how many acres you didn't farm in any one year?

A. No.

Q. Do you know how many acres you didn't farm in 1992?

A. No.

Q. Do you have any record that you can refer to to determine how many acres you did not farm because of the gravel operation which would include not only the crushing, but the storage and all phases of it in any year?

A. No. I don't keep track of what I don't farm, I just keep track of what I do farm. I don't know nothing to do with the farm -- with the acreage I don't farm.

Q. I'd like you to describe, if you will, the irrigation system through which these rights, number one -- water right number one and water right number 12, is brought to the lands shown on Exhibit A as farm lands. First, there is a diversion works; is that correct?

A. Right.

Q. And that's in Porter Creek?

A. Porter Creek.

Q. And that -- when you get by the diversion it's an open ditch?

A. Open ditch.

Q. And how far is it an open ditch?

A. I have never measured it, but it should be a little over two miles.

Q. And it enters then a pipeline; is that correct?

A. At Jackass Creek, yes.

Q. And it's up on the hill by Jackass Creek?

A. Right.

Q. Will that point appear on the Exhibit A, the map -- aerial photo?

A. I believe so.

Q. Would you take that red pen in front of you and put a circle over where the ditch ends and the pipeline begins north of Jackass Creek?

We have got to label that some way or another. Let's take an arrow off of that and make it point B. You want me to do that for you?

A. Might as well. Point B.

Q. Did I do that to suit you?

A. That's pretty close. That's good.

Q. Thank you. Now at the point -- at point B there is a -- I guess a headgate structure where the water could be diverted into two different pipes; is that accurate?

A. Accurate. Yes.

Q. And one of those pipes empties directly into Jackass Creek?

A. Right.

Q. And one pipe continues on towards the farmland?

A. Right.

Q. The pipe that enters into -- or how do you control the -- whether the water continues on to the farmland or whether it empties into Jackass Creek?

A. I don't guess we have any control. I don't know what you mean by control.

Q. Well, for instance, can you divert the whole -- all of the water that's coming into Jackass Creek if you need to?

A. Well, the only way that would be good was to shut down all your lines below. If you shut every head of water you was irrigating with down below that would fill your pipe up and when the pipe filled up, then it would flow over into Jackass Creek.

Q. So it was all on overflow, basically?

A. Right.

Q. And as long as the water that is coming down the ditch and entering that point, what we have called point B, as long as it -- as the capacity -- as the water

is being used in the irrigation system, as long as that condition exists, then it will pass on down to the irrigation system?

A. Right.

Q. And if, for any reason, it doesn't -- isn't being used in the irrigation system, then it will back up and rather than just flood out over the hillside, it then is diverted into this spillway, if you'd like, and into a pipe that enters into Jackass Creek; is that a fair statement?

A. Fair statement.

Q. Now from -- I'm taking the -- well, after this one pipe is emptied into Jackass Creek, that is where it terminates right at Jackass Creek; is that correct?

A. Right.

Q. Doesn't go any place else? And the water that flows into Jackass Creek through that pipe continues down to the Payette River?

A. Right.

Q. Now I'm directing your attention to the other pipeline that continues onto the farmland. Where does it go from point B? Where does that pipeline lead to?

A. Down to the farm.

Q. Well, you have a pump in the Payette River.

A. Right.

Q. And maybe we need to locate the pump site in the Payette River. Would you put a circle around the pump site in the Payette River?

That's at the head of or right on field number two?

A. Yes.

Q. And we can call that point C?

A. Right.

Q. Thank you.

MR. SPACKMAN: While Mr. Eismann is walking back, Mr. Cockrum, if I could encourage you to speak directly into the microphone. It is not registering as recording real strongly and so if you can keep right on it, it would be helpful. Thanks.

THE WITNESS: Okay.

BY MR. EISMANN:

Q. Now does the pipeline from point B go to point C?

A. Not straight to it, no.

Q. Explain your answer, if you would.

A. Well, it comes out further up the field and then another line goes back to the pump.

Q. So it -- the line that goes back to the pump, does it also work as a conduit to bring Payette River water to the field when the Payette pump is on?

A. Right.

Q. Is the Payette -- let me start again. Is there a valve that would prevent Porter Creek water coming from points B to the area of point C -- prevent that from going into the Payette River?

A. Well, yes, we have got a foot valve there at the pump, yes.

Q. Okay. Is there anything else that would keep it from going into the Payette River, aside from the foot valve?

A. No.

Q. There is no manual valve of any kind to --

A. No. Well, there is a valve -- a manual valve and foot valve both that's sitting there that you can shut off, yes.

Q. That's my question.

A. Oh, yes.

Q. Then if you want to use Porter Creek water only on the field, you have a valve you close so that you're not relying entirely on the foot valve?

A. Right.

Q. And how far is that located from the pump?

A. Right at the pump.

Q. Inside the little pump building?

A. Right.

Q. And there is a building over the pump?
A. There is a building over the pump.
Q. Now can -- or do you have any other pump in the system that would provide head or force to the Porter Creek water?
A. We do have one there, yes.
Q. And is it used?
A. I haven't used it for a couple years, no.
Q. And is that a booster pump?
A. It was a booster pump when we had the pump in the river that wasn't as strong as the one we have got now. See, we updated and we got a bigger pump at the river, so we didn't -- don't really need the booster pump that we was using before.
Q. Okay. Does the Payette River pump act as a booster pump for Porter Creek water?
A. Well, when I got both waters running together, yes.
Q. And when not it doesn't?
A. Doesn't, no.
Q. So then the Porter Creek water is a gravity system, unless you're pumping water from the Payette River?
A. Right.
Q. Now, again, I'm dealing with Porter Creek

water, so we have the water that has come down by gravity from point B to the area of point C; we have a valve closed there when we are only using Porter Creek water, which sends the water on south in the pipeline?

A. Right.

Q. And the pipeline generally -- does it follow any line we can -- as it goes through the farm does it follow any line up there that is easily identifiable?

A. Yes.

Q. Along the road, for instance, or --

A. No road, but pretty close, yes. A line that can be identified, anyway.

Q. Okay. With this black pen would you, please, draw the mainline -- and I'm not asking you to get it exact, you know, this is an approximation -- from point C to the end of the mainline. Do you understand my question?

A. To the end of the mainline? My whole system or are you just counting Porter Creek water?

Q. Porter Creek water. Excuse me.

A. Well --

Q. Excuse me. Go ahead.

A. That's one mainline, but we do have two side ones. Did you want those, too?

Q. Yes, please.

With your permission, I'm going to take an arrow off of the black line and mark mainline.

And that's represented by the black lines drawn with a black pen as -- and that's substantially right, but not exact location; is that correct?

A. Right.

Q. Now when you reach the portion of the fields that you're going to irrigate, you do this with wheel lines and handlines; is that accurate?

A. Yes, sir.

Q. Do the wheel lines pretty much stay in one area of the field going -- moving up so far and back so far?

A. Usually, yes.

Q. And how many wheel lines are there?

A. I have six walking lines in that field right there.

Q. Is that what you call wheel lines?

A. Yes. Wheel lines. Wheel lines. Walking lines. What difference.

Q. What I'd like you to do, if you would be kind enough to take this red pen now and come off the mainline, showing the wheel lines that you use, and put them in their most southerly position that they would be positioned if every wheel line was in the southerly

position from the area which it normally operates. Is my question clear?

A. What happens to the north and south?

Q. Are there some north and south ones also?

A. Yes.

Q. Let's put them in --

A. East and west I mean.

Q. East and west? Okay. Let's put the north -- the ones that run east and west in their southerly positions and let's put the ones that run -- we are going to get goofed up here. The ones that you move north and south -- in other words, where you turn the wheels going north or turn the wheels to bring them back south, let's put them in first with a red pen.

MR. RIDDLEMOSER: Mr. Cockrum, are you sure you understand?

THE WITNESS: Well, I think so, but I'm not really sure.

MR. EISMANN: Well, let me take another --

THE WITNESS: You said to put all my wheel lines out there that I irrigate with; right?

BY MR. EISMANN:

Q. Right. But apparently you have got some that are going to travel east and west?

A. Right.

Q. And you have got some that are going to travel north and south?

A. Right.

Q. Okay. Let's put in the ones that travel north and south first and put them in their southerly -- usually their southerly most position. Okay?

A. Okay. I guess. Oh, boy. What about the north -- east and west.

Q. Let's take care of these first.

A. Okay. Well, we got another one up here, then.

Q. You have identified -- this is a wheel line where I have the pen?

A. Right.

Q. We will put a W.L. there. And over by where it's the 3-A, the 3-A field is a wheel line?

A. Right.

Q. And then immediately south of -- or actually to the east of what was designated as wheel -- as field number three is another wheel line?

A. Right.

Q. And north of that is another wheel line?

A. Yeah.

Q. And north of that still is another wheel line?

A. Uh-huh.

Q. We still have one more wheel line someplace; is that --

A. Two.

Q. You have seven wheel lines?

A. Yeah.

Q. Okay. And they are going to move on their wheels east and west?

A. Right.

Q. Okay. Would you draw those in also, please?

A. You want them on the north side, here and here, or you want them down here and here?

Q. Let's put them on the -- they are going to move east and west?

A. They are going this way.

Q. Okay. Let's put them on the east side of the field they move through.

A. Well --

Q. And you have drawn one which is a red line appearing just west of the arrow that indicates the mainline?

A. Right.

Q. And I will put a W.L. there and you have drawn one further east from that over by -- bordering field number one?

A. Right.

Q. Now in the field where we have the last wheel line near field number one, the field is odd shaped.

A. Right.

Q. I'm assuming that as you go across you pick up pieces and as you come back you drop off?

A. Right.

Q. And that would be true of any field that isn't absolutely square --

A. That's true.

Q. -- if it's necessary; is that correct?

A. Right.

Q. I want to put a number on these wheel lines so that we can refer to them, with a pound sign and one on the most south one, pound sign on the one immediately north of that and a number two, pound sign and a number three on the one immediately north of that, then the most easterly line a pound sign and a number four and then moving west to the next one, a pound sign and number five, and then the most northerly wheel line is a pound sign and number six and then the one down in the lower left-hand corner near field 3-A, a pound sign and number seven.

Are there any of those wheel lines that you did not use at the locations indicated in 1992?

A. Yes. One of them.

Q. Which one was that?
A. Number seven.
Q. And did you use number seven in 1991?
A. Yes. I believe so. I don't remember the date, but that was just -- last year was when we pulled it out.
Q. Okay. Before then you're saying that you used it?
A. Yes.
Q. And was that in a regular rotation setup?
A. Yes.
Q. Now you have handlines, as I understand it, also?
A. Yes.
Q. What areas do you irrigate with handlines? Step to the map first and indicate it, then we will figure out some way to try to designate it.
A. Just here, here, here, and here.
Q. Here is a green pen. Would you outline and kind of cross-hatch the fields that you irrigate with handlines, again, as substantially accurate as you can.
Have you completed -- okay. So we have one, two, three, four fields we irrigate with handlines?
A. Right. And then I put a couple here for my pasture.

Q. Right next to your house?
A. Yeah. There is four.
Q. I guess we will start up here at the top and put handlines -- H.L. for handline number one, H.L. for handline number two, H.L. for handline number three, H.L. for handline number four.
And the handline field number four is the same as field number one marked by Mr. Rumsey; is that correct?
A. Correct. Well, there is one more there.
Q. Did I miss one?
A. For a handline. Yes. I missed it.
Q. Oh. You mark it on there and we will give it a number five.
A. Okay.
Q. And we will mark it H.L. for handline number five.
Okay. Now my understanding is that those fields are approximate, they are not exact?
A. Approximate.
Q. But their location is reasonable to -- for illustrative purposes?
A. Right.
Q. Now with respect to wheel line number one, how many sprinklers are in wheel line number one when it's

fully extended?

A. I don't know. I didn't count them.

Q. You have no idea?

A. I have no idea.

Q. How about -- is that true of all the wheel lines?

A. That's true of all of them. I have no reason to count them.

Q. Do you know the size of the nozzle on any of the wheel lines?

A. The majority of them are 9/32nds.

Q. 9/32nds?

A. Right.

Q. Or 9/64ths?

A. Now you got me. I'd have to go look. Ask George. He probably knows.

MR. DOVEL: I don't know, but --

BY MR. EISMANN:

Q. Your time will come.

So as far as your recollection is, it would be either -- most of them 9/32nds or 9/64ths?

A. Probably.

Q. Have the size of the nozzles changed in any significant way since, oh, 1987?

A. Well, they could have. I buy pretty near 400

dollars worth of sprinkler heads every year and just whatever comes on them is what I put out there. I don't never usually look at them.

Q. Okay. Could have, but you really don't know?

A. They are -- usually most of them stay right in that for hay.

Q. Okay. And that's kind of a good size for hay?

A. Yes. That's what they tell me.

Q. So from 1987 to -- through 1992, if there were any changes in sprinkler nozzle sizes -- in the opening, it would not be significant?

A. No.

Q. How about your handlines? What size nozzles do you use on those?

A. They are the same. I guess.

Q. Okay. Do you know what brand of nozzles you use?

A. Most of these new ones I bought was Rain Birds.

Q. Well, if you're kind of typical you're going to have Nelson and Rain Bird out there.

A. That's -- I think most of them are Rain Bird. I don't have too many Nelsons. I do have some, but not very many.

Q. Have you taken any pressure readings on your handline or wheel lines at the end of the line?

A. No, I haven't.

Q. Have you taken any pressure readings to determine pounds of pressure existing at any point on any of the wheel lines?

A. I never have.

Q. Has anyone, to your knowledge?

A. Well, I don't remember, but I think there was a guy took them once when they put that pump in, but I don't remember.

Q. Okay.

A. I never, anyway.

Q. Now when you're using only Porter Creek water through your gravity system, how many wheel lines do you operate?

A. Boy, you got me there. As many as I can.

Q. Well, what determines how many you use?

A. Determines how much water we have got.

Q. Well, my limited information on sprinklers is that if I have got too many sprinklers on or not enough water, whichever you want to view it, it could be either way, I got to shut down sprinklers until I have got enough pressure to make a decent pattern.

A. Right.

Q. And with just Porter Creek water alone, do you use all of the wheel lines or have you ever?

A. I guess I have. I just haven't paid any attention.

Q. You don't know really whether you have or haven't?

A. Well, I don't keep track of that kind of stuff. You know, I'm either using them or I'm not.

Q. I take it that your system of irrigation is that if you can use Porter Creek water you do before you start pumping out of the Payette River?

A. Right.

Q. And, of course, the obvious purpose is to conserve power bills?

A. Right.

Q. Now with respect to the pipeline that delivers water from point B into the mainline -- and point B is up on the hill where the ditch meets the pipeline -- are there any leaks in that portion of the system?

A. Well, not that I know of. Once in awhile we have a couple that -- across Jackass Creek, but we always usually get them plugged.

Q. So far as you know, the system is substantially sound as far as for conveying water without any great or abnormal leaks from the top of the hill,

point B, to the bottom -- to the end of your mainline?

A. Right.

Q. And I assume like most things, you have had a few breaks or leaks and you have repaired them; is that correct?

A. True.

Q. Now the ranch also had water out of Shafer Creek; is that correct?

A. That's right.

Q. And where you have shown wheel line number one, is that about the northerly boundary of lands where Shafer Creek water is used?

A. Yes.

Q. Are there individuals that take water from Double Diamond's ditch between the weir on Porter Creek and the point B we have identified on the Exhibit A?

A. Other than courtesy water, no.

Q. And we call courtesy water two inches or something like that?

A. I think that's what they have said.

Q. And how many people -- I don't need to know who they are, but how many people take courtesy water from that ditch?

A. Three.

Q. With respect to maintenance of that ditch

from the weir to about the Dovel property line -- do you know where that is?

A. Right.

Q. Is there maintenance performed on that section of the ditch?

A. Not too much. It's kind of in an area where she flows pretty good.

Q. It's kind of a jungle through parts of that, isn't it?

A. Parts of it.

Q. And so, really, is it a reasonable and fair thing to say that there is really no maintenance in that section of the ditch?

A. Well, other than we get in there and clean it out once in awhile, no.

Q. With equipment or what?

A. No. Hand.

Q. You don't chop down any of the brush?

A. Well, depends on whether it needs, but I haven't chopped any out last year, no.

Q. Who in the ranch operations orders the water -- amount of water -- quantity of water from the water master? Is that your function?

A. I do. Right.

Q. Do you keep any records of the amount of

water that you actually order or do you rely on the water master for his records in that regard?

A. Just the water master alone.

Q. When there is water flowing into the pipe at point B that flows then into Jackass Creek, what causes that to occur?

A. Pardon?

Q. Okay. Let's take situations when water -- when you're irrigating.

A. Right.

Q. And your intention is to have the water directed down to the mainline from point B.

A. Right.

Q. But, in fact, some water or a quantity of water is going down the other pipeline that enters into Jackass Creek. What creates or causes that situation?

A. Well, it could be if one of my fellows was changing one line and shut it off and we fill up the pipeline -- we have a screen there that could plug up to where it goes into the mainline. It could plug up.

Q. So it could be sprinkler change and it could be a screen plug?

A. Right.

Q. With respect to the diversion dam Double Diamond maintains at its weir, is that upstream or

downstream from the diversion dam used by George Dovel?

Q. Yes.

A. It's downstream.

Q. Below his dam?

A. Right.

Q. Does water leak by that diversion -- Double Diamond's diversion?

A. Most of the time, no.

Q. What do you do to control the flow of water by the diversion?

A. I don't understand what you're talking about. If the dam don't leak -- what do you mean? What are you talking about?

Q. What do you do to make the dam -- seal the dam?

A. Oh, we put canvas in and put it up over -- we have got boards across the creek and we put canvases in over the top of it to seal it.

Q. And then are there occasions when it still lets some water pass?

A. Oh, yeah, there is always reasons that the canvas gets tore somehow or another.

Q. How often do you, yourself, inspect that dam and diversion?

A. Just depends on how often I need to go up

there.

Q. Okay.

A. I don't go up there every day, if that's what you mean.

Q. I'm sure you wouldn't go up every day. Do you have some regular practice of once a week or once a month or something like that?

A. At least once a week I go up there, but I don't have any certain time or pattern, it's just whenever -- if we are having trouble with the water, it's not coming or something, then I go check on it.

MR. EISMANN: Mr. Hearing Officer, that would conclude our direct examination of Mr. Cockrum.

MR. SPACKMAN: Mr. Riddlemoser?

CROSS-EXAMINATION

BY MR. RIDDLEMOSER:

Q. Mr. Cockrum, you stated that you ordered the water from the water master.

A. Yes.

Q. And what's the procedure to order the water in?

A. You just have to call him and tell him you need the water.

Q. Do you order a certain amount?

A. I don't recall ever ordering a certain amount.

Q. In other words, he knows your --

A. Right.

Q. Assume that he knows what water you're entitled to at that point?

A. Right.

Q. And you just tell him we need the water?

A. Right.

Q. And he --

A. But, see, it's not all just cut and dried like that, either. See, he don't come on board until we have got the water half -- we have already been using water before he gets there, so really I guess you would say I turn the water in myself until the water gets short enough that there is no water to fill all of the water rights and we are down to one -- the number one water right, well, then, there is no ditch rider there, you take your own water, so I guess when we first start out the season I guess I do turn my own water on and then when he comes he locks her down to what -- when he gets there usually our full water right isn't there no more or pretty close.

Q. And that would be at approximately what point in time? And I realize it's different, but --

A. Different last year. It was pretty early. We started pretty close in April -- pretty close there last year. I know it was pretty darn soon to be irrigating, but I'd have to look exactly when I turned it on.

MR. RIDDLEMOSER: I don't have any further questions of that witness.

MR. SPACKMAN: Mr. Eismann?

REDIRECT EXAMINATION

BY MR. EISMANN:

Q. Yes. Thank you. Double Diamond has the number one right on the creek; is that correct?

A. Correct.

Q. Porter Creek? And so until there is not sufficient water to fill number two, three, four, five rights, up until that point -- or, excuse me, after that point, then, you get everything that you ordered, to the extent there is water in the creek?

A. Right. If I understand.

Q. When somebody else is drawing water and you don't have your full water right being diverted at the diversion, is that because you don't need your full water right? Do I make myself clear?

A. Not exactly, no.

Q. Okay. Let's take a point in -- and I'm going to just be arbitrary with you.

A. Okay.

Q. Let's assume on June 25th of a given year the number four right is drawing water, the number six right is drawing water, and maybe other rights and you ask for water. Is it correct to say that whatever you ask for the water master is then going to turn other people back or down or off to get you the water you ordered?

A. True. Right.

Q. And so if you're not taking your full right, it's because you don't need your full right at that particular time if some others are drawing water and you're not getting your full right; is that correct?

A. That would probably be the truth; right.

MR. EISMANN: That's all I have.

MR. SPACKMAN: Mr. Riddlemoser?

MR. RIDDLEMOSER: Nothing further of this witness.

MR. SPACKMAN: Thank you, Mr. Cockrum. Next witness, Mr. Eismann.

MR. EISMANN: We would like to call Christie Shirley.

MR. SPACKMAN: Ms. Shirley, would you approach the witness chair?

MS. SHIRLEY: Can I take a copy of my diary and my

water measurement?

MR. SPACKMAN: You may take it with you.

MS. SHIRLEY: Just in case somebody has some questions.

CHRISTIE SHIRLEY,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISMANN:

Q. Please state your name.

A. Christie Shirley.

Q. And your residence address?

A. You want my full mailing address or just where I live?

Q. Either one.

A. Box 445, Horseshoe Bend.

Q. You were employed by George Dovel?

A. Yes, I was.

Q. And what years were you employed by George Dovel?

A. In what capacity?

Q. In your capacity with irrigation.

A. Let's see. I believe 1989, '90, '91 and '92.

Q. And as far as his irrigation is concerned, Mr. Dovel and his sister own a ranch which draws water out of Porter Creek; is that correct?

A. Yes, sir.

Q. And with respect to irrigating that ranch, what did you do or contract to do?

A. I sub -- had contracted from George to provide crews to set up the water lines and I, myself, for two of those years assisted those crews in setting up the water lines and irrigating the fields.

Q. Sprinkler changes?

A. Yes. Sprinkler changing.

Q. Is it all a sprinkler system?

A. Yes, it is.

Q. How many people did you employ?

A. I had five each year.

Q. Plus yourself?

A. Plus myself, yes.

Q. What happens to those people as far as employment through you when water is -- water deliveries are terminated to Mr. Dovel's property?

A. Well, they are unemployed.

Q. They seek other employment somewhere else?

A. Yes, they do.

Q. Now you have been in the room -- hearing room

when we had put various marks, fields -- identified fields, wheel lines, handlines on Exhibit A, the aerial photograph; is that correct?

A. Yes, sir.

Q. Do you also have a recollection of where those are located and that sort of thing?

A. Yes. Vaguely I do. It has been two years since I observed -- you know, was doing this, but the only one that I disagree with is the wheel line number seven. I do not remember seeing that. Just off the top of my head I do not remember seeing that in operation.

Q. What year was that?

A. That was in '91.

Q. Now what -- were you monitoring the irrigation that was being conducted on Double Diamond's farmland depicted in Exhibit A in 1991?

A. Yes, I was.

Q. Would you describe for me how you went about that monitoring operation? What -- first, what route did you take?

A. Okay. I live north -- or south of the Double Diamond Ranch.

Q. And that would be at the bottom of Exhibit A?

A. Yes. That would be down here by wheel line number one. From that direction. I would travel north --

I leave my house, I would travel north, I would observe the lines that were running --

Q. Can you please step to Exhibit A and show the roads that you traveled on?

A. Okay. That was this one right here.

Q. That clear white line is a road?

A. Yes, sir.

Q. And it extends -- run your finger all the way along. It extends clear to the north?

A. I went up and around. Yes, sir.

Q. Okay.

A. And it also comes down around here, which it does not show, and it -- at no point does that one ever cross the river. It's always on the other side there.

Q. Now would you tell me what route you took in observing the irrigation on Double Diamond in 1991?

A. Okay. I would come this way, I would head north, I would count -- I would document which wheel lines were running, I would count usually the number of sprinklers on those wheel lines, and I would continue to do that all the way up and also the lines on the other side here, around to here, counting all the lines as I was going, and usually number sprinklers in the line, and I would check and see whether or not the river pump was running or the booster pump was running. At no point in

all that time was the booster -- did I ever observe the booster pump was running. Then I would come up and around, go up Jackass Creek and check the overflow, approximate that according to some calculations that George and I had done together and observed, then I would continue on around and up over Porter Creek and go -- drop down and measure first Double Diamond's weir and then Oliver Dobson's weir.

Q. These measurements and observations, did you reduce those to writing?

A. Yes, I did.

Q. Okay. Now you have described the route you took. You did that once a day? How frequently?

A. Three times a day.

Q. And each time did you record your observations?

A. Yes, I did.

Q. Was there any times when you and Mr. Dovel made that tour or inspection or observation together?

A. Yes. There were several times.

Q. Did you measure the sprinkler pressure being developed at any time?

A. There were a few occasions we did, yes.

Q. And did you check nozzle sizes?

A. Yes, we did.

MR. EISMANN: You can be seated if you like.

Mr. Hearing Officer, we have here a device that was used to check water pressure with and we have an exhibit that shows kind of a crummy picture of it. Do you want the actual instrument to be in evidence or do you want to have it available during the hearing and have a picture to illustrate what it is?

MR. SPACKMAN: I guess if the instrument is here and my opinion -- if Ms. Shirley described how the instrument was used, I'm not sure that I'll need either one, but I certainly don't need the actual instrument. A photocopy would be fine if you want to submit one, but I think the hearing officer's knowledge of this measuring equipment probably is sufficient if Ms. Shirley describes it and shows -- and shows that she's competent in using the equipment.

MR. RIDDLEMOSER: Mr. Hearing Officer, I'd like to ask a question here in aid of an objection to this line of testimony.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: Ms. Shirley, you said there that you were checking all the water three times a day that's on Double Diamond, did I understand you correctly?

THE WITNESS: At the weir, yes, sir. I was checking the water, measuring it with the staff gauge

three times a day. I was also counting the lines that were running, the lines that were not running, and usually the number of sprinklers per line.

MR. RIDDLEMOSER: And you also were checking the sprinklers on Oliver Dobson, did I hear you say?

THE WITNESS: No, sir, I was not checking the sprinklers on Oliver Dobson, I was measuring their weirs to see how much water they were diverting.

MR. RIDDLEMOSER: I see. And what was the purpose of making these measurements?

MR. EISMANN: We object. This is not -- this may be good cross-examination, but this isn't questioning in aid of objection.

MR. SPACKMAN: Perhaps you can explain where your questions are leading us, Mr. Riddlemoser.

MR. RIDDLEMOSER: Well, I guess maybe I may be anticipating Mr. Eismann here, because I think I know where it's going. We will reserve it for cross-examination.

MR. SPACKMAN: Okay. Thank you. Mr. Eismann.

BY MR. EISMANN:

Q. Thank you. Ms. Shirley, Exhibit S has been marked and that is a picture of this instrument that I hold here. First, directing your attention to the instrument itself, is that the instrument that you

utilized from time to time to take pressure readings?

A. At the nozzles, yes, sir. This is a Peto gauge.

Q. And how did you apply or use that Peto gauge?

A. Well, first you calibrate it by removing the lens, zeroing the needle back with your fingernail or a small screwdriver to where it is right on the zero and you take this point and you put it directly in the nozzle and it then gives you a reading up here to tell you how much pressure you're getting through that nozzle at that time.

MR. EISMANN: We would offer for purposes of illustrating the gauge Exhibit S and we have no problem with this being retained in your possession through the hearing, or for whatever purpose, the actual instrument.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: I have no problem with admitting the exhibit and I'm -- it's immaterial to me how you handle the actual --

MR. SPACKMAN: I don't need the gauge.

MR. EISMANN: It's available if anybody wants it.

MR. SPACKMAN: The hearing officer is familiar with the typical Peto gauge used for measuring pressures or discharge, I guess, from the sprinkler head, so the document marked as Exhibit S, for purposes of identification, is received into evidence.

BY MR. EISMANN:

Q. Next, Mr. Hearing Officer, we have a device that was used by, the evidence will establish, by Ms. Shirley to determine the opening in sprinkler heads and a picture of it to depict what it is, it's a six-inch dial caliper.

Ms. Shirley, I'm handing you what has been marked as Exhibit R, which is a six-inch dial caliper and the actual instrument itself. Did you, while you were making your inspections, measure the opening in the sprinkler orifice or hole in the sprinkler head itself?

A. I myself, no, sir, I did not.

Q. Were you present when it was done?

A. On occasions, yes, with Mr. Dovel I was there when he would measure it.

Q. And Mr. Dovel did the measuring?

A. Yes, sir.

Q. Okay. We also have a staff gauge that Ms. Shirley used. We made a picture of it as Exhibit T.

Ms. Shirley, I'm handing you what has been identified -- or what is this? What is --

A. This is a staff gauge.

Q. All right. And that's the staff gauge you used in measuring at the weirs as you testified?

A. Yes, sir.

Q. And is Exhibit T just simply a picture of that?

A. Yes, sir.

Q. Would you describe how you used the staff gauge?

A. I would take the staff gauge up to the weir itself, face it directly into the flow of water coming over the weir, turn it to a 45 degree angle, approximately, to get the best crest, the highest crest, I would then read it -- I will say it was, you know, right on the line here it would be a .3 and then I would document it down as being such. I would always turn it to where I got the highest crest of water to give the benefit of the doubt as to how much was being diverted through the ditch. It was -- the whole reason for taking the reading was to see how much they were diverting into that ditch.

Q. Now was that -- did you record your observations as you made them?

A. Yes, I did. Shortly after.

MR. EISMANN: Shortly after? We would offer, for the purposes of illustration, Exhibit T and, again, we would be glad to have this staff gauge available if anybody wants to utilize or inspect it.

MR. SPACKMAN: Mr. Riddlemoser?

MR. RIDDLEMOSER: No objection.

MR. SPACKMAN: The document marked as Exhibit T is received into evidence. The hearing officer, again, recognizes a staff gauge and it's common usage as a measuring device. Mr. Lester S and T have been received into evidence. R has not been received.

(Protestant's Exhibits S and T admitted.)

BY MR. EISMANN:

Q. Handing you what has been marked as Exhibit J. Do you know what that is?

A. Yes, sir. That is a picture of myself taking a reading on the Double Diamond weir. Mr. Dovel took the picture.

Q. And does that illustrate how you would position the staff gauge?

A. Yes, it does.

MR. EISMANN: We would offer J.

MR. SPACKMAN: Mr. Riddlemoser?

MR. RIDDLEMOSER: What's the date on that? There appears to be a date in the corner of that picture.

THE WITNESS: I believe that particular one is 8-1. Did you want the year?

MR. RIDDLEMOSER: I was just wondering what the number was.

THE WITNESS: As far as I know that is August the 1st.

MR. RIDDLEMOSER: And that's a measurement taken of the weir at Double Diamond?

THE WITNESS: Double Diamond's ditch, yes.

MR. RIDDLEMOSER: And what was the purpose of that being taken at that time?

MR. EISMANN: Again --

THE WITNESS: I just explained that to you. The reason for taking those readings is to see how much water they are diverting into their ditch at any particular time and I done that three times a day, because sometimes it would vary as to how much water was in the creek, as how much was being diverted and how much was going down, so it was done three times a day.

MR. RIDDLEMOSER: No objection.

MR. SPACKMAN: Document marked as Protestant's Exhibit J is received into evidence.

(Protestant's Exhibit J admitted.)

BY MR. EISMANN:

Q. Here is Exhibit G. Would you tell us what Exhibit G is, please?

A. This is a diary of my observations that I took and recorded. I was hired by Mr. Dovel as his private water master just to monitor what was being diverted and what was being used for the irrigation season of 1991 and this is a diary of my measurements and my

findings, my observations.

Q. And is it accurate, to the best of your knowledge?

A. As far as I know, yes, sir.

Q. And it was entered as you gathered the information?

A. From a day to day, time to time, yes, three times a day.

Q. Was it entered on the day you gathered the information?

A. Yes, it was.

Q. Always?

A. I took the book with me, I had it with me, I walked out into the fields carrying this book with me. I never estimated anything. I measured it to the best of my knowledge and documented it at that time.

Q. Now, in fact, Exhibit G is a photostat; is that correct?

A. Yes, sir.

Q. And I have here in my hand the two documents that are photostated.

A. Yes, sir.

Q. That's your original record?

A. Yes, sir.

MR. EISMANN: And they are available if anybody

would like to compare the originals to the photostats, but we would offer Exhibit G.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: And which we will object upon the grounds, number one, that there is -- nothing has been shown to lay a foundation for this as to why this was done and the necessity for it being done, this is purely a self-serving document that has no authenticity to it, other than the hearsay statements of this person who's not a party to the action and as far as this is concerned, I feel there that this is -- does not have the reliability that it needs to put it in in this hearing to prove any of the material issues in this case.

MR. SPACKMAN: I will withhold ruling on the objection at least for a little bit, Mr. Eismann. I would like to have you lay some foundation with Ms. Shirley, if you would, just to show me, I guess, what the contents of the diary contain and whether they are measurements, whether they are calculations, whether she's competent to make those calculations and reaching the conclusions, if there are any, within the document.

MR. EISMANN: The rule we are used to is we can't testify to or elicit information from the content of the exhibit until it's admitted.

MR. SPACKMAN: Well, at least as to her competence

on what's there.

MR. EISMANN: Well, when you count sprinkler heads -- is that what you're saying?

MR. SPACKMAN: I don't --

MR. EISMANN: If you want us to go through -- and we will be glad to go into it and testify from the document itself, if that's what you're seeking. We don't have a problem with that. Is that --

MR. SPACKMAN: Well, I guess what I'm asking for is I want to know generally what's within the document and what her competence is. I think I'm talking about foundation, because I think there needs to be some foundation laid to show that she is competent to reach some conclusions that are within there. Now if she's just measuring a depth of water over a weir and that's all that's mentioned there, that -- I don't know that I need much foundation laid. If she is simply out there counting sprinkler heads, I don't think I need much foundation. If she is calculating flows from sprinkler heads, if she's calculating flows over the weir, then I think she needs to establish that she's competent to calculate those values before I would receive it into evidence.

BY MR. EISMANN:

Q. Would you, please, take up Exhibit G? Do you have the original? Yes. You have it in your hand?

A. Yes.

Q. And we have put it into two parts. Is that simply because you had two books?

A. Yes, sir.

Q. And the first one starts with the first entry June 20th, 1991?

A. Yes, sir.

Q. Now would you explain the entries that have been made?

A. Mr. Dovel was with me making these calculations as far as 36 PSI. He was with me the first week or so that I was doing this and familiarizing me with the system. He was with me when I was counting -- numbering the wheel lines, placing the wheel lines where they are shown here and he done this for, like I said, about the first week or week and a half, maybe two weeks of this.

I also might add just to clarify whether or not I was competent enough to do this, I had met with Mr. Bernstein on a couple of occasions where he was taking the same readings I was taking, we compared our readings and we came up with the same readings and that is documented somewhere in this diary. I don't know the exact dates on that, but it is documented.

Q. Let's start through the first page of part

one.

A. Okay.

Q. And tell us what is documented at that point.

A. Pardon?

Q. Tell me what is documented on page one of part one.

A. Page one, part one, is one line on Shafer Creek was not running. There were five wheel lines that were running, one wheel line was not running, because that area was in windrows, which is cut hay, which is put into rows to be turned and baled at a later date.

The Double Diamond weir reading was .49.

The booster pump wasn't running, which simply means the booster pump wasn't on.

The river pump wasn't running.

There was overflow at Jackass Creek, which anybody can go and see the water dumping out the pipe and into the creek, so that definitely means that there is an overthrow and it was quite heavy, it was coming out at quite a high rate of speed there, quite a bit of water coming through, so that substantiates a heavy water flow.

Q. All right. What about the sprinkler lines? What can you tell us about those from your notes?

A. What do you mean?

Q. How many sprinklers or which lines were

running?

A. All the lines were running, except the one that I have marked off, because it was in windrows.

Q. Now --

A. The wheel lines -- one end, for instance -- oh, let's start at the top of the page. There was nine on one side -- like your wheel lines, you have a wheel here, you have a section line, you have a wheel in the middle, and you have another section. Okay. The first section there were nine sprinklers on that section. On the second half of that line -- that wheel line there were 12 sprinklers in that part and so on down through them. That's what these numbers are here is how many sprinklers were in each of those lines.

Q. Can you relate those lines to the lines we have numbered on Exhibit A?

A. Okay. Wheel line number one would be this one.

Q. And which one would be wheel line number one on page one of the part one?

A. Well, this is how I numbered them. I would start from this end and this would be wheel line number one.

Q. But on your page which one is wheel line number one?

A. Let's see. That would be the one with nine and 12.

Q. The one at the top of the page?

A. Yes. The one at the top of the page right by the Shafer Creek line that is not running.

Q. And so you would progress with -- the first wheel line you made observations with would be at the top of the page and then you would continue on down; is that correct?

A. Yes.

Q. Okay. So on that date how many wheel lines were running?

A. On that date five wheel lines were running.

Q. And how many sprinklers were running on those wheel lines?

A. You want me to add them all up for you?

Q. Well, just give us the wheel line numbers. Can't we use the same numbers as --

A. Okay. Wheel line number one there was, oh, 21 sprinklers running.

Q. Okay.

A. This is not -- it is not coordinating with that one here completely.

Q. Well, don't -- if it doesn't coordinate with the numbers, then tell us what the other two wheel lines

would be. You have got two more wheel lines running up and down the paper.

A. Yes. There was 18 in one -- well, there is 18 in each of them.

Q. And what do the numbers on the right-hand side of each of the lines indicate?

A. I'd have to go back and think about that, because it's -- like I said, it's been two years and I haven't had a chance. I just received this late yesterday afternoon and I haven't had a chance to go through and refamiliarize myself with it.

Q. Do they indicate the number of sprinklers actually in the line? Do some of those drop off sprinklers, is the question, I guess?

A. Do they do what?

Q. Do they drop off sprinklers?

A. Yes, they do. As they travel across the field the field gets smaller, so they drop sprinklers as they are going.

Q. All right. Now the two vertical lines are 18, I think you testified?

A. Yes.

Q. Then there is an H-5. What does that mean?

A. Handline. Five sprinklers.

Q. And there was only one handline operating?

A. Yes, sir.

Q. And then there are two more wheel lines indicated below that. How many were -- actual sprinklers were operating?

A. How many were running at that time?

Q. Yes.

A. 18 on the top one, 15, and then, of course, the other one wasn't running.

Q. And what was the weir reading?

A. .49.

Q. And what is the information that appears below the weir reading?

A. The gauge was under water and dirt, so we were unable to read how much water was going into the diversion box.

Q. What's the next line refer to?

A. There was one line on the 20 acres, which we measured at 19 PSI.

Q. Okay. Go ahead. What is the next line?

A. The next one -- there was two lines running on the 45 acre parcel.

Q. Which acres do those refer to?

A. You know, as far as the acres and the lots, I'm not any more familiar with them than Mr. Rumsey was as how many was in -- like I say, on these Mr. Dovel was with

me. He is familiar with the acres and the sections and all of that and he was assisting me in these documentations earlier on.

Q. He gave you the information?

A. Yes, he did.

Q. Okay. And then below the next one we have got O.D. What does that stand for?

A. That's the Oliver Dobson weir.

Q. And that's the numbers related to them? The weir is .20 cubic feet per second?

A. Yes.

Q. And each of these weir readings is cubic feet per second?

A. Yes, sir. Cubic feet per second?

Q. Uh-huh.

A. No.

Q. That's the reading on the staff?

A. That's the reading on the staff gauge, yes, and it's converted.

Q. And you didn't convert it here?

A. No, I did not.

Q. Okay. Let's move through to another example, maybe. I'm looking at July 7th, 1991. Would you relate what you recorded for July 7th, 1991?

A. As soon as I find it here. Okay. At 3:30

p.m. there were five wheel lines running. I did not document which wheel lines those were. I just simply said there were five wheel lines running. There were three handlines running and the river pump was running.

Q. Continue.

A. Jackass overflow was low. The Double Diamond weir reading was .36. The Oliver Dobson weir was .29.

Q. Continue.

A. 7:30 p.m. all lines but one wheel line were running. Jackass overflow again was low. The river pump was running.

At 8:15 p.m. the Double Diamond weir was .36.

At 8:20 -- I believe that's a two in there. No. This is kind of faded here. It was 8:45. I correct that. 8:15. It's 8:45. It's a little bit hard to read.

Q. Would you like to have your originals so you can refer to those? The copies may not be as good as the originals.

A. That might be better.

Okay. We are at 8:45 p.m. Double Diamond weir reading was .36.

8:50 p.m. Oliver Dobson weir was .16.

I then took two readings with the Peto gauge, Mr. Dovel and I. At the bottom of wheel line number one it was 32 PSI. We then went and read the top number,

which was 30 PSI, and then Mr. Dovel calculated that out as to how much water was being used and everything. He averaged it out at .31 to give them the benefit of the doubt on that. I did not have those computations in here, because I wasn't documenting them.

Q. That was the calculations he made?

A. Yes.

Q. Okay. Let's go to part two. July 25th. Would you tell us what was recorded then?

A. What date was that?

Q. July 25th. The first page of part two, second book.

A. Okay. 9:25 a.m. The number one wheel line was running.

Q. And which one is that again; do you recall?

A. That is the one down here by the --

Q. The south one?

A. Uh-huh. Yes, sir.

Q. Is that the same one that we have labeled number one?

A. Yes.

Q. Okay. Go ahead.

A. There was one sprinkler at that point by the pasture. It was one line with just one sprinkler running.

Q. Okay.

A. And the river pump was not running.

In that wheel line there were 21 sprinklers in that wheel line running. That is what the 21 out to the sides in parenthesis is there.

The river pump was not running. The booster pump was not running.

Again, the Jackass overflow I approximate that as 200 gallons a minute. The way I get that computation is Mr. Dovel and I went out with a five gallon bucket and we measured with a stop watch on other occasions and I estimated this approximation on a comparison basis with what we had measured previously on that.

Q. Were any sprinkler lines being changed?

A. No, sir, there wasn't.

Q. Okay. Go ahead.

A. On Little Jackass -- of course, we don't even want to refer to Little Jackass Creek, that's not even part of this, but the Little Jackass was at a trickle, which is -- Little Jackass Creek is nothing more than a very small ditch that runs through a pasture.

Q. What's it's source?

A. Pardon?

Q. Do you know what the source of water in --

A. Yeah. It's the runoff from the Double

Diamond diversion. That's what they were calling courtesy water to these other parties.

Q. Okay. Go ahead.

A. Okay. Double Diamond weir is .20.

Oliver Dobson weir is .36.

At 3:45 the same wheel line was running, had 19 sprinklers in it at that time. One handline by the pasture. The river pump --

Q. Was the full handline there?

A. One line. Yeah, it was the same sprinkler. One sprinkler in the handline that is not documented as being such, but at that day nothing had basically changed the first two times I checked it.

Q. Okay.

A. The river pump was not running. The booster pump was not running.

Jackass overflow was low.

Of course, again, Little Jackass was muddy with no flow.

Double Diamond weir was .20.

Oliver Dobson weir was .30, which means they were diverting less -- as the day progressed they were diverting less water.

At 8:50 -- this is 8:50 p.m. It's not documented in here, but it is 8:50 p.m. Number one wheel

line was running with 20 sprinklers.

Q. Before you go to that one, you have some verbiage between -- to the right of Double Diamond weir and Oliver Dobson weir. What does that refer to?

A. 3:45?

Q. Yes.

A. Okay. They were running the Shafer Creek line off from the Porter Creek water.

Q. How could you tell that?

A. Because the line extended -- the pipeline extended across the Shafer Creek border and the sprinkler line was hooked into it. It was just -- it was very obvious. It was just sitting there. You know, there was no attempt to disguise it or anything. I mean it was -- you know.

Q. Let's go through that explanation again. The sprinkler line that you observed that was on the Shafer Creek water right property was being -- provided water from Porter Creek?

A. Yes, sir. It was running off the Porter Creek line.

Q. Off the mainline?

A. Yes.

Q. And at a point north of the division line between Shafer Creek water right and Porter Creek water

right lands?

A. No. That would have been south.

Q. South of that?

A. Yes, sir.

Q. How could you tell it was Porter Creek water, is what I'm getting at?

A. When Mr. Dovel took me out and was showing me the water rights and where the lines broke and, you know, one water right ended and another one began, this was the line that he definitely had emphasized to me at the beginning was Shafer Creek side and one side was Porter Creek side and there is no fence between these, there is no -- no landmarks of any kind that I can remember, there is just a point or break there.

Q. Well, let's go forward to July 30th. Do you find that?

A. Okay.

Q. Would you tell me what you found on July 30th?

A. At 8:45 a.m. wheel line number three was running. I did not count the number of sprinklers. I did not document them.

Q. All right. But now, first off, let's take wheel line number three. Is that what we have numbered as wheel line number three on Exhibit A?

A. I believe it is.

Q. All right. Continue.

A. Okay. The river pump was not running. The buster pump was not running.

There was no overflow at Jackass Creek.

The Double Diamond weir was .20. It was just a fraction above, it wasn't enough to, you know, take it up to the next reading, so I just gave them that little plus. It was just slightly more than .20.

Oliver Dobson -- this is at 9:34 a.m. At 9:26 a.m. Oliver Dobson weir was .25.

Now these computations in here, I have to tell you, are Mr. Dovel's. I was not hired to computate, I was not coached on the computation. These are computations that he made provided on the reading that I got with the staff gauge.

Okay. Double Diamond was diverting .20 crest or 898 CFS or 404 gallons per minute, but beneficially using only number three wheel line with 24 nozzles at 3.4 gallons a minute, equaling 87 gallons a minute, versus 404 gallons per minutes being diverted, so 79 percent is being wasted or four gallons out of each five diverted is being wasted.

Q. That's Mr. Dovel's --

A. That's his computation.

Q. Is the next one also Mr. Dovel's computation, the paragraph below that?

A. Yes, sir.

Q. Now directing your attention to the next page, July 31st. Can you tell us -- run through what you observed on that date.

A. Okay. Wheel line number two was running. This is 1:45 -- or 1:40 p.m. I did not make two readings on that day. It was 1:40 p.m. Wheel line number three -- wheel line number two, wheel line number three --

Q. What day are you on?

A. I'm sorry. I skipped a -- I'm on August. I skipped a page here.

Q. July 31?

A. July 31st. One handline with 12 sprinklers was running.

Jackass overflow estimated at 90 plus gallons per minute -- just a little more than 90. Again, this was based on a comparison with what Mr. Dovel and I had measured out with a five gallon bucket. This was basically -- it's just an estimate. It was not measured.

The river pump was not running. The booster pump was not running.

At 8:34 a.m. Double Diamond's weir was .25.

8:30 a.m. the Oliver Dobson weir was .14.

Q. Do you have other entries on July 31?

A. Yes, I do. At 5:40 p.m. wheel line number two was running with 23 sprinklers.

Wheel line number three was running with 26 sprinklers.

One handline was running with eight sprinklers.

One handline with ten to 12. I was looking into the sun and at the angle that I was looking I could not be sure whether it was ten or 12 on that looking through the water and reflecting back in my face. Sometimes it's hard to see that and I did not have binoculars with me, so it was just an estimate there. There was between ten and 12.

One sprinkler in the pasture.

The River pump was not running. The booster pump was not running.

Double Diamond weir was .24 and the Oliver Dobson weir was .05.

Q. And on that same page you have entries on August 1st.

A. Yes. 7:00 a.m. Wheel line number two with 26 sprinklers.

Wheel line number three with 24 sprinklers.

There was one sprinkler in the pasture, a

handline with eight, a handline with ten.

The river pump, again, was not running. The booster pump was not running.

Jackass overflow was very low.

Double Diamond weir was .27 and I don't have a reading for the Oliver Dobson weir.

Q. Let's move over to August 8th.

A. August 8th. 7:50 a.m. Wheel lines -- all six wheel lines were running, one, two, three, four, five, and six.

As I mentioned earlier, I never did observe wheel line -- what they are calling wheel line number seven on here, at no time did I ever observe that wheel line running.

Q. All right.

A. One sprinkler in the pasture. One handline with 14 and one handline with 17 across the road, which would be what they have as handline number three there, I believe.

Q. Okay. To the east side of the road?

A. Yes. One handline with 14, one handline with five.

The river pump was running.

The Jackass overflow was low.

Double Diamond weir was .26.

The Oliver Dobson weir was .10.

At 3:30 p.m. wheel lines one and two south of the gravel pit road were running.

Wheel line number three by the house with 27 sprinklers.

Pasture line at this time had five sprinklers in it. This is the one that I had earlier -- it says one sprinkler at 7:50. I had not counted the sprinklers in there.

Single sprinkler by the pasture.

One handline with six, one handline with 12 east of the road. Both over there on that one.

One handline with 13.

Wheel lines four, five, and six. One handline with ten sprinklers, one handline with five.

The river pump was not running.

Jackass overflow was approximately --

Q. The river pump was not running?

A. The river pump was running.

Jackass overflow was approximately 40 gallons a minute.

Q. Okay.

A. The Double Diamond weir was .26.

The Oliver Dobson weir was .02.

At 8:30 p.m. --

Q. Let's hold it at this point. Mr. Hearing Officer, that demonstrates how the matter was recorded. There are, on occasion, calculations and your testimony is that the calculations in each case are Mr. Dovel's; is that correct?

A. Yes, sir.

MR. EISMANN: And so we would offer, again, Exhibit G on the basis that you have all exhibits, except those purporting to make calculations of water being wasted or water being consumed.

MR. SPACKMAN: Mr. Riddlemoser.

MR. RIDDLEMOSER: I think on this it is also shown that this is nothing more than a self-serving exhibit. It doesn't say where -- just take the last page here when we are talking about the wheel lines that are on there and the number of lines. It doesn't say anything about how much water is going on there and I think for the purpose of this, when it is directly for the purpose of snooping not only on Double Diamond, on the weir, which is controlled by the water master, but also snooping on Oliver Dobson's weir, which is also controlled by that, I don't think we have the reasonableness here of the accuracy that it would need for the purpose of which they want to use it for. I renew my objection.

MR. SPACKMAN: I have two concerns. One of my

concerns is separating the notes that Ms. Shirley recorded from calculations that were recorded by Mr. Dovel and separating the two. That concerns me.

I think these are notes that were kept by Ms. Shirley -- or I have no reason to doubt her veracity and I see no reason why her recorded notes can't come into the record, rather than have her recite every one of those for the record.

And I wonder about -- my other question, I guess, is I wonder about the relevance of the information that's coming in. I'm not sure yet that it's relevant to any issue before me, but I should be able to judge that one way or the other.

So I guess before its full admission, Mr. Eismann, I would like to have some explanation from Mr. Dovel regarding his calculations, his competency to record them, because if I accept the document, then it all comes in, and unless I can somehow separate his calculations from her notes --

MR. EISMANN: I think that's reasonable. What I would suggest is that Ms. Shirley take a moment, take part one and designate the page and the material that is calculated by Mr. Dovel so that we can highlight it or do something in here, so if it's clearly -- or underline it in red or -- so it is clearly Mr. Dovel's calculations

distinguished from her observations.

MR. SPACKMAN: You want to allow her to do that at a recess, which we should recess again, since we have been at it another couple hours.

MR. EISMANN: Are you going to go past 5:00?

MR. SPACKMAN: I will do whatever --

MR. RIDDLEMOSER: 5:00 o'clock already.

MR. SPACKMAN: I will do whatever the parties want to do. I will stay here until we finish.

MR. EISMANN: That's going to be late this evening. I have a commitment that I have to go to by a quarter to 6:00 is the reason -- I have to get to my office to get to that appointment and I have to travel to do it, but why don't we complete her -- at least her direct by having her take a few minutes to locate the material that is Mr. Dovel's calculations, so that we can specifically address it and satisfy -- or at least identify that in this record, so that we don't spend a lot of time otherwise, so why don't we take maybe a five or ten minute recess and have her do that.

MR. SPACKMAN: Okay.

MR. EISMANN: And then we will identify that.

MR. SPACKMAN: Let's recess for ten minutes and we will come back. Let's go off the record right now.

(An off-the-record discussion ensued.)

MR. SPACKMAN: Okay. We are back on the record after having discussed scheduling for the remainder of the hearing and it appears, in discussing the matter with the parties, that we can't finish tonight and that we need to reschedule. The parties have agreed that we will reconvene -- we will recess here and reconvene on Thursday -- and that's March 11th at 1:00 p.m.

Let's go off the record again.

(An off-the-record discussion ensued.)

MR. SPACKMAN: After further discussions and questions about conflicting schedules, we will continue to look at conducting the rest of the hearing on Thursday, March 11th, beginning at 1:00 p.m. It's contingent upon Mr. Riddlemoser clearing his schedule and Mr. Eismann as well and the parties have committed to letting me know at the earliest possible time, hopefully tomorrow morning, which would be Tuesday morning, regarding their conflict of scheduling.

If we cannot schedule it for Thursday afternoon, we will then alternatively continue this matter Friday at approximately 1:30, hoping that Mr. Eismann can be back from the motion day in Murphy and we will continue on either of those days into the evening until we finish, is my intention.

So if the parties can clear their schedule

that will be fine and Ms. Shirley, you will have to come back, I suppose, and continue your testimony at that time, so your attorneys -- and all the witnesses you will need to be in contact with the attorneys regarding your appearance.

Anything further? Thank you very much for your cooperation.

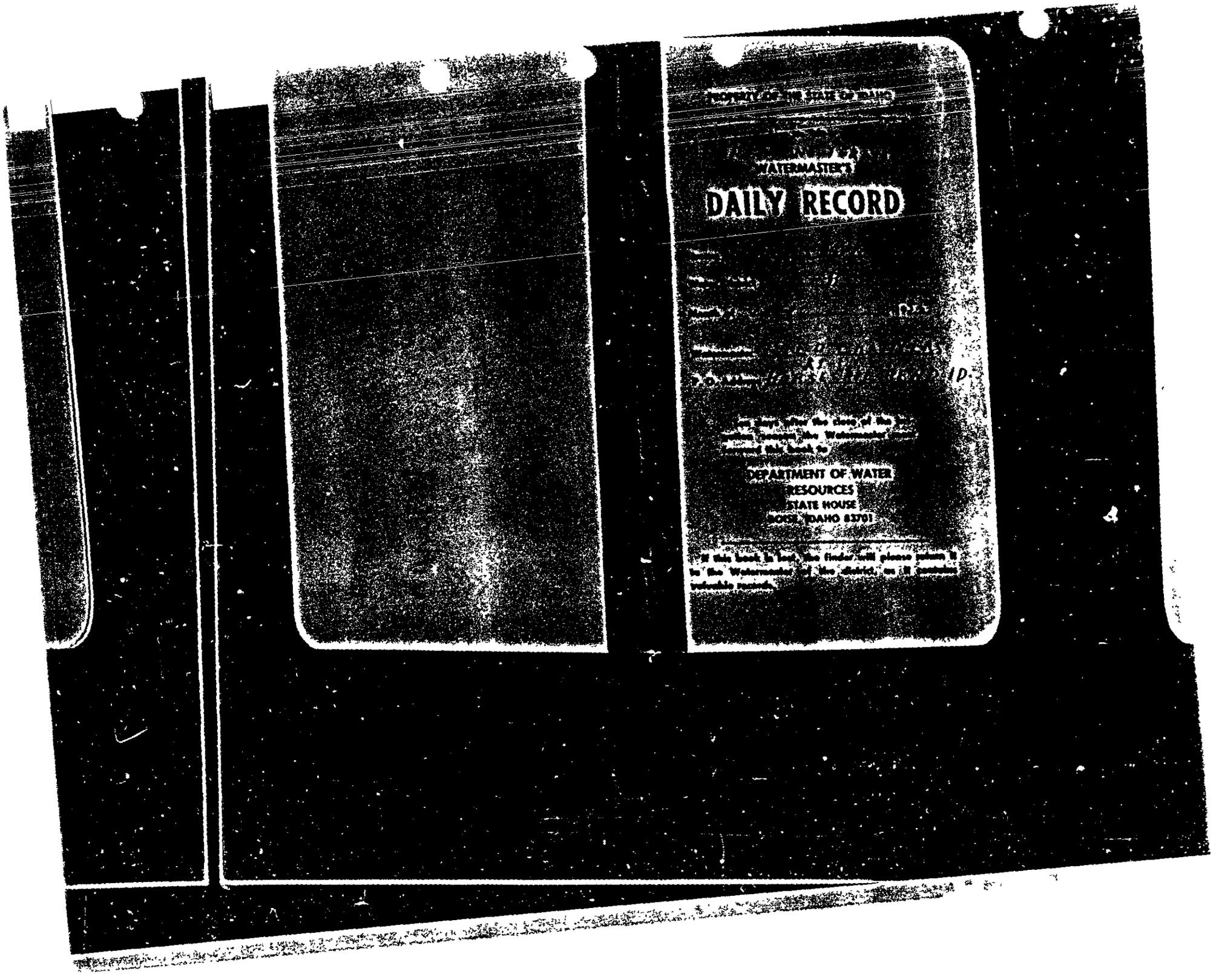
(Whereupon the deposition ended at 5:08 p.m.)

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98 41

WATER MASTER RECORDS




WATERMASTER'S
DAILY RECORD
DEPARTMENT OF WATER
RESOURCES
STATE HOUSE

Month of June 15 nBk

Name of Person Owner	20	21	22	23	24	DATE OF MONTH 25	26	27	28
Aurora Borealis						2 1/2-P 1	2 1/2-P 2	2 1/2-P 3	2 1/2-A
						24 35"		321	445	38.5
						.0 71		.036	.836	1.84
Double-Dagger						45"		1145	1126	121
						1.91		2.14	2 41	2.23
Dove - Bourne O						3 15 6		47	645	
						1.70		1.38	1.21	

PROPERTY OF THE STATE OF IDAHO

Form No 300 W

WATERMASTER'S

DAILY RECORD

Stream [illegible]

Water District [illegible]

Month of [illegible] 19[illegible]

Watermaster [illegible]

P O Address [illegible]

Ten days after the close of the irrigation season the Watermaster must forward this book to

DEPARTMENT OF WATER RESOURCES
STATE HOUSE
BOISE, IDAHO 83701

If this book is lost, the finder will please return it to the Watermaster of the district, as it contains valuable records

Month of [illegible] 19

Name of Person Owner	Address	Right Claim No.	Acres or Miner's Inch (ds)
POULSEN RANCH CO		[illegible]	

Month of _____ 19 _____

Name of Present Owner	Water Right		DAYS OF MONTH																													Acres Cultivated	Sec	Twp	Rge
			6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5			
POVELA Revisit												7½																							
												5½																							

NOTE—Flowers are to be given in cubic feet per second for 24 hour periods, or 4 hour second feet. Give name of measuring station, and manner

15	Acres Culti-vated	Sec	Twp	Rge
78.6				
1.57				

Month of ______________ 19____

NOTE—Figures to be given in cubic feet per second for 24 hour periods, or 24 hour second feet. Give name of owner of water rights not known.

DAYS OF MONTH

Name of Present Owner	16	17	18	19	Water Right	20	21	22	23	24	25	Acres Culti-vated	Sec	Twp	Rge
Dovell a Rovell							0.5 / 1.15		69 / 1.38	60.5 / 1.41					

Month of _____ 19

Name of Person Owner	26	27	28	29	30	31	DAYS OF MONTH	REMARKS	Acres Cultivated	Sec	Twp	Rge
VILLA ROUILL												

Month of _____ 19

Name of Person Owner	Address	Water Right Date No.
DOUILLA REAL		

1984

PROPERTY OF THE STATE OF IDAHO

Form No. 300 A

WATERMASTER'S

DAILY RECORD

Stream

Water District

Month of ..... 19..

Watermaster

P. O. Address

Ten days after the close of the irrigation season the Watermaster must forward this book to

DEPARTMENT OF WATER RESOURCES
STATE HOUSE
BOISE IDAHO 83701

Month of July 19 86

Name of Person Owning	Address	Idaho Water Right No.	Acres Irrigated (1)	DAYS OF MONTH 1	2	3	4	5
Bo Diamond Inc	% Ben Ramey Heb	65-3103						
Steve & Tom Robertson	Heb	65-3104						
[illegible]	[illegible]	[illegible]						
[illegible]	Heb	65-7071						
Grove Ranch	Heb	[illegible]						



July 19 68

NOTE—Figures to be given in cubic feet per second for [illegible] periods, or gallons per minute if a name of owner of water right is known.

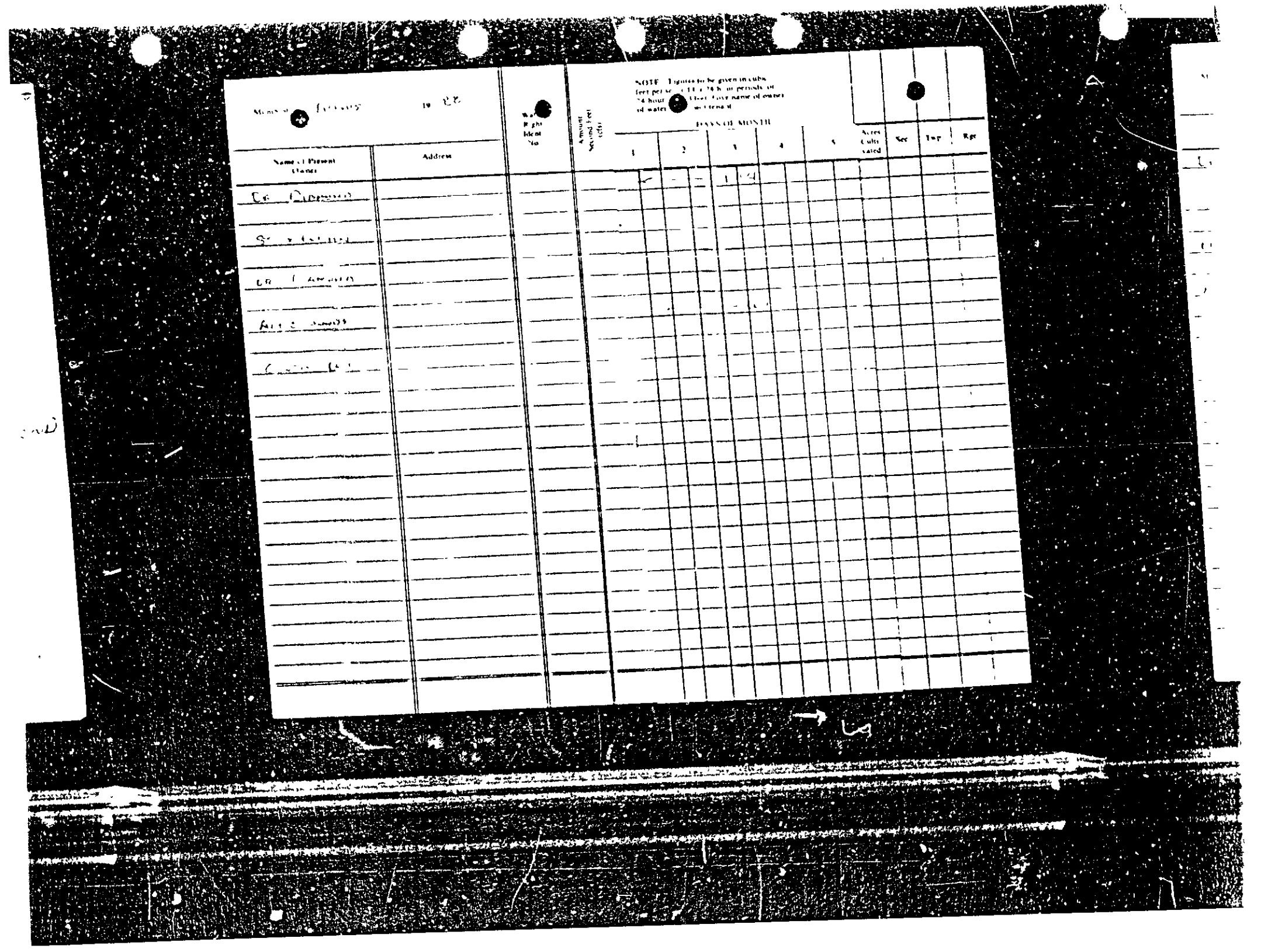
DAYS OF MONTH

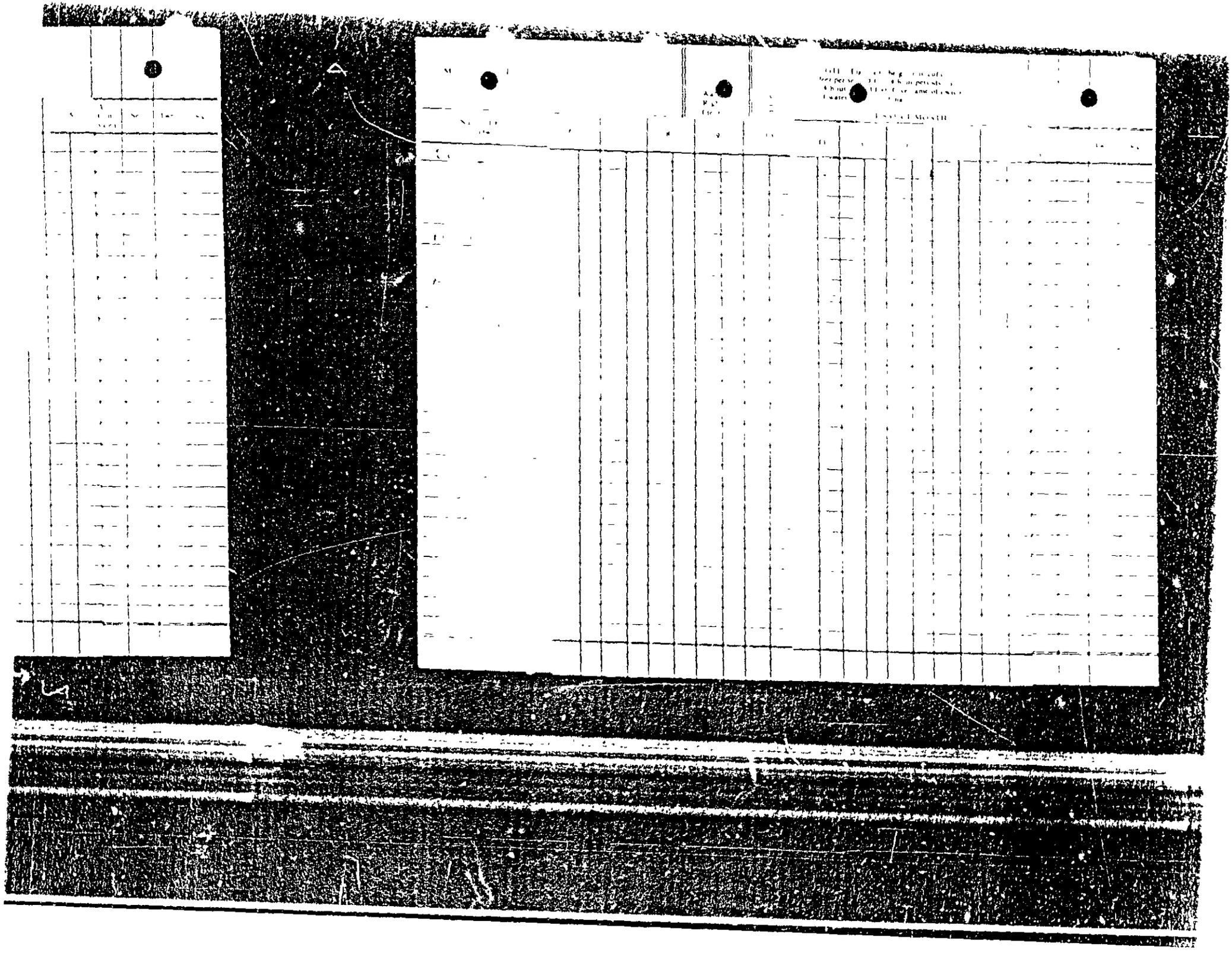
Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Area (Acres)	Sec.	Twp.	Rge.
P.D. Diamond Inc	→			(1.81)			1.74				193			
Lessee Tom Robert Oliver											76			
P.D. Diamond Inc											45			
5 Arlie Woods				→ (Goods)			.03				8			
1 George Rush											57			

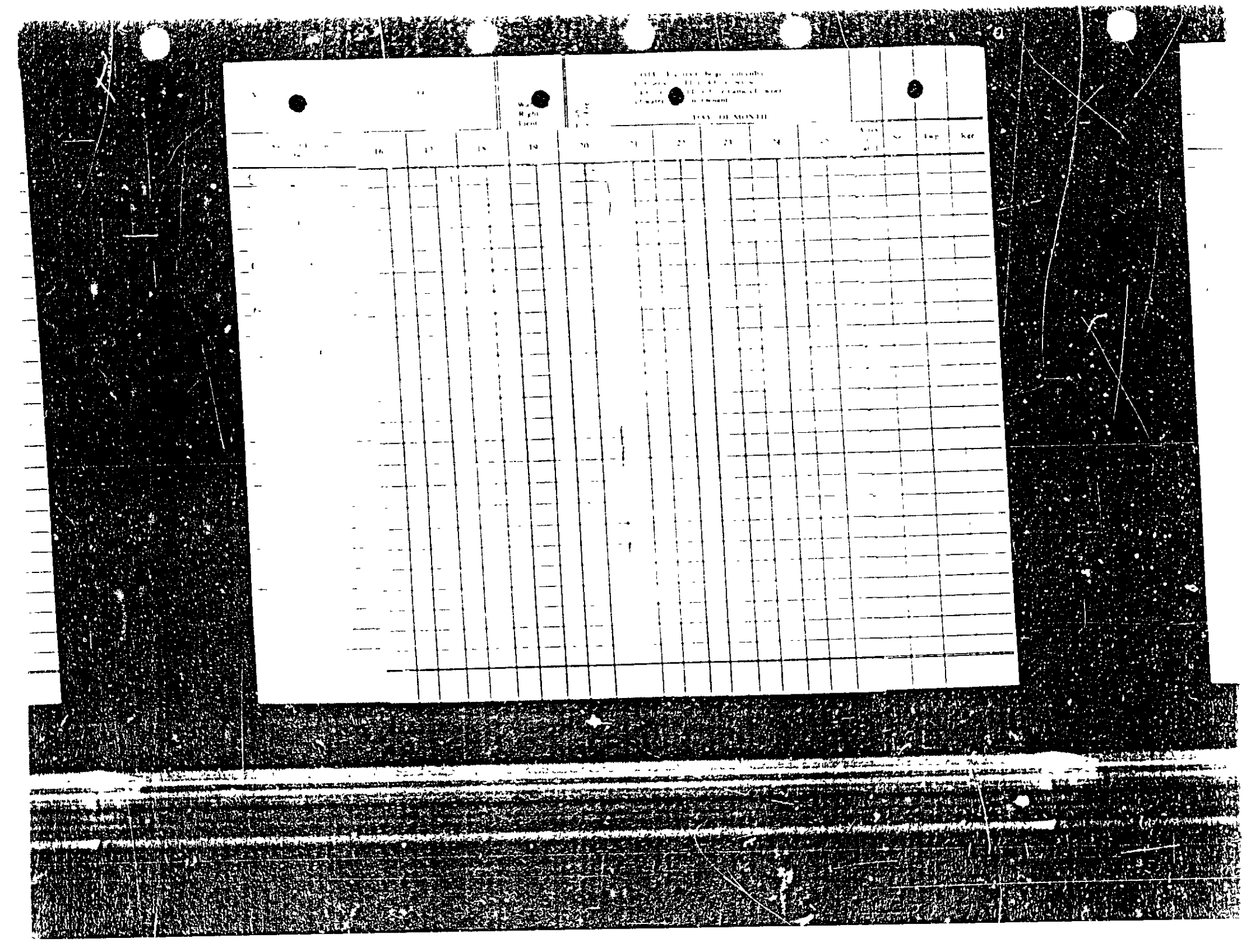
July 1958

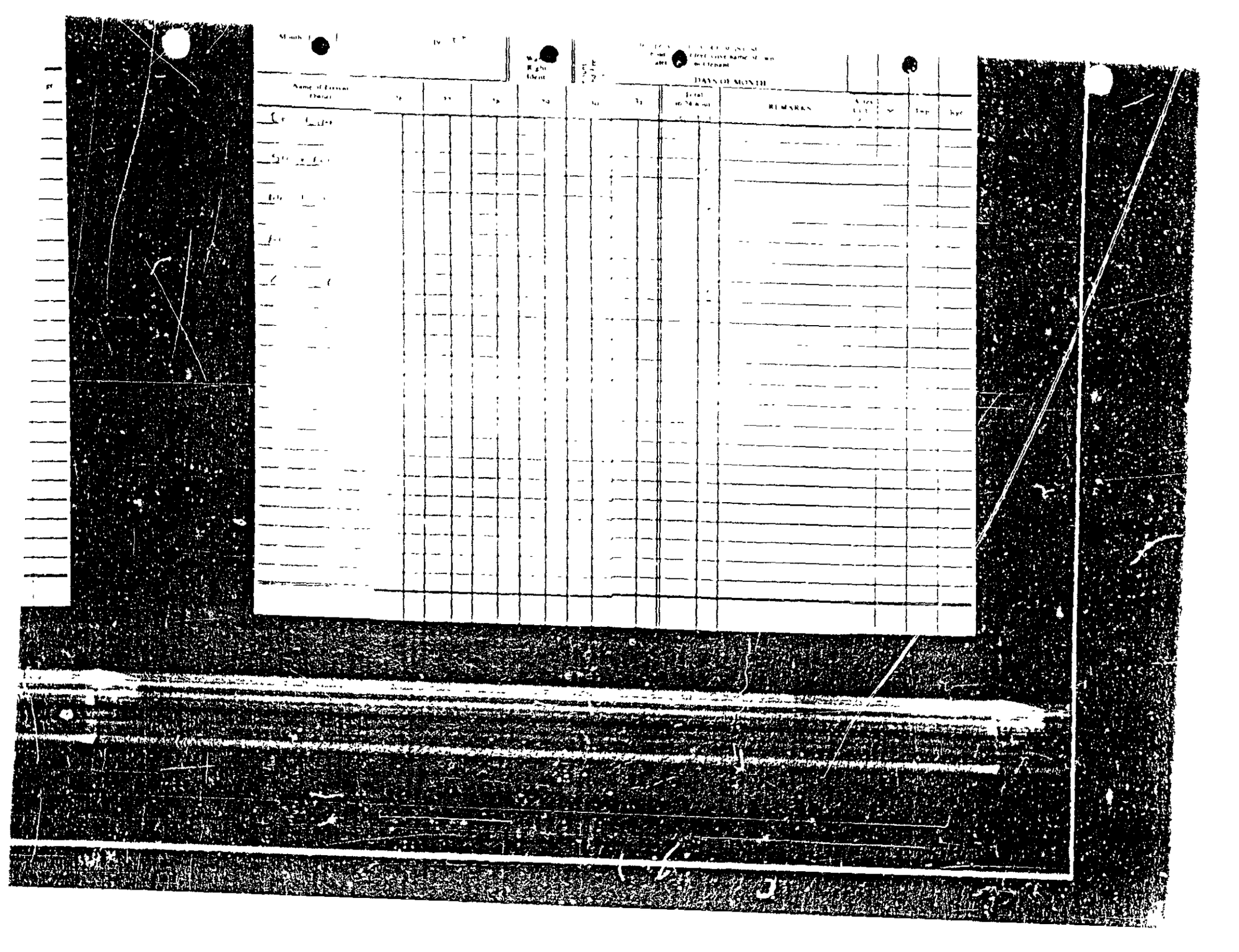
Name of Power Owner	26	27	28	29	30	31	Total in 24 hours Sec.	Total in 24 hours Ft.	Remarks	Acres Cultivated	Sec.	Twp.	Rge.
DB Diamond Inc	1.64	→					53	36		193			
Steve Tom Olsen-Oliver	→						1	84		76			
DC, Diamond Inc								0		45			
Arlie Woods	6.507	→						16		8			
George Dent	→						1	62		67			

NOTE—Figures as shown in cubic feet per second of flow for 24 hour periods as determined by means of current meter measurements.









OF THE STATE OF IDAHO

Form No. 300 W

WATERMASTER'S

.Y RECORD

[illegible] Creek

[illegible] B

Sept . 19 [illegible]

Elizabeth [illegible]

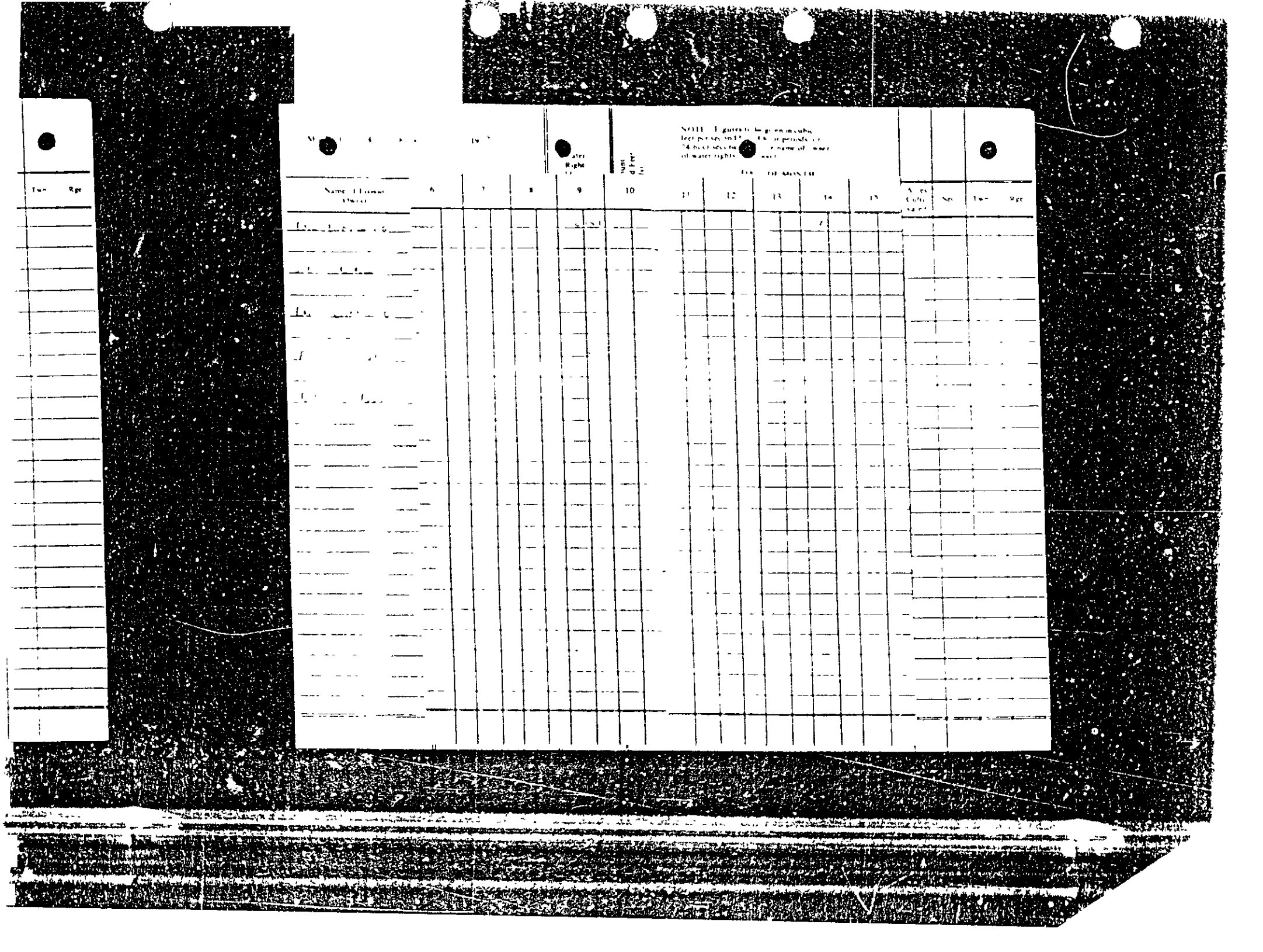
ays after the close of the irri-
season the Watermaster must
this book to

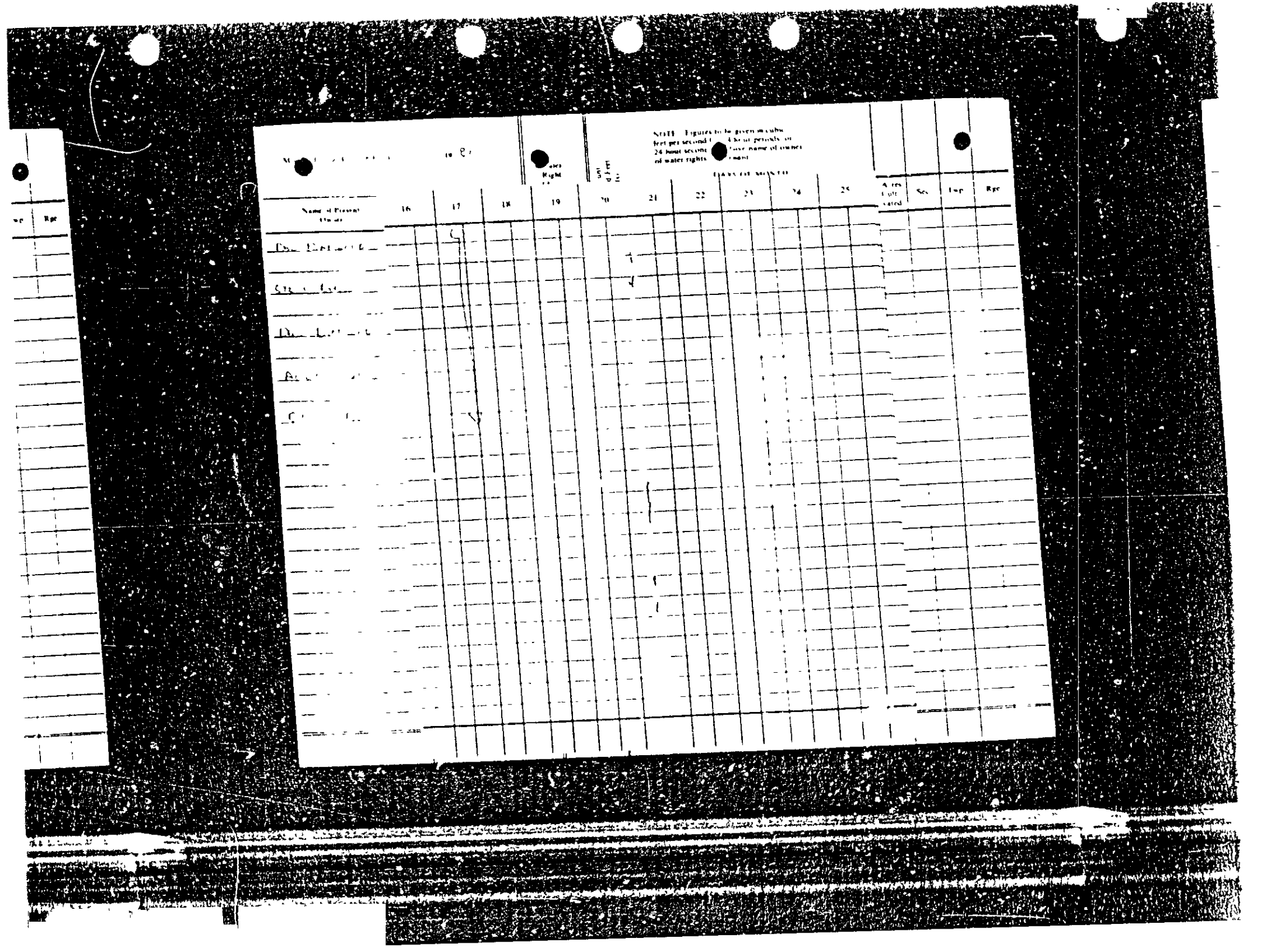
PARTMENT OF WATER
RESOURCES
STATE HOUSE
BOISE IDAHO 83701

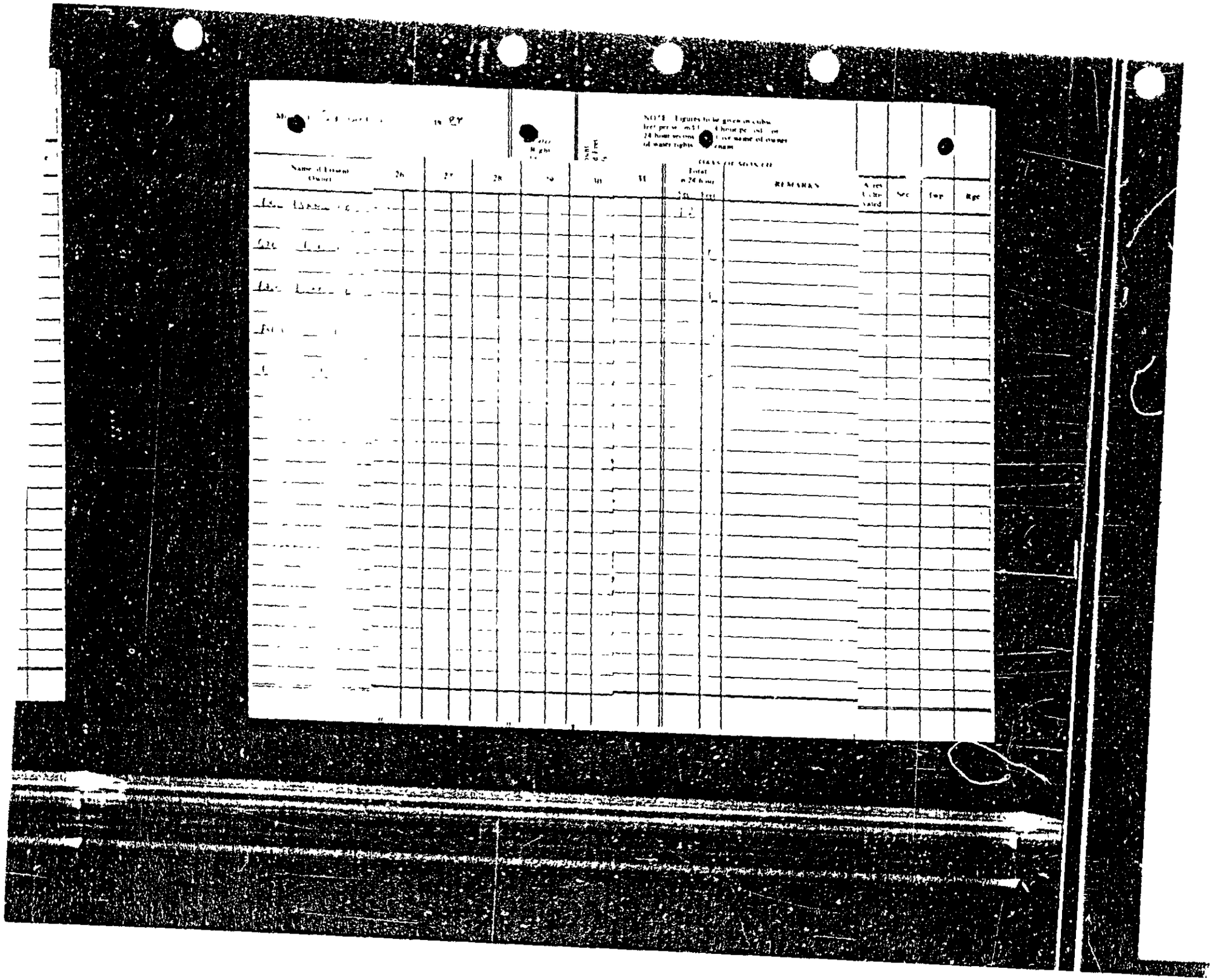
is lost, the finder will please return it
master of the district as it contains
ds

NOTE: Figures to be given in cubic feet per second [illegible] 24 hour seconds [illegible] name of owner of water rights [illegible]

Name of Owner	Address	Water Right Ident. No.	Amount second feet (cfs)	1	2	3	4	5	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]												
[illegible]												
[illegible]												
[illegible]												
[illegible]												







1990

Month of July 19 90

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant.

shows c.f.s. delivered that day

DAYS OF MONTH

Name of Present Owner	Address	Water Right Ident. No.	Amount in Second Feet (cfs)	1	2	3	4	5	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond		65-03103										
(2) Oliver / Dobson		65-03104										
(4) Double Diamond		65-10773										
(5) Arlie Woods		65-10771										
(6) George Duvel		65-10950										
(7) George Duvel		65-10951										
(11) George Duvel		65-10953										
(12) Double Diamond		65-10746										
(15) Double Diamond		65-12751										
(16) Oliver / Dobson		65-12842										
TOTAL DELIVERY (CFS) PER DAY →												

Month of July 19 90

NOTE: Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second-feet. Give name of owner of water rights, not tenant

DAYS OF MONTH ↙

Zippy's deliveries 7/11/90 after that ewe by EOWR

Name of Present Owner	6	7	8	Water Right Ident 9	Amount (cfs) 10	11	12	13	14	15	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond						0 00	2.79	2.09						
(2) Oliver / Dobson						.69	0 00	0 00						
(4) Double Diamond						.90		.10 with by ▲ OK 2						
(5) Arlie Woods						0 00	.06	.06						
(6) George Duvel				#6		.89	0 00	0 00						
(7)				#7										
(11)							.04	.04						
(12) Double Diamond														
(15) Double Diamond														
(16) Oliver / Dobson														
TOTAL DELIVERY (cfs) PER DAY →							2 89 (144½")	2 89 (144½")						

Month of July 19 0

Water Right Ident

Amount and Feet (cfs)

NOTE: Figures to be given in cubic feet per second, 24-hour periods, or 24-hour second (Give name of owner of water rights, not tenant

shows cfs. delivered that day

DAYS OF MONTH

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond		.04						1.04						
(2) Oliver / Dobson		1.52						1.15						
(4) Double Diamond		.60						0.00						
(5) Arlie Woods		.06						.06						
(6) George Duvel														
(7)														
(11)	Checked & Reset	.04					Checked & reset	.04						
(12) Double Diamond														
(15) Double Diamond														
(16) Oliver / Dobson														
TOTAL DELIVERY (CFS) PER DAY →		2.26 (113")						2.29 (114½")						

Month of July 19 90

Water Right Ident

NOTE—Figures to be [illegible] in cubic -feet per second for 24 [illegible] periods, or 24-hour second feet Give name of owner of water rights, not tenant

shows cfs. delivered that day

DAYS OF MONTH

Name of Present Owner	26	27	28	29	30	31	Total in 24-hour Sec	Total in 24-hour Feet	REMARKS	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond						.06	19	77					
(2) Oliver / Dobson						1.44	20	45					
(4) Double Diamond						0 00	8	20					
(5) Archie Woods						.06	1	20					
(6) George Duvel								89					
(7) George Duvel													
(11) George Duvel						.04		80					
(12) Double Diamond													
(15) Double Diamond													
(16) Oliver / Dobson													
TOTAL DELIVERY (CFS) PER DAY →						1 60 (80")							

Month of August 19 90

NOTE: Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet (name of owner of water rights, not tenant) Shows cfs delivered that day

Name of Present Owner	Address	Water Right Ident No	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond		65-03103										
(2) Olivin/Dobson		65-03104										
(4) Double Diamond		65-10773										
(5) Arlie Woods		65-10771										
(6) George Dovel		65-10950										
(9) George Dovel		65-10951										
(11)		65-10953										
(12) Double Diamond		65-10746										
(15) Double Diamond		65-12751										
(16) Olivin/Dobson		65-12842										
Total Delivery (cfs) PER DAY →												

Month of August 19 90

NOTE—Figures to be g cubic feet per second for 24-hou periods, or 24-hour second feet Give name of owner of water rights, not tenant Shows GPs delivered that day

DAYS OF MONTH

Name of Present Owner	6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec	Twp	Rge
(10) Double Diamond		0	0.88											
(2) Olivin / Dobson		0.88	0											
(4) Double Diamond		0												
(5) Arlie Woods		No change												
		2.06	2.06											
(6) George Dovel														
(5)														
(11)		No change												
		2.04	2.04											
(12) Double Diamond														
(15)														
(16) Olivin / Dobson														
Total Delivery (cfs) PER DAY →		.98	.98											

Month of Sept 19 90

NOTE– Figures given in cubic feet per second for hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant. Shows cfs delivered that day

Name of Present Owner	Address	Water Right Ident No	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond		65-03103										
(2) Olivi / Dobson		65-03104										
(4) Double Diamond		65-10773										
(5) Woods		65-10771										
(6) George Duvall		65-10950										
(7) George Duvall		65-10951										
(11)		65-10953										

Month of Sept 19 C

Water Right Ident

Amount 2nd Feet (cfs)

NOTE: Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second-feet. Give name of owner of water rights, not tenant. Shows cfs delivered that day

DAYS OF MONTH

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond						0 00								
(2) Olivia / Dubois						0 00								
(4) Double Diamond						0 00								
(5) Woods						.06								
(6) George Duvel						1.21								
(7) George Duvel						See remarks								
(11)						0 00								

delivered all available flow to #6 & #7 (was 1.21 cfs at #2 so this is delivery to #6 & 7). Couldn't read Duvel meter since he had not yet opened his lines.

Month of Sept 19 90

Water Right Ident

Amount in Second Feet (cfs)

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant. 5 hours cfs delivered that day

DAYS OF MONTH

Name of Present Owner	26	27	28	29	30	31	Total in 24-hour Sec	Feet	REMARKS	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond							36	20					
(2) Olivia / Dobson							0	00					
(4) Double Diamond							0	00					
(5) Woods							1	80					
(6) (7) (11) George Duvel									Use totalizer meter to see if 1.21 cfs delivered.				
							1	80	11 Courtesy H2O to 0 since irrig. water on.				
									See remarks in November Daily Record Book. (No Book for Oct., No change until 11/1/90)				

Month of November 19 90

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant. Show days of delivery that date

DAYS OF MONTH

Name of Present Owner	Address	Water Right Ident No	Amount Second Feet (cfs) Oct. Total	1	2	3	4	5	Acres Cultivated	Sec	Twp	Rge
(1) Double Diamond		65-03103		0								
(2) Olwen / Robson		65-03104		0								
(4) Double Diamond		65-10773		0								
(5) Woods		65-10771	1.86	0								
(6) *		65-10950		0 *								
(7) } Duvel *		65-10951	6.94	0 *	9/21 to 10/31 CALCULATION							
(11)		65-10953		0								

* Duvel's #6 & #7:

recvd 9/21/90 1.21 cfs delivered to these rights. This reading was based on delivery measured at #2 & shut down & delivered to #6 & 7.

#6 & 7 Total's meter

11/1	9741	4700	gal/in
9/21	9293	0250	
total used =	448	4450	= 13.762 acre-feet used 9/21 to 10/31

removal all lists, deliveries and

Month of November 19 90

NOTE—Figures to be given in cubic feet per second hour periods, or 24-hour second ive name of owner of water rights, not tenant

Show date of delivery that date

DAYS OF MONTH

Name of Present Owner	6	7	8	Water Right Ident	Amount Cubic Feet (cfs)	10	11	12	13	14	15	Acres Cultivated	Sec	Twp	Rge
① Dorothy Brown															
② Oliver / Robson															
④ Dorothy Brown		CALCULATION "Dovel" WA # 8, 7, 11													
⑤ Woods		9/21 - 10/31 = 41 days													
⑥ *		TOTAL 13.762 AC-FT													
⑦ } Dovel *		13.762 AC-Ft / 41 days = .3357 AC-Ft/day													
⑪															
		.3357 AC-FT/day / 1.9835 AC-Ft/day = .16925 CFS													
* Dovel		1 CFS													
result 9/21		.16925 CFS · 41 days = 6.94 CFS - 24 Hour													
Phase in delivery & delivery #6 & 7 Tot															

1991

Month of June 19 91

Name of Present Owner	83C29 Address HORSESHOE BEND	Water Right Ident. No.	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec.	Twp.	Rge.
DOUBLE DIAMOND	RTE #1 BOX 54	65-3103	279									
OLIVER/DOBSON	PO BOX 366	653104	1.60									
ADAMS/MILLER		653834	.147									
DOUBLE DIAMOND	RTE #1 BOX 54	6510773	.90									
WOODS		6510771	.04									
DAVIS		6510950	1.61									
DOVEL		6510951	.84									

APR 24 1995

Month of JUNE 19 91

Water Right

NOTE—Figures to be given in cubic feet per second for 24 hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant.

Amount in Cubic Feet (or Miner's Inches)

DAYS OF MONTH

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec.	Twp.	Rge.
										1100 1200				
DOUBLE DIAMOND										2 29				
OLIVER/DOBSON										1 60				
ADAMS/MILLER										15				
DOUBLE DIAMOND										Locked				
WOODS										04				
DAVIES										83				
BOYCE										1 57				

APR 25 1995

Wa Ri.

Count Feet (Ft.)

24-hour second feet. Give name of owner of w[illegible]ights, not tenant.

DAYS OF MONTH

Name of Present Owner	26	27 (1230)	28 (1100)	29	30	31	Total In 24-hour Sec.	Total In 24-hour Feet	REMARKS	Acres Cultivated	Sec.	Twp.	Rge.
DOUBLE DIAMOND	2 79	2 79	2 79	2 79	2 79	2 79	16	74					
OLIVER/DOBSON	1 60	1 60	1 60	1 60	1 60		9	60					
ADAMS/MILLER	15	15	15	15	15			90					
DOUBLE DIAMOND	---	---	---	---	---	---	---	---					
WOODS	04	04	04	04	04			24					
DAVIES	83	100	89	89	89		5	33					
NOVEL													

APR 25 1995

Time of Water Master and Assistants

MONTH OF June

NAMES	1	2	3	4	5	6	7	8
	9	10	11	12	13	14	15	16
			475/50					
	17	18	19	20	21	22	23	24
			40/48					55/CC
	25	26	27	28	29	30	31	Total
	535/52	15/54	105/101	55/76				

APR 25 1995

REMARKS

THE SUBMERGED ORIFICE

This form of measuring device is illustrated on page 19. The submerged orifice may be used where physical conditions or lack of fall in ditch make it impracticable to use a weir. The essential requirements in setting and the methods of using the submerged orifice are as follows:

1. The front should be set at right angles to the direction of the flow and in a perpendicular position.

2. The orifice opening should be rectangular and have sharp edges. It should have an area of one square foot or 144 square inches, or an easy multiple thereof, to conform to standard discharge tables.

3. The depth of submergence (the distance from the water surface to the top of the orifice opening) should not be less than the height of the orifice opening, and more is desirable.

4. The bottom of the orifice opening should be not less than the height of the orifice opening above the grade of the ditch—to prevent silt from obstructing the opening.

5. With the orifice two gages are required, indicating the level of water on each side of the orifice opening. The difference between these two elevations is called the effective head, which should not be less than one inch.

6. Care should be taken at all times to see that the submerged opening is not obstructed by trash or silt.

The discharge of the submerged orifice is found by first obtaining the effective head, then looking down the left-hand column of the table printed on page 18, till you find this particular effective head, and then across to the discharge column. As this discharge is computed for an opening of one square foot only, any other size opening must be computed as a fraction, or multiple of this discharge.

Month JULY ..... 19..71.

NOTE: Secutes to be given in feet ... cond for 24-hour perio... 24-ho... ond feet. Give name of ... of water rights, not tenant.

Name of Present Owner	Address	Water Right Ident. No.	Amount - Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	Acres Culti-vated	Sec.	Twp.	Rge.
DBL DIAMOND		65-3103	2.75	2 79	2 79	2 38	2 25	2 25			
OLIVER/DOBSON		65.3104	1.60	1 60	1 60	1 60	1 60	1 60			
ADAMS/MILLER		65 3024	.147	15	15	15					
DOUBLE DIAMOND		6510923	.50	- SHUT							
WOODS		65.10221	.04	04	04	04	04	04			
DOVEL		65 10950	1.61	1 89	1 89	72	04	04			
DOVEL		65.10957	.42								

APR 25 1995

for JULY 19 81

Water Right

Figures to be given [illegible] cubic feet per second for 24 hour [illegible] days, or 24 hour second feet. Give name of owner of water rights, not tenant.

DAYS OF MONTH

Name of Present Owner	6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec.	Twp.	Rge.
DBL DIAMOND	2 25	2 25	2 25	2 25	2 16	2 16	2 16	2 16	2 16	2 16				
OLIVER/DOBSON	1 60	1 60	1 60	1 60	98	99	61	51	51	51				
ADAMS/MILLER														
DOUBLE DIAMOND														
WOODS	04	04	04	04	04	04	04	04	04	04				
DOVEL	04	04	04	04	04	04	04	04	04	04				
DOVEL														

APR 25 1985

I

Month of JULY 19 71

Water Right

Amount of Fees ($)

feet per second for 24-hour periods
24 hou nd feet. Give name of o
of wa hts, not tenant.

DAYS OF MONTH

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec.	Twp.	Rge.
DBL DIAMOND	2 16	2 16	1 64	1 48	1 48	1 48	898	898	898	966				
OLIVER/DOBSON	51	51	10	69	69	69	1 04	990	990	1 21				
ADAMS/MILLER														
DOUBLE DIAMOND														
WOODS	04	04	04	04	04	04	04	04	04	04			-	
DOVEL	04	04	04	04	04	04	04	04	04	04				
DOVEL														

APR 2 5 1995

I

... 19 ..

... second feet for 24-hour periods, or ... hour second feet. Give name ... owner ... ater rights, not tenant.

DAYS OF MONTH

Name of Present Owner	26	27	28	29	30	31	Total in 24-hour Sec.	Total in 24-hour Feet	REMARKS	Acres Cultivated	Sec.	Twp.	Rge.
DBL DIAMOND	1 96	82	82	82	1 25	1 25	54	406					
OLIVER/DOBSON	1 21	1 06	1 06	1 06	—	—	30	23					
ADAMS/MILLER	—	—	—	—	—	—		45					
DOUBLE DIAMOND	—	—	—	—	—	—							
WOODS	04	04	04	04	04	04	1	24					
DOVEL	04	04	04	04	04	04	3	62					
DOVEL	—	—											

APR 25 1995

Time of Water Master and Assistants

MONTH OF.....

NAMES	1	2	3	4	5	6	7	8
	5 2 / 65	5	6 25 / 73	7.25 / 72	4 25 / 67	2 5 / K		
	9	10	11	12	13	14	15	16
			8 5 / 66		5 25 / 61	5 / 1		
	17	18	19	20	21	22	23	24
		3 5 / 62	6 40 / 71			4 25 / 73	2.75 / 64	
	25	26	27	28	29	30	31	Total
	4.0 / 70		3.5 / 68			3 5 / 64		

APR 2 5 1995

REMARKS

THE SUBMERGED ORIFICE

This form of measuring device is illustrated on page 19. The submerged orifice may be used where physical conditions or lack of fall in ditch make it impracticable to use a weir. The essential requirements in setting and the methods of using the submerged orifice are as follows:

1. The front should be set at right angles to the direction of the flow and in a perpendicular position.

2. The orifice opening should be rectangular and have sharp edges. It should have an area of one square foot or 144 square inches, or an easy multiple thereof, to conform to standard discharge tables.

3. The depth of submergence (the distance from the water surface to the top of the orifice opening) should not be less than the height of the orifice opening, and more is desirable.

4. The bottom of the orifice opening should be not less than the height of the orifice opening above the grade of the ditch—to prevent silt from obstructing the opening.

5. With the orifice two gages are required, indicating the level of water on each side of the orifice opening. The difference between these two elevations is called the effective head, which should not be less than one inch.

6. Care should be taken at all times to see that the submerged opening is not obstructed by trash or silt.

The discharge of the submerged orifice is found by first obtaining the effective head, then looking down the left-hand column of the table printed on page 18, till you find this particular effective head, and then across to the discharge column. As this discharge is computed for an opening of one square foot only, any other size opening must be computed as a fraction, or multiple of this discharge.

Month of AUGUST 1991

NOTE—Figures must be given in cubic feet per second for 24 hour periods, or 24 hour second feet. Give name of owner of water rights, not tenant.

Name of Present Owner	Address	Water Right Ident. No.	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec.	Twp.	Rge.
DBL DIAMOND		65 3103	2.79				1 26					
OLIVER/DOBSON		65-3104	1.60									
ADAMS/MILLER		65 3834	.147				—					
DBL DIAMOND		65 10773	.90				—					
WOOD		65 10771	.04				04					
DOUCL		65 10950	1.61				04					
DOUCL		65-10951	.42				—					

APR 25 1995

Month of AUGUST 19 91

N) —Figures to be given) bic
fe r second for 24 hour p) or
24 hour second feet. Give name o owner
of water rights, not tenant

Name of Present Owner	Water Right	Amount (Acre Feet)	DAYS OF MONTH 6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec	Twp.	Rge
DBL DIAMOND																
OLIVER/DOBSON																
ADAMS/MILLER																
DBL DIAMOND																
WOOD																
DOUCL																
DOUCL																

APR 25 1995

Month of AUGUST 19 91

NOTE—Figures to be given in cubic feet per second for 24 hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant.

Name of Present Owner	Water Right	Amount (Second Feet)	DAYS OF MONTH 16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec.	Twp.	Rge
DBL DIAMOND									966							
OLIVER/DOBSON																
ADAMS/MILLER																
DBL DIAMOND																
WOOD									04							
DOUGL									04							
DOUGL																

#18 CFS OVER

APR 25 1995

Month o AUGUST 19 91

NOTE— ures to be given in cu feet pe nd for 24 hour periods, 24 hour d feet. Give name of ow of water ights, not tenant.

Name of Present Owner	Water Right	Amount (Cubic Feet per Second)	DAYS OF MONTH 26	27	28	29	30	31	Total in 24-hour Sec. Feet	REMARKS	Acres Cultivated	Sec.	Twp.	Rge.
DBL DIAMOND														
OLIVER/DOBSON														
ADAMS/MILLER														
DBL DIAMOND														
WOOD														
DOVEL														
DOVEL														

RECEIVED
AUG 25 1995

Time of Water Master and Assistant:

MONTH OF.....

NAMES	1	2	3	4	5	6	7	8
					2.93 / 59			
	9	10	11	12	13	14	15	16
	17	18	19	20	21	22	23	24
						4.25 / 61		
	25	26	27	28	29	30	31	Total

REMARKS

APR 2 5 1965

THE SUBMERGED ORIFICE

This form of measuring device is illustrated on page 19 The submerged orifice may be used where physical conditions or lack of fall in ditch make it impracticable to use a weir The essential requirements in setting and the methods of using the submerged orifice are as follows:

1. The front should be set at right angles to the direction of the flow and in a perpendicular position.

2 The orifice opening should be rectangular and have sharp edges. It should have an area of one square foot or 144 square inches, or an easy multiple thereof, to conform to standard discharge tables.

3. The depth of submergence (the distance from the water surface to the top of the orifice opening) should not be less than the height of the orifice opening, and more is desirable.

4 The bottom of the orifice opening should be not less than the height of the orifice opening above the grade of the ditch—to prevent silt from obstructing the opening.

5. With the orifice two gages are required, indicating the level of water on each side of the orifice opening. The difference between these two elevations is called the effective head, which should not be less than one inch.

6. Care should be taken at all times to see that the submerged opening is not obstructed by trash or silt.

The discharge of the submerged orifice is found by first obtaining the effective head, then looking down the left-hand column of the table printed on page 18, till you find this particular effective head, and then across to the discharge column. As this discharge is computed for an opening of one square foot only, any other size opening must be computed as a fraction, or multiple of this discharge.

Month SEPTEMBER 19 91

NOTE: Figures to be given in cubic feet per second for 24-hour periods, 24-hour second feet. Give name of owner of water rights, not tenant

Name of Present Owner	Address	Water Right Ident No.	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec.	Twp	Rge
DBL DIAMOND		25?103	.77	996	996	996	996	996				
OLIVER/DIBSON		25-2104	1.11									
ADAMS/MILLER		25-2103	.111									
DBL DIAMOND		6510773	.90									
WOOD		6510771	.04	04	04	04	04	04				
DOUEL		6510950	1.61	04	04	04	04	04				
DOUEL		6510951	.42									

1985

Month of SEPTEMBER ... 19 ..91 ...

Wate Right ident.

nount nd Feet cfs)

feet per second for 24-hour periods, or 24-hc ond feet Give name of ow of wa ghts, not tenant

DAYS OF MONTH

Name of Present Owner	6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec.	Twp	Rge.
DBL DIAMOND	996	996	996	996	996	421	421	421	421	421				
OLIVER/DOBSON														
ADAMS/MILLER														
DBL DIAMOND														
WOOD	04	04	04	04	04	04	04	04	04	04				
DOVEL	04	04	04	04	041	44	04	04	04	04				
DOVEL														

Loan

-GOV'D SHUT SHUT OFF FLOW -

APR 25 1995

I

Wa... R Ide...

...nount ...rd Feet ...fs)

...cubic second feet Give name of owner of ... rights, not tenant

DAYS OF MONTH

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Culti-vated	Sec.	Twp	Rge.
DBL DIAMOND	421	421	421	421	421	421	421	421	VN	OVER				
CLINTON/DOBSON									11					
ADAMS/MILLER									11					
DBL DIAMOND									11					
WOOD	04	04	04	04	04	04	04	04	11					
DOVEL	04	04	04	04	04	04	04	04	11					
DOVEL														

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I

Mor) SEPTEMBER 19 91)

Water Right Ident

NOTE—Figures to be given in cubic feet per second for 24-hour period or acre-feet. Four second feet Give name of owner of water rights, not tenant

Amount (Cubic Feet per Second (cfs))

DAYS OF MONTH

Name of Present Owner	26	27	28	29	30	31	Total in 24-hour Sec	Total in 24-hour Feet	REMARKS	Acres Cultivated	Sec	Twp	Rge
DBL DIAMOND							15	433					
ELLISON/DIBSON							—	—					
ADAMS/MILLER							—	—					
DBL DIAMOND							—	—					
WOOD							1	20					
DOVEL							1	60					
" DOVEL													

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Time of Water Master and Assist

MONTH OF Sept 1991

NAMES	1	2	3	4	5	6	7	8
	9	10	11	12	13	14	15	16
			55/70			735/66		
	17	18	19	20	21	22	23	24
							68/72	
	25	26	27	28	29	30	31	Total
			0	C	TOBER			
				20	21			
				40	80			

REMARKS

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THE SUBMERGED ORIFICE

This form of measuring device is illustrated on page 19. The submerged orifice may be used where physical conditions or lack of fall in ditch make it impracticable to use a weir. The essential requirements in setting and the methods of using the submerged orifice are as follows:

1. The front should be set at right angles to the direction of the flow and in a perpendicular position.

2. The orifice opening should be rectangular and have sharp edges. It should have an area of one square foot or 144 square inches, or an easy multiple thereof, to conform to standard discharge tables.

3. The depth of submergence (the distance from the water surface to the top of the orifice opening) should not be less than the height of the orifice opening, and more is desirable.

4. The bottom of the orifice opening should be not less than the height of the orifice opening above the grade of the ditch—to prevent silt from obstructing the opening.

5. With the orifice two gages are required, indicating the level of water on each side of the orifice opening. The difference between these two elevations is called the effective head, which should not be less than one inch.

6. Care should be taken at all times to see that the submerged opening is not obstructed by trash or silt.

The discharge of the submerged orifice is found by first obtaining the effective head, then looking down the left-hand column of the table printed on page 18, till you find this particular effective head, and then across to the discharge column. As this discharge is computed for an opening of one square foot only, any other size opening must be computed as a fraction, or multiple of this discharge.

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1992

Month of MAY 19 82

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not tenant

Name of Present Owner	WATER RIGHT IDENTIFICATION NO.	Amount Second Feet (cfs)	1	2	3	4	5	RKS
DOUBLE DIAMOND #1	65 3103	2.19						
CRUISE - DOBSON #2	65 51.141	1.60						
ADAMS - MILLER #3	65 3839	54.0						
DOUBLE - DIAMOND #4	65 10773	9?.0						
WOODS ARLIE #5	65 10771	.0?						
DOVEL GEORGE #6	6510950	1.61						
DOVEL GEORGE #7	6510951	.184						

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Month of May 1952

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not tenant

Name of Pres Owner	26	27	28	29	30	31	Total In 24-hour Sec. Feet	REMARKS
DOUBLE DIAMOND	1 4	1	A	A	A	1	39 63	JACKASS [illegible]
OLIVIER - DUDSON	0	0	0	0	0	0	19 76	SHUT OFF - [illegible]
ADAMS - MILLER	~~	~	-				~~	CREEK TO LOW TO SUPPLY DITCH.
DOUBLE - DIAMOND	0	0	0	0	0	0	0	SHUT OFF - NON USE.
WOODS ARLIS	80	A	A	A	A	A	1 0	SURPLUS - SEEPAGE -
DOVEL GEORGE	33	A	A	1	1	1	11 78	
DOVEL GEORGE								

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Month of MAY 19 52

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not tenant

Name of Pres Owner	16	17	18	19	20	21	#1 NO. 22	23	24	25	RKS
DOUBLE DIAMOND	A	A	1 .18	A	A	A	1 40	A	A	A	
CHUTE 2 - DUBSON	A	A	1 21	A	A	A	O	O	O	O	
ADAMS - MILLER	—	—	—	—	—	—	—	—	—	—	
DOUBLE - DIAMOND	O	O	O	O	—	O	O				
WOODS ANIM.	A	A	.04	A	A	A	.04	A	A	A	—
DOVEL GROUCE	A	A	O	O	O	O	O	O			
DOVEL GROUCE											

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Month of MAY 19 52

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant.

Name of Pres Owner	6	7	8	9	10	11	12	13	14	15	RKS
DOUBLE DIAMOND		207	A	A	207	A	1 56	A	A	A	
OLIVIER - DUBSON		160	A	A	110	A	1 32	A	A	A	
ADAMS - MILLER		0	-	-	-	-	-	-	-	-	
DOUBLE - DIAMOND		0	METER NOT READABLE		C	D	D	D	C	D	
WOODS ARLIS		04	A	A	04	A	04	A	A	A	
DOVEL GEORGE		78	A	A	106	A	89	A	A	A	
DOVEL GEORGE											

SEP 29 1995

Month of JUNE) 19 92

feet per second for 24 hour periods, or 24 hour second feet) name of owner of water rights, not) nt.

Name of Present Owner	Address	Water Right Ident. No.	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec	Twp.	Rge.
UBLE DIAMOND		65-3103	2.79 1.48	A	A	1.81	1.64	A				
UER-DUDSON		65-3104	1.60	0	0	0	0	0				
AMS-MILLER		65-3839	.54									
UBLE-DIAMOND		65-10773	.90	0	0	0	0	0				
OMS-ARLIE		6510771	.32 .04	A	A	.04	.04	A				
EL-GEORGE		6510950	1.01 .33	A	A	.33	0	0	1/4 1/10T.			
EL-GEORGE		6510771	.84									

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AUG 5 1995

Month of JUNE) 19 92

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Name of Present Owner	Water Right	Amount of Feet (cfs)	DAYS OF MONTH 6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec	Twp	Rge.
BLE DIAMOND	1/64	1	A	A	A	A	1 2	A	18	A	1/64	A				
ER - DOBSON			0	0	0				0		0	0				
MS - MILLER																
BLE - DIAMOND			0	0	0	0	0	0	90	A	90	A				
IIS - ARLIE	.04	.04	A	A	A	A	.04	A	A	A	.04	A				
EL - GEORGE			0	0	0	0	0	0	0	0	.04	0	Silt			
L - GEORGE																

1995

Month of JUNE) 1992) feet per second for hour periods, or 24 hour second feet of water rights not) name of owner at)

Name of Present Owner	Water Right	Amount (Acre Feet)	DAYS OF MONTH 16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec	Twp	Rge
BLE DIAMOND			A	A	A	A	48	A	A	A	A	A				
ER - DUDSON			O	O	O	O		O	O	O	O	O				
AMS - MILLER																
BLE - DIAMOND			A	A	A	A	90	A	A	A	A	A				
IS - ARLIE			A	A	A	A	04	A	A	A	A	A				
EL - GEORGE			O	O	O	O	Diversion Ceased Past	O	O	O	O	O	Fallow			
EL - GEORGE																

APR 25 1995

Month of JUNE) 19 92

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not ten.

Name of Present Owner	Water Right	Amount (Second Feet)	DAYS OF MONTH 26	27	28	29	30	31	Total in 24-hour Sec.	Total in 24-hour Feet	REMARKS	Acres Cultivated	Sec	Twp.	Rge.
E DIAMOND			A	A	1	A	A		44	90	F.F FOR FLOW CHECK 6-10 F.F / 25				
R - DIBSON			C	C		0	0			0					
S - MILLER			—												
F - DIAMOND			A	1	0	0	0		14	40					
S - ARLIE			A	1		A	A		1	20					
- GEORGE					FILTER	0	0		1	03	6-04 CHAIR AND GEORGE GATE/SHUT/6-10 OPEN FINE FILTER				
- GEORGE															

[redacted]

APR 25 1995

[redacted]

Month of July 1992

NOTE—Figures to be given in cubic feet per second for 24 hour periods, or 24 hour second feet equivalent. Name of owner of water rights, not tenant.

Name of Present Owner	Address	Water Right Ident. No.	Amount Second Feet (cfs)		DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec.	Twp	Rge.
BLT DIAMOND		65 3103	2.79	.15	A	A	A	A	A				
EVTH DOBSON		65 3104	1.60										
OAMS MILLER		65 35'39	.54										
UBLE DIAMOND		65 10773	.90		0	0	0	0	0				
OWLS ARIZ		6510771	.32	.04	A	A	A	A	A				
OVEL GRANGE		6510950	1.61		0	0	0	0	0				
DOVEL GRANGE		6510151	.84		0	0	0	0	0				

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Month of July) .. 19 92

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Gi[illegible] me of owner of water rights, not tena[illegible]

Name of Present Owner	Water Right	Amount Feet (cfs)	DAYS OF MONTH 6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec.	Twp.	Rge.
[illegible] DIAMOND	1	48	A	A	A	A	A	A	A	A	A	A				
[illegible] DOBSON																
AG - MILLER																
BLF DIAMOND	1	.90	A	A	A	A	A	A	A	A	A	A				
BS ARIZ	1	.04	A	A	A	A	A	A	A	A	A	A				
FL GEORGE																
[illegible] GEORGE																

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[redacted]

[redacted]

Month of July) 19 92

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet of water rights, not te) ame of owner)

Water Right

Amount (Cubic Feet per Second)

DAYS OF MONTH

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec	Twp.	Rge
[illegible] DIAMOND	A	A	A	.27	/				.525	A				
[illegible] DOBSON														
MG - MILLER														
BLF DIAMOND	A	A	A	.[illegible]	A	A	A	A	.95	A				
[illegible] NIELSEN	A	A	A	.[illegible]	A			A	.05	A				
SL GRANGE														
VEL GRANGE														

[illegible] 5 1995

[illegible]

Month of JULY) .. 1992

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet of water rights, not

) name of owner

) Water Right) Amount in Feet (cfs)

DAYS OF MONTH

Name of Present Owner	26	27	28	29	30	31	Total in 24-hour Sec	Feet	REMARKS	Acres Cultivated	Sec	Twp	Rge.
ALT DIAMOND	A	A	A	A	A	A	33	17					
VITH - DOBSON													
AMS - MILLER													
UBLF DIAMOND	A	A	A	A	A	A	22	50					
EDS-ARCH	A	A	A	A	A	A	1	24					
UBL CHANGE													
OUBL CHANGE													

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[redacted]

[redacted]

of water rights not ... DAYS O... ONTH

...ame of Present Owner	Address	Water Right Ident. No.	Amount Second Feet (cfs)	1	2	3	4	5	Acres Culti-vated	Sec.	Twp	Rge.
...LE DIAMOND		653103	2.79 .578	A	A	A	A	.27				
...GR-DOBSON		653104	1.60									
...S-MILLER		653839	.54									
...LE DIAMOND		6510773	.90 .90	A	A	A	A	.50				
...S. A		6510771	.32 1.04	A	A	A	A	.04				
...L G		6510950	1.61									
...L G		6510951	.84									
...1 SPRING		6517134										

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of Water Rights Not Certain

Name of Present Owner	Water Right	Amount (Acre-Ft)	DAYS MONTH 6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec.	Twp.	Rge.
BLE DIAMOND			A	A	A	A	A	A	.42	A	A	A				
VOIR-DORSON																
MS-MILLER																
BLE DIAMOND			A	A	A	A	A	A	.30	A	A	A				
NS. A			A	A	A	A	A	A	.04	A	A	A				
EL G									.02	A	A	A				
EL G																

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ect Spring 6

Name of Present Owner	16	17	18	19	20	21	22	23	24	25	Acres Cultivated	Sec.	Twp	Rge.
LE DIAMOND	A	A	A	SOB	A	A	A	A	A	A				
G.H - DOBSON														
S - MILLER														
LE DIAMOND	A	A	A	0	0	0	0	0	0	0				
S. A	A	A	A	.04	A	A	A	A	A	A				
L G	A	A	A		A	A	A	A	A	A				
L G														

Water Right

Amount of Feet

DAYS OF WATER USED, JULY MONTH

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Water Resources

.011

of water rights not to exit

Name of Present Owner	26	27	28	29	30	31	Total in 24-hour Sec.	Total in 24-hour Feet	REMARKS	Acres Cultivated	Sec.	Twp	Rge.
BLE DIAMOND	/		.55	A	.5	.	14	038					
VIER-DOBSON								0					
MS-MILLCR								0					
BLE DIAMOND	/						9	20					
NS. A	A	A	.04	A	A	A	1	24					
CL G	A	A	.01	A	A	A		27					
CL G								0					

Water Right

Amount of Feet ft)

DAYS MONTH

APR 2 5 1995

ect Springs

Month of Septem 19 92

feet per second for 24 hour periods, or 24-hour second feet G me of owner of water rights, not te

Name of Present Owner	Address	Water Right Ident. No.	Amount Second Feet (cfs)	DAYS OF MONTH 1	2	3	4	5	Acres Cultivated	Sec	Twp.	Rge.
BLE Diamond		63-2113	2.79 .554	A	A	A	A	A				
GE Dobson		63-3104	1.20									
MS Miller		63 3539	.54									
BLE Diamond		6510773	.9									
ND H.		6510771	.32 .104	A	A	A	A	A				
EL G.		6510950	1.61 .21	A	A	A	A	A				
EL F.		63-10951	.54									

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[redacted]

[redacted]

onth of September 19 72

NOTE—Figures to be given in cubic feet per second for 24 hour periods, or 24 hour second feet. Give of owner of water rights, not tenan

Water Right

Amount d Feet ft)

DAYS OF MONTH

me of Present Owner	6	7	8	9	10	11	12	13	14	15	Acres Cultivated	Sec.	Twp	Rge.
E DIAMOND		DS					1	1	2					
DODSON														
S MILLER														
E DIAMOND														
H.	A	04								04				
L G.	A	01								01				
E.														

[redacted]

Month of Septem 19 92

feet per second for 2 ur periods, or
24 hour second feet (ame of owner
of water rights, not t

Name of Present Owner	Water Right	Amount (Acre Feet)	DAYS OF MONTH									Acres Cultivated	Sec.	Twp	Rge.
			16	17	18	19	20	21	22	23	24	25				
BLE DIAMOND			A	A	A	A	A	A	A	A	S					
ER DOBSON											H					
MS MILLER											U					
BLE DIAMONT											T					
OD A.			A	A	A	A	A	A	A	A	D					
EL G.			A	/	/						O					
EL G.											W					
											A					

[redacted]

Month of Septem Yr 19 72

NOTE—Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not te

Name of Present Owner	Water Right (Amount in Second Feet)	DAYS OF MONTH 26	27	28	29	30	31	Total in 24-hour Sec	Total in 24-hour Feet	REMARKS	Acres Cultivated	Sec.	Twp.	Rge.
BLE DIAMOND								20	00					
IE DOBSON														
MS MILLER														
BLE DIAMOND														
D H.									12					
L G.									24					
L G.														

[redacted]

Bulletin No. 552
February 1976

WATER MEASUREMENT

Dorrell C. Larsen

COOPERATIVE EXTENSION SERVICE
University of Idaho
College of Agriculture

APR 25 1995

WATER MEASUREMENT

By D.C. LARSEN

Associate Extension Professor and Extension Irrigationist

Increasing demands from industry, recreational interests, municipal needs and agriculture are creating pressures on water, a very important and limited resource. The greater the demand, the greater the need for water users to use and share available water wisely. How can a user practice good management unless he knows the amount of water involved? Measuring water will help every user get his fair share and be treated equally.

In today's world good performance is demanded. In the quest for protection of the environment, water measurement will help reduce excessive waste and lessen drainage problems. It will establish a record of improved use and improve public relations.

Water is measured in two ways — in motion and at rest. Motion units used are Idaho miner's inches, gallons per minute and cubic feet per second. Rest units are acre-inches or acre-feet. These water measurement units are compared in Table 1. The depth of water applied in 12 or 24 hours by various stream sizes is shown in Table 2 for different acreages.

Table 1. Equivalent rates of flow.

Cubic feet per second (cfs)	Idaho Miner's inches	Gallons per minute (gpm)	Acre-inches per hour	Acre-feet per day (24 hours)
0.2	10	90	0.2	0.4
0 4	20	180	0.4	0.8
0.6	30	270	0.6	1.2
0 8	40	360	0.8	1.6
1.0	50	450	1 0	2.0
1.2	60	540	1.2	2.4
1 4	70	630	1.4	2.8
1 6	80	720	1.6	3.2
1 8	90	810	1.8	3.6
2.0	100	900	2.0	4 0
2 2	110	990	2.2	4.4
2.4	120	1080	2.4	4.8
2 6	130	1170	2.6	5.2
2.8	140	1260	2.8	5.6
3 0	150	1350	3.0	6.0
3 2	160	1440	3.2	6.4
3 4	170	1530	3.4	6.8
3 6	180	1620	3.6	7.2
3.8	190	1710	3.8	7.6
4 0	200	1800	4 0	8 0
5 0	250	2250	5 0	10.0
6 0	300	2700	6 0	12 0
7 0	350	3150	7.0	14.0
8 0	400	3600	8 0	16.0
9 0	450	4050	9.0	18.0
10 0	500	4500	10 0	20.0

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Table 4. Flow over Cipolletti weirs in cubic feet per second.*

Head in ft. "H"	Head in inches, approx.	Crest length (L)					For each additional foot of crest in excess of 4 ft. (approx.)
		1.0 foot	1.5 feet	2.0 feet	3.0 feet	4.0 feet	
		Flow in cubic feet per second					
0.10	1-3/16	0.107	0.160	0.214	0.321	0.429	0.108
0.11	1-5/16	0.123	0.185	0.246	0.370	0.494	0.124
0.12	1-7/16	0.140	0.210	0.280	0.421	0.562	0.141
0.13	1-9/16	0.158	0.237	0.316	0.474	0.632	0.159
0.14	1-11/16	0.177	0.264	0.352	0.528	0.706	0.177
0.15	1-13/16	0.195	0.293	0.390	0.586	0.782	0.196
0.16	1-15/16	0.216	0.322	0.430	0.644	0.860	0.216
0.17	2-1/16	0.237	0.353	0.470	0.705	0.941	0.236
0.18	2-3/16	0.258	0.384	0.512	0.768	1.024	0.257
0.19	2-1/4	0.280	0.417	0.555	0.832	1.110	0.278
0.20	2-3/8	0.302	0.450	0.599	0.898	1.20	0.302
0.21	2-1/2	0.324	0.484	0.644	0.966	1.29	0.324
0.22	2-5/8	0.349	0.519	0.691	1.04	1.38	0.35
0.23	2-3/4	0.374	0.555	0.739	1.11	1.47	0.37
0.24	2-7/8	0.397	0.591	0.786	1.18	1.57	0.39
0.25	3	0.423	0.628	0.836	1.25	1.67	0.42
0.26	3-1/8	0.449	0.667	0.886	1.33	1.77	0.44
0.27	3-1/4	0.475	0.705	0.937	1.40	1.87	0.47
0.28	3-3/8	0.502	0.745	0.990	1.48	1.97	0.49
0.29	3-1/2	0.529	0.785	1.04	1.56	2.08	0.52
0.30	3-5/8	0.557	0.827	1.10	1.64	2.19	0.55
0.31	3-3/4	0.586	0.869	1.15	1.73	2.30	0.57
0.32	3-13/16	0.615	0.911	1.21	1.81	2.41	0.60
0.33	3-15/16	0.644	0.954	1.27	1.89	2.52	0.62
0.34	4-1/16	0.675	1.00	1.32	1.98	2.64	0.66
0.35	4-3/16	0.705	1.04	1.38	2.07	2.75	0.69
0.36	4-5/16	0.735	1.09	1.44	2.16	2.87	0.71
0.37	4-7/16	0.767	1.13	1.50	2.25	2.99	0.74
0.38	4-9/16	0.799	1.18	1.57	2.34	3.11	0.78
0.39	4-11/16	0.832	1.23	1.63	2.43	3.24	0.81
0.40	4-13/16	0.866	1.28	1.69	2.53	3.36	0.84
0.41	4-15/16	0.899	1.32	1.76	2.62	3.49	0.87
0.42	5-1/16	0.932	1.37	1.82	2.72	3.61	0.89
0.43	5-3/16	0.967	1.42	1.89	2.81	3.74	0.93
0.44	5-1/4	1.00	1.47	1.95	2.91	3.87	0.97
0.45	5-3/8	1.04	1.53	2.02	3.01	4.01	1.00
0.46	5-1/2	1.07	1.58	2.09	3.11	4.14	1.02
0.47	5-5/8	1.11	1.63	2.16	3.21	4.28	1.06
0.48	5-3/4	1.15	1.68	2.23	3.32	4.41	1.10
0.49	5-7/8	1.18	1.74	2.30	3.42	4.55	1.13
0.50	6	1.22	1.79	2.37	3.53	4.69	1.16
0.51	6-1/8	1.26	1.85	2.44	3.64	4.83	1.20
0.52	6-1/4	1.30	1.90	2.51	3.74	4.97	1.24
0.53	6-3/8	1.34	1.96	2.59	3.85	5.12	1.26
0.54	6-1/2	1.38	2.02	2.66	3.96	5.26	1.30
0.55	6-5/8	1.42	2.07	2.74	4.07	5.41	1.33
0.56	6-3/4	1.46	2.13	2.81	4.18	5.56	1.38
0.57	6-13/16	1.50	2.19	2.89	4.30	5.71	1.41
0.58	6-15/16	1.54	2.25	2.97	4.41	5.86	1.44
0.59	7-1/16	1.58	2.31	3.05	4.53	6.01	1.49

*Computed from Cone's formula: $Q = 3.247\ LH^{1.5} - \frac{0.566L^{1.5} \cdot H^{1.5}}{12L^{1.5}} + 0.609\ H^{2.5}$

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Equivalent Units of Water Measurement

1 Cubic Foot = 7.48 gallons
= 62.4 pounds
= 1728 cubic inches

1 Gallon = 231 cubic inches
= 8.33 pounds

1 Million Gallons (mg) = 3.0689 acre-feet

1 Acre-inch = amount of water required to cover one acre one inch deep.
= 3,630 cubic feet
= 27,154 gallons
= 226,512 pounds

1 Acre-foot = amount of water required to cover one acre one foot deep.
= 43,560 cubic feet
= 325,850 gallons
= 12 acre-inches

1 Cubic Foot per Second (cfs) = 7.48 gallons per second
= 448.8 gallons per minute
= 50 Idaho Miner's inches

1 Idaho Miner's Inch = 9 gallons per minute

1 Gallon per Minute (gpm) = 0.00223 cubic feet per second
= 1440 gallons per day (24 hours)

1 Million Gallons per 24 hours (mgd) = 1.547 cubic feet per second.
= 695 gallons per minute

1 Cubic Foot per Second flowing for:

(a) One hour = .9917 acre-inches or approximately 1 acre-inch.
(b) 12 hours = .9917 acre-foot or approximately 1 acre-foot.
(c) 24 hours = 1.9835 acre-feet or approximately 2 acre-feet.

1 Pound per Square Inch (psi) = 2.31 feet head of water (column).

1 Foot Head of Water = 0.4335 pounds per square inch.

$$HP = \frac{Q \times H}{3960 \times E}$$

HP = Horse-power required to pump or lift water.
Q = Water to be moved in gallons per minute.
H = Head or difference in elevation water is to be lifted in feet.
E = Pumping plant efficiency (rule of thumb - 70%)

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The State is truly our campus. We desire to work for all citizens of the State striving to provide the best possible educational and research information and its application through Cooperative Extension in order to provide a high quality food supply, a strong economy for the State and a quality of life desired by all.

Auttis M. Mullins
Dean, College of Agriculture
University of Idaho



SERVING THE STATE

This is the three-fold charge of the College of Agriculture at your state Land-Grant institution, the University of Idaho. To fulfill this charge, the College extends its faculty and resources to all parts of the state.

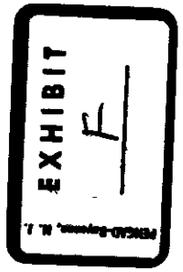
Service ... The Cooperative Extension Service has active programs in 42 of Idaho's 44 counties. Current organizaton places major emphasis on county office contact and multi-county specialists to better serve all the people. These College of Agriculture faculty members are supported cooperatively by federal, state and county funding to work with agriculture, home economics, youth and community development.

Research ... Agricultural Research scientists are located at the campus in Moscow, at Research and Extension Centers near Aberdeen, Caldwell, Parma, Sandpoint, Tetonia, Twin Falls and at the U.S. Sheep Experiment Station, Dubois and the USDA/ARS Soil and Water Laboratory at Kimberly. Their work includes research on every major agricultural program in Idaho and on economic and community development activities that apply to the state as a whole.

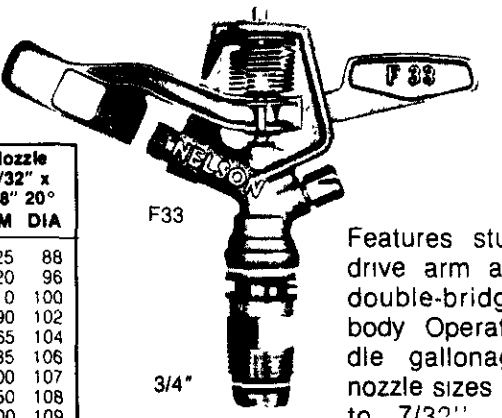
Teaching ... Centers of College of Agriculture teaching are the University classrooms and laboratories where agriculture students can earn bachelor of science degrees in any of 20 major fields, or work for master's and Ph.D. degrees in their specialties. And beyond these are the variety of workshops and training sessions developed throughout the state for adults and youth by College of Agriculture faculty.

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NELSON



Nelson F33 Series



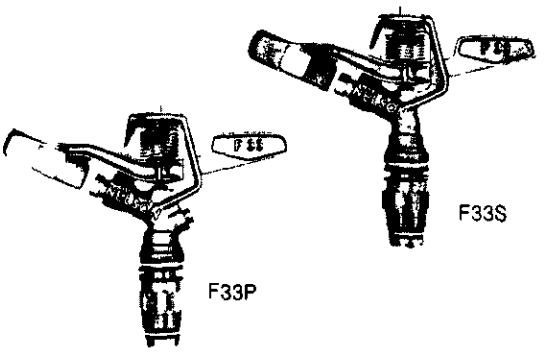
Features sturdy brass drive arm and rugged double-bridged brass body Operated in middle gallonage range, nozzle sizes from 9/64" to 7/32" Trajectory angle is 25°

TWO NOZZLES F33

NOZ P.S.I.	Nozzle 9/64" x 3/32" 7° GPM	DIA.	Nozzle 5/32" x 3/32" 7° GPM	DIA.	Nozzle 11/64" x 3/32" 7° GPM	DIA	Nozzle 3/16" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 1/8" 20° GPM	DIA.	Nozzle 13/64" x 1/8" 20° GPM	DIA.	Nozzle 7/32" x 1/8" 20° GPM	DIA
25	4 18	80	4 83	82	5 55	83	6 31	85	7 40	85	8 30	86	9 25	88
30	4 58	81	5 28	85	6 07	88	6 93	91	8 15	91	9 15	94	10 20	96
35	4 95	82	5 71	87	6 57	90	7 51	94	8 83	94	9 93	97	11 10	100
40	5 29	83	6 11	88	7 03	92	8 03	96	9 46	96	10 65	99	11 90	102
45	5 61	84	6 48	89	7 46	94	8 53	98	10 05	98	11 30	101	12 65	104
50	5 91	85	6 82	90	7 87	95	9 00	100	10 60	100	11 90	103	13 35	106
55	6 20	86	7 15	91	8 25	96	9 45	101	11 10	101	12 50	104	14 00	107
60	6 48	87	7 47	92	8 60	97	9 86	102	11 60	102	13 00	105	14 50	108
65	6 75	88	7 78	93	8 93	98	10 27	103	12 10	103	13 50	106	15 00	109
70	7 00	89	8 08	94	9 25	99	10 66	104	12 50	104	14 00	107	15 45	110
75	7 25	90	8 37	95	9 56	100	11 02	105	12 90	105	14 40	108	15 90	111
80	7 49	91	8 65	96	9 87	101	11 36	106	13 25	106	14 80	109	16 30	112

TWO NOZZLES WITH VANE F33V

NOZ P.S.I.	Nozzle 9/64" x 3/32" 7° GPM	DIA.	Nozzle 5/32" x 3/32" 7° GPM	DIA.	Nozzle 11/64" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 3/32" 7° GPM	DIA.	Nozzle 3/16" x 1/8" 20° GPM	DIA.	Nozzle 13/64" x 1/8" 20° GPM	DIA.	Nozzle 7/32" x 1/8" 20° GPM	DIA.
40	5 29	91	6 11	94	7 03	96	8 03	101	9 46	101	10 65	105	11 90	106
45	5 61	92	6 48	96	7 46	98	8 53	104	10 05	104	11 30	106	12 65	108
50	5 91	93	6 82	98	7 87	100	9 00	106	10 60	106	11 90	107	13 35	110
55	6 20	94	7 15	100	8 25	102	9 45	108	11 10	108	12 50	108	14 00	112
60	6 48	95	7 47	101	8 60	103	9 86	109	11 60	109	13 00	110	14 50	114
65	6 75	96	7 78	102	8 93	104	10 27	110	12 10	110	13 50	112	15 00	116
70	7 00	97	8 08	103	9 25	106	10 66	111	12 50	111	14 00	114	15 45	118
75	7 25	98	8 37	104	9 56	108	11 02	112	12 90	112	14 40	116	15 90	120
80	7 49	100	8 65	105	9 87	110	11 36	113	13 25	113	14 80	118	16 30	122



SINGLE NOZZLE F33S OR F33P

NOZ P.S I	Nozzle 9/64" GPM	DIA.	Nozzle 5/32" GPM	DIA.	Nozzle 11/64" GPM	DIA.	Nozzle 3/16" GPM	DIA	Nozzle 13/64" GPM	DIA	Nozzle 7/32" GPM	DIA
25	2 88	80	3 52	82	4 24	83	5 00	85	5 90	86	6 85	88
30	3 15	81	3 85	85	4 64	88	5 50	91	6 50	94	7 55	96
35	3 40	82	4 16	87	5 02	90	5 96	94	7 05	97	8 20	100
40	3 64	83	4 45	88	5 37	92	6 38	96	7 55	99	8 80	102
45	3 86	84	4 72	89	5 70	94	6 78	98	8 00	101	9 35	104
50	4 07	85	4 98	90	6 01	95	7 16	100	8 45	103	9 90	106
55	4 27	86	5 22	91	6 30	96	7 52	101	8 85	104	10 40	107
60	4 46	87	5 45	92	6 57	97	7 85	102	9 25	105	10 75	108
65	4 65	88	5 68	93	6 83	98	8 18	103	9 60	106	11 10	109
70	4 83	89	5 90	94	7 09	99	8 50	104	9 95	107	11 40	110
75	5 00	90	6 11	95	7 34	100	8 80	105	10 25	108	11 70	111
80	5 17	91	6 30	96	7 58	101	9 09	106	10 50	109	12 00	112

SINGLE NOZZLE WITH VANE F33SV OR F33PV

NOZ P S.I.	Nozzle 9/64" GPM	DIA	Nozzle 5/32" GPM	DIA.	Nozzle 11/64" GPM	DIA.	Nozzle 3/16" GPM	DIA.	Nozzle 13/64" GPM	DIA	Nozzle 7/32" GPM	DIA
40	3 64	91	4 45	94	5 37	96	6 38	101	7 55	105	8 80	106
45	3 86	92	4 72	96	5 70	98	6 78	104	8 00	106	9 35	108
50	4 07	93	4 98	98	6 01	100	7 16	106	8 45	107	9 90	110
55	4 27	94	5 22	100	6 30	102	7 52	108	8 85	108	10 40	112
60	4 46	95	5 45	101	6 57	103	7 85	109	9 25	110	10 75	114
65	4 65	96	5 68	102	6 83	104	8 18	110	9 60	112	11 10	116
70	4 83	97	5 90	103	7 09	106	8 50	111	9 95	114	11 40	118
75	5 00	98	6 11	104	7 34	108	8 80	112	10 25	116	11 70	120
80	5 17	100	6 30	105	7 58	110	9 09	113	10 50	118	12 00	122

Sprinkler performance data has been obtained under ideal test conditions and may be adversely affected by wind poor hydraulic entrance conditions, or other factors Nelson Irrigation Corporation makes no representation regarding droplet conditions uniformity, or application rate

NOTES:

Highest point of stream is 8' above nozzle with standard 11/64" nozzle at normal operating pressure STATED PERFORMANCE AT **NOZZLE** PRESSURE

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Nelson F32S Series

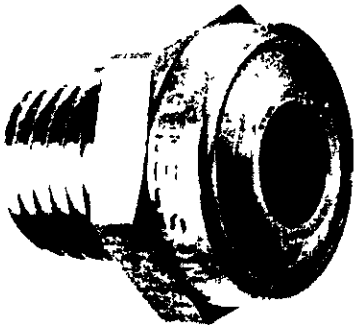
SINGLE NOZZLE F32S

NOZ P.S.I.	Nozzle 7/64" GPM	DIA.	Nozzle 1/8" GPM	DIA.	Nozzle 9/64" GPM	DIA
25	1 73	77	2 25	78	2 88	80
30	1 89	78	2 47	79	3 15	81
35	2 05	78	2 68	80	3 40	82
40	2 19	79	2 87	81	3 64	83
45	2 32	80	3 05	82	3 86	84
50	2 45	80	3 22	83	4 07	85
55	2 57	81	3 38	84	4 27	86
60	2 68	82	3 53	85	4 46	87
65	2 79	82	3 68	86	4 65	88
70	2 90	83	3 82	86	4 83	89
75	3 00	83	3 96	87	5 00	90
80	3 10	84	4 09	87	5 17	91

SINGLE NOZZLE WITH VANE F32SV

NOZ P.S.I.	Nozzle 7/64" GPM	DIA	Nozzle 1/8" GPM	DIA.	Nozzle 9/64' GPM	DIA.
25	1 73	78	2 25	82	2 88	85
30	1 89	79	2 47	84	3 15	87
35	2 05	80	2 68	85	3 40	89
40	2 19	81	2 87	86	3 64	91
45	2 32	82	3 05	87	3 86	92
50	2 45	83	3 22	88	4 07	93
55	2 57	84	3 38	89	4 27	94
60	2 68	85	3 53	90	4 46	95
65	2 79	86	3 68	91	4 65	96
70	2 90	87	3 82	92	4 83	97
75	3 00	88	3 96	93	5 00	98
80	3 10	89	4 09	94	5 17	100

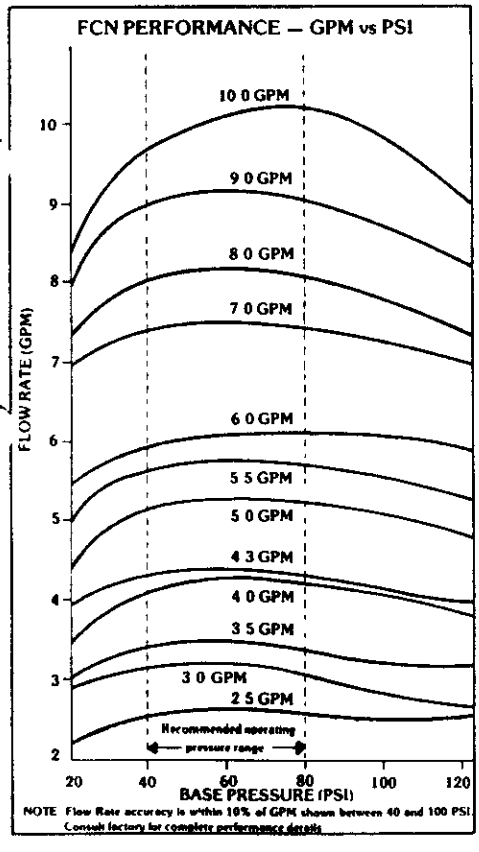
Nelson FCN® Flow Control Nozzles



Many factors can influence the way you apply water through your sprinkler systems Differences in field elevation Excessive pipe friction losses Even fluctuations in your pump pressure

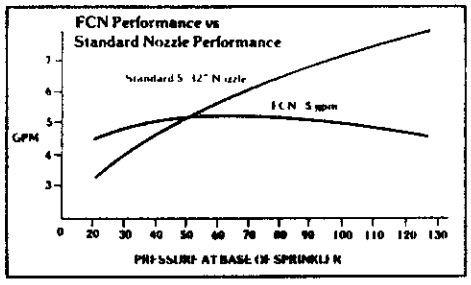
With the Nelson FCN Flow Control Nozzle, you can now minimize the effect those factors have on your water application pattern, allowing you to achieve a more uniform application of water on all parts of your field

The Nelson FCN is designed to replace the standard nozzles in your impact sprinklers Used with hand line, wheel line or solid set sprinkler

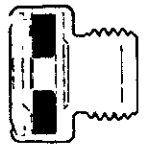


systems, the FCN can help equalize the flow rate from each sprinkler on the line Or if you irrigate with a center pivot system, the FCN can help maintain a constant flow rate

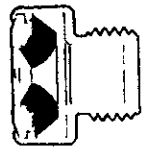
What does a more uniform water application pattern mean to you as an irrigator? It can mean an increase in your crop yield A reduction in your pumping costs And, just as importantly, a savings in water, fertilizer, and costly farm chemicals



The chart above illustrates how the FCN serves to maintain a constant flow rate over a wide range of pressure Notice that the GPM of a standard 5/32" nozzle will vary as much as 40% when the pressure changes from 40 psi to 80 psi, while the GPM of the FCN holds nearly constant during an identical pressure change



FLOW CONTROL NOZZLE UNDER MINIMUM PRESSURE



FLOW CONTROL NOZZLE UNDER HIGH PRESSURE

PATENT #4091996 AND OTHERS PENDING

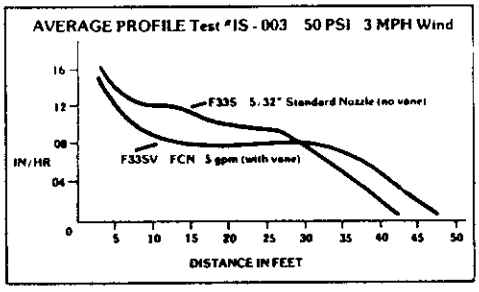
PRINCIPLE OF OPERATION

The FCN is a brass nozzle cartridge which contains a flexible orifice that contracts as the pressure increases, allowing the GPM discharge to be held constant Since the stream is discharged across the orifice directly into the atmosphere, the pressure drop normally associated with flow control devices does not occur Additionally, the threshold pressure — the pressure at which the FCN achieves rated flow — is much lower than that of base flow control devices

WATER DISTRIBUTION

The average water distribution profile of a sprinkler equipped with a FCN is not significantly different from that of a sprinkler equipped with a standard nozzle The variances shown in the comparative profiles above right are largely a result of differences in arm stroke rate nozzle exit conditions, and stream-straightener vanes

The total amount of water collected is essentially the same, indicating that under low wind conditions there is very little difference in irrigation efficiency or in the amount of water lost as mist High wind test results are not yet available

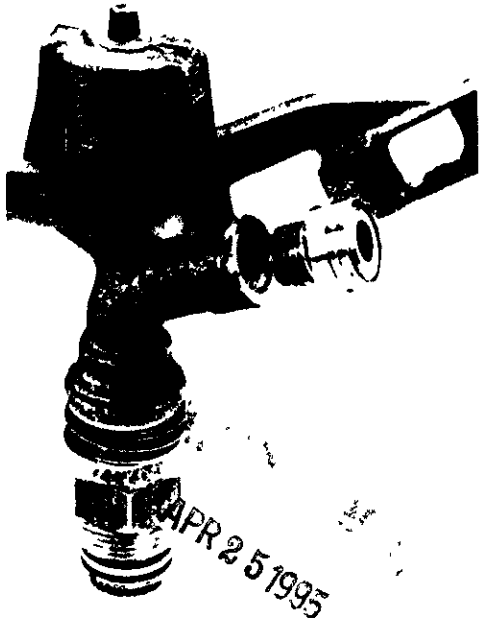


Sprinkler Performance Radius (feet) with vane

Base Psi	3 FCN Size (nominal gpm)								
	2 5	3 0	3 5	4 0	5 0	6 0	7 0	9 0	10 0
40	45	45	46	48	51	53	54	55	56
50	47	47	47	49	52	54	55	57	58
60	47	48	48	50	52	55	56	58	59
70			48	50	52	56	57	59	60
80			49	51	53	56	59	59	60

Stated performance is with F32SVand F33SV sprinklers (with vane) in no wind test conditions Radius is reduced 4% to 12% when used without vane (highest reduction is in high gpm ranges) Derate performance 2% to 4% when using F44V series sprinklers For complete performance details consult factory

FCN™ FLOW CONTROL NOZZLE ORDER INFORMATION			
2FCN for ½" Impacts		3FCN for ¾" Impacts	
Model	GPM Size	Model	GPM Size
2FCN	2 0	3FCN	2 5
2FCN	2 5	3FCN	3 0
2FCN	3 0	3FCN	3 5
2FCN	3 5	3FCN	4 0
2FCN	4 0	3FCN	4 3
		3FCN	5 0
		3FCN	5 5
		3FCN	6 0
		3FCN	7 0
		3FCN	8 0
		3FCN	9 0
		3FCN	10 0



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RAIN BIRD

APR 25 1995

PERFORMANCE FOR 20J H
Highest point of stream is 7' above nozzle *

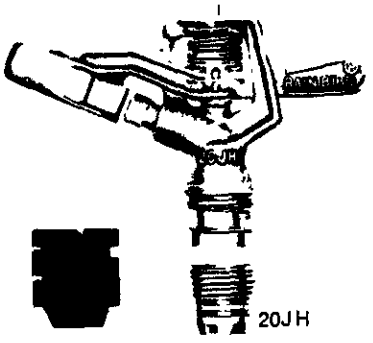
@ PSI Nozzle	Nozzle 3/32" Dia	GPM	†Nozzle 7/64" Dia	GPM	Nozzle 1/8' Dia	GPM	Nozzle 9/64" Dia	GPM
[illegible]								
40	73	1 62	77	2 27	78	2 94	80	3.66
45	74	1 72	78	2 40	79	3 11	80	3 87
50	74	1 80	78	2 53	79	3 27	81	4 08
55	75	1 88	78	2 65	80	3 43	81	4 27
60	75	1 98	79	2 76	80	3.57	82	4 45

PERFORMANCE FOR 20EJ H
Highest point of stream is 7' above nozzle *

@ PSI Nozzle	Nozzle 3/32" Dia	GPM	† Nozzle 7/64" Dia	GPM	Nozzle 1/8' Dia	GPM	Nozzle 9/64" Dia	GPM
[illegible]								
40	76	1 62	78	2,27	80	2 94	83	3 66
45	77	1 72	79	2.40	81	3 11	84	3 87
50	78	1 80	80	2.53	82	3 27	85	4 08
55	79	1.88	81	2 65	82	3 43	86	4 27
60	79	1 98	81	2 76	82	3 57	87	4 45

20J H/20EJ H

All-new sprinkler including **"H" bearing;** widely used in all types of permanent systems, on center pivots and in general field applications Rugged enough for hand move and solid set systems. Now cataloged with 3/32" nozzle. Excellent performance extended in low to medium application rates Performance is maintained under windy conditions with non-clog vane in "E" model ½" male bearing.



RAIN BIRD®

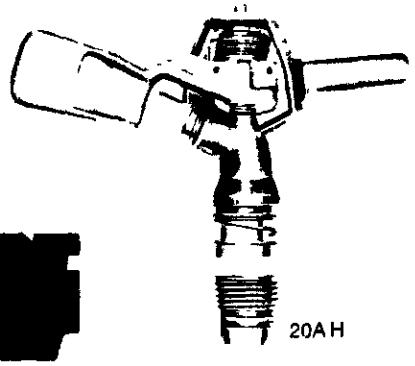
PERFORMANCE FOR 20A H 7° Highest point of stream is 3' above nozzle (aluminum arm model) *

ALUMINUM ARM

@ PSI Nozzle	†Nozzle 7/64" 7° Dia	GPM	Nozzle 1/8' 7° Dia	GPM	Nozzle 9/64" 7° Dia	GPM
[illegible]						
25	45	1 73	47	2 21	[illegible]	
30	47	1 89	49	2.44	51	3 10
35	48	2 05	51	2 66	53	3 36
40	50	2 20	52	2 86	54	3 61
45	51	2 32	54	3 04	56	3 82
50	52	2 44	55	3 22	57	4 03

BRONZE ARM

@ PSI Nozzle	†Nozzle 5/32' 7° Dia	GPM	Nozzle 11/64" 7° Dia	GPM	Nozzle 3/16" 7° Dia	GPM	Nozzle 13/64" 7° Dia	GPM	Nozzle 7/32' 7° Dia	GPM
[illegible]										
30	53	3 78	[illegible]							
35	54	4 10	55	4 96	57	5 84	[illegible]			
40	56	4 40	57	5 32	59	6 27	62	7 31	65	8 35
45	57	4 68	58	5 65	60	6 66	64	7 76	67	8 88
50	59	4 95	60	5 95	62	7 03	65	8 18	69	9 38



PERFORMANCE FOR 20A H 12° Highest point of stream is 4' above nozzle (aluminum arm model) *

ALUMINUM ARM

@ PSI Nozzle	†Nozzle 7/64" 12° Dia	GPM	Nozzle 1/8' 12° Dia	GPM	Nozzle 9/64" 12° Dia	GPM
[illegible]						
25	49	1 73	52	2 21	[illegible]	
30	51	1 89	54	2 44	55	3 10
35	54	2 05	55	2 66	57	3 36
40	55	2 20	57	2 86	58	3 61
45	56	2 32	59	3 04	60	3 82
50	58	2 44	60	3 22	61	4 03

BRONZE ARM

@ PSI Nozzle	†Nozzle 5/32 12° Dia	GPM	Nozzle 11/64" 12° Dia	GPM	Nozzle 3/16" 12° Dia	GPM	Nozzle 13/64" 12° Dia	GPM	Nozzle 7/32" 12° Dia	GPM
[illegible]										
30	56	3 78	[illegible]							
35	58	4 10	59	4 96	61	5 84	[illegible]			
40	60	4 40	61	5 32	63	6 27	66	7 31	70	8 35
45	61	4 68	63	5 65	64	6 66	68	7 76	71	8 88
50	63	4 95	64	5 95	66	7 03	69	8 18	73	9 38

20A H Series

This versatile model has a wide range of nozzle sizes and angles Widely used in undertree permanent and solid set systems Anodized aluminum arm with a brass bushing and neoprene bumper is used for small nozzles; the bronze arm for large nozzles. Gives good water patterns and wetted diameters without interference with tree skirt (where required) because of the special nozzle designs This sprinkler has the all-new **"H" bearing.** ½" male bearing.

PERFORMANCE FOR 20A H 23° Highest point of stream is 5' above nozzle (aluminum arm model) *

ALUMINUM ARM

@ PSI Nozzle	†Nozzle 7/64" 23° Dia	GPM	Nozzle 1/8" 23° Dia	GPM	Nozzle 9/64" 23° Dia	GPM
[illegible]						
25	64	1 73	65	2 21	[illegible]	
30	66	1 89	67	2 44	68	3 10
35	68	2 05	69	2 66	70	3 36
40	70	2 20	71	2 86	72	3 61
45	72	2 32	73	3 04	74	3 82
50	74	2 44	75	3 22	76	4 03

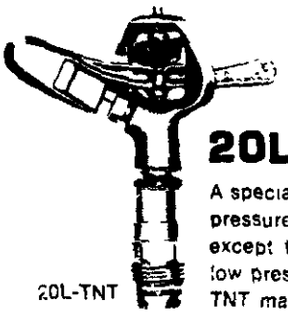
BRONZE ARM

@ PSI Nozzle	†Nozzle 5/32' 23° Dia	GPM	Nozzle 11/64" 23° Dia	GPM	Nozzle 3/16" 23° Dia	GPM	Nozzle 13/64" 23° Dia	GPM	Nozzle 7/32" 23° Dia	GPM
[illegible]										
30	69	3 78	[illegible]							
35	71	4 10	74	4 96	77	5 84	[illegible]			
40	73	4 40	76	5 32	79	6 27	81	7 31	82	8 35
45	75	4 68	78	5 65	81	6 66	83	7 76	[illegible]	
50	77	4 95	80	5 95	83	7 03	85	8 18	[illegible]	

PERFORMANCE FOR 20A H 5°
Highest point of stream is 1 5' above nozzle *

@ PSI Nozzle	Nozzle 7/64"–5° Dia	GPM	†Nozzle 1/8"–5° Dia	GPM	Nozzle 9/64"–5° Dia	GPM	Nozzle 5/32"–5° Dia	GPM
[illegible]								
25	47	1.60	[illegible]					
30	48	1.78	49	2 31	50	2 98	51	3 66
35	49	1 95	50	2 49	51	3 23	52	3 97
40	50	2 12	51	2 67	52	3 46	53	4 25
45	51	2 29	52	2 83	53	3 68	54	4 52
50	52	2 46	53	2 99	54	3 89	55	4 77

RAIN BIRD®

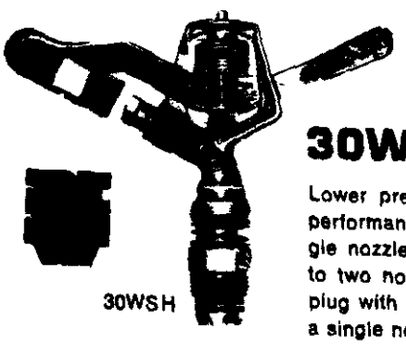

20L-TNT

20L-TNT

A special model for use where only very low water pressure is available. Similar features as model 20 except this model has better stream breakup at low pressures due to special fixed pin nozzle. ½" TNT male bearing.

PERFORMANCE FOR 20L-TNT

@ PSI / Nozzle	†Nozzle 11/64 Dia	GPM	Nozzle 3/16" Dia	GPM	Nozzle 13/64 Dia	GPM	Nozzle 7/32 Dia	GPM	Nozzle 4 Dia	GPM
8	40	2 27	40	2 63	40	2 98	42	3 37	42	4 1[illegible]
10	42	2 54	44	2 54	44	3 33	46	3 77	4[illegible]	4 67
12	46	2 79	46	3 22	46	3 65	48	4 13	48	[illegible] 12
15	50	3 12	50	3 51	50	4 09	52	4 62	52	5 74
20	54	3 61	54	4 27	54	4 73	56	5 35	56	6 63


30WSH

30WH/30WSH

Lower precipitation rates and better performance in wind because of single nozzle. 30WH may be converted to two nozzle sprinkler by replacing plug with spreader nozzle. 30WSH is a single nozzle sprinkler only.

PERFORMANCE FOR 30WH/30WSH
Highest point of stream is 9' above nozzle *

@ PSI / Nozzle	Nozzle 1/8 Dia.	GPM	Nozzle 9/64" Dia	GPM	Nozzle 5/32" Dia	GPM	†Nozzle 11/64 Dia.	GPM	Nozzle 3/16' Dia	GPM
40	81	2 87	83	3 63	88	4.45	92	5.37		
45	82	3 05	84	3 84	89	4.72	93	5.70	98	6 81
50	83	3 22	85	4 04	90	4 98	95	6 01	100	7 18
55	84	3 39	86	4 22	91	5 22	96	6 30	101	7 51
60	85	3 55	87	4 38	92	5.44	97	6 56	102	7 82
65	86	3 72	88	4 65	93	5 73	98	6 83	103	8 19
70	86	3 84	89	4 80	94	5 93	99	7 08	104	8 48
75	87	3 98	90	5 00	95	6 16	100	7 34	105	8 78
80	87	4 09	91	5 18	96	6 32	101	7 58	106	9 09



30EWH/30EWSH

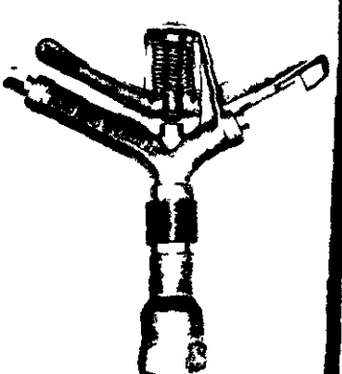
Lower precipitation rates and better performance in wind conditions because of single nozzle. 30EWH may be converted to two nozzle sprinkler by replacing plug with spreader nozzle. 30EWSH is single nozzle sprinkler only. Diameter of throw increased substantially under extremely windy conditions because this model has a non-clog vane.

PERFORMANCE FOR 30EWH/30EWSH
Highest point of stream is 10' above nozzle.*

@ PSI / Nozzle	Nozzle 1/8" Dia	GPM	Nozzle 9/64" Dia	GPM	Nozzle 5/32" Dia	GPM	†Nozzle 11/64' Dia	GPM	Nozzle 3/16' Dia	GPM
55	89	3.39	94	4 22	100	5.22	102	6 30		
60	90	3.55	95	4 38	101	5 44	103	6.56	109	7 82
65	91	3 72	96	4 65	102	5 73	104	6 83	110	8 19
70	92	3 84	97	4 80	103	5 93	106	7 08	111	8 48
75	93	3 98	98	5 00	104	6 16	108	7 34	112	8 87
80	94	4 09	100	5 18	105	6 32	110	7 58	113	9 09

70E-TNT

For use on mechanical move systems, especially center pivot machines and in general field applications. Model has exceptional water pattern because the arm drives off spreader nozzle with fixed stainless steel pin that breaks up stream. Diameter of throw increased substantially under extremely windy conditions because this model has a non-clog vane. Wear life of this sprinkler extended significantly due to new plastic hood, top seal, Fluoroloy "G"® wear ring and hycar seal washer. Available with 1" male or female bearing.



PERFORMANCE FOR 70E-TNT Highest point of stream is 10' above nozzle *

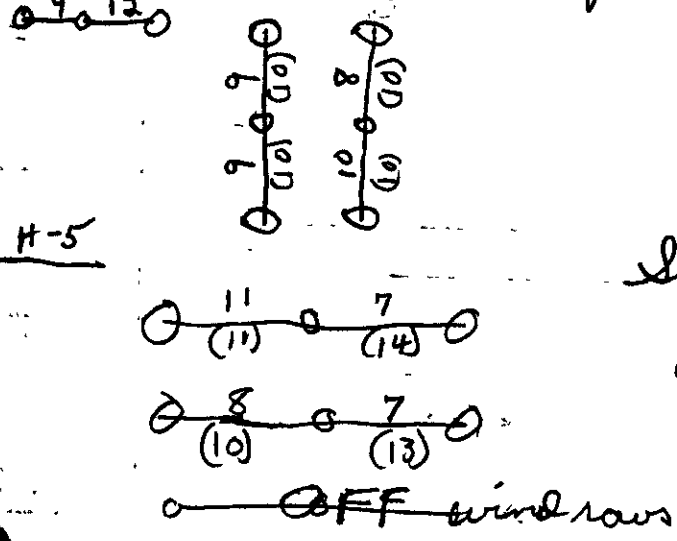
@ PSI / Nozzle	Nozzle 7/32" x 11/64" Dia	GPM	Nozzle 1/4" x 11/64" Dia.	GPM	†Nozzle 1/4' x 3/16" Dia	GPM	Nozzle 9/32" x 3/16" Dia.	GPM	Nozzle 9/32" x 7/32" Dia	GPM	Nozzle 5/16" x 7/32" Dia	GPM	Nozzle 11/32" x 7/32" Dia	GPM	Nozzle 3/8" x 7/32" Dia	GPM
50	125	16.0														
55	127	16.7	136	19 7	136	21.1										
60	129	17.5	139	20.6	139	22 0	144	25 2	144	28.0						
65	131	18 2	142	21.7	142	22 9	147	26 3	147	29 2	152	33.1				
70	134	19.0	145	22 6	145	23.8	150	27 4	150	30.4	155	34 5	164	38.6	173	42.2
75	137	19 7	148	23 3	148	24 7	153	28 3	153	31.5	158	35.8	168	40.0	177	43 8
80	140	20.3	151	24.0	151	25.5	156	29.2	156	32 6	161	37 0	172	41.3	181	45 4

Part 1

CHRISTIE SHIRLEY
1991 DIARY

June 20, 1991

(1) Shafer Creek (not irrigating)
H-7 ← N. of boundary 36 P.S.I.



booster pump not running
line pump not running
Substantial Jackass Creek overflow
Little Jackass Creek - heavy

(2) D.D. Weir .49

D.D. 6S Guage under water & dirt.
1 line 20 acres / 19 P.S.I.
2 lines 45 acres /
no pond overflow

O/D weir .20

O/D field weir

APR 25 1995

June 27 12:20 p.m.

D.D. Weir .32

O.D. Weir .36
O.D. field weir — gone

June 28 9:15 AM

O.D. All lines running

(S) by house

16E 10 (2 h lines across road)

River Pump running

Jackass Over Flow very minimal

D.D. .32

O.D. .38

11 AM. O.D. 1 Line South (O) North

1:45 P.M.
2W-1h S. Gulch
(O)n Cook Gulch

APR 25 1995

6-28-91 cont

D.D. #4 locked closed 2 pm no gauge

D/W #6 410 g.p.m.

D.D. 2:25 pm .32

O.D. 2:30 pm .38

2:45 pm packer over flow closed

2:50 pm R.P. running

6-28-91

7:25 pm other side gravel pit road 1 wheel line

all lines running but horse pasture

River pump running Booster pump not running

Jackass over Flow low

:45 DD. .34

:50 O.D. .39

APR 25 1995

6-30-91

9:15 Am DD. all lines but horse pasture and 2 across road running

River pump running, appears to be slow booster pump not running.

Jackass over Flow moderate to heavy

10:25 Am D.D. weir .33

10:30 Am OD weir .40

6-30-91 cont.

5:10 Top wheel line not running
horse pasture running
all others but 2 other side road running
Jackass Over Flow heavy
River Pump running appears to be slow
booster pump not running

5:50 pm DD weir .32

5:55 PM OD weir .39

9:15 pm All lines running but top wheel line and 2 across road
7 sprinklers horse pasture
River Pump running booster pump not running
Jackass Creek Over Flow moderatly heavy
Little Jackass - small trickle

9:30 DD weir .32
9:35 OD weir .39

APR 25 1995

7-2-91 9:10 AM

DD all lines running but 2 across road
River pump running
booster pump not running
Jackass Creek over Flow ± heavy
little Jackass small East Flow

DD weir .40 (10:00AM)

DD weir .34 (10:05AM)

7-2-91 DD

3:30pm all lines running but 2 across road
River pump running
booster pump not running
Jackass over Flow heavy
little Jackass med East Flow
~~setting up 2 more wheel lines~~

4:15pm DD weir .39

4:20 pm OD weir .12

7-2-91

8:10pm all lines running but 2 on east side of road
River pump running
booster pump not running
Jackass Creek over Flow moderate
little Jackass slow

8:45 pm DD weir .37

8:50 pm OD weir .16

APR 25 1995

Page 5

7-4-91 9:15 A.m.

4 lines running (Crew changing)

Wheel line leak

Jackass Over Flow low

Little Jackass Small Fast Flow

11:AM DD. 37

1:05 A.m. OD. 40

at appx. 11:05 Am July 4 I had a Conversation with Hank Berntsen Concerning The water diversion. Oliver Dobson was diverting slightly more than their water right, Berntsen he stated he was going to close Oliver/Dobson down a bit and indicated with a slight nod of his towards J.C. Fry, who was also present, that he (Berntsen) was going to to release the excess to him (J.C. Fry)

1:05 P.m. DD. 37

1:10 P.m. OD. 40

2:20 P.m. Jackass Overflow heavy (no pipe changing Taking place at this Time)
River Pump Running very slow
Booster Pump not running

2:30 P.m. DD. 5 lines running low 4 wheellines
1 hand line

APR 25 1995

7-4-91 Continued

2:15 Myself, George Dowd and Matt Dowd observed Jackass Creek overFlow, Took measurments using a 5 gallon bucket, we also took photographs. We then observed DD irrigation which was almost non-existent. The River Pump was not running at this time, The Jackass Creek was very heavy. Most all of the water being diverted at this time was being dumped into the Payette River (Wasted)

July 4-91
8:30 P.M

All lines running but 2 on east side of road, pressure good.
River pump running, booster pump not running
Jack-ass overFlow moderate,
Little Jackass - Small Fast Flow

DD weir .36

OD weir .30

July 5 10:30 AM

DD 3 wheel lines & 3 hand lines running (low)
River pump running
booster pump not running
Jackass overFlow (medium)
DD weir .38 at 9 5

OD. weir .39

APR 25 1995

Page 7

July 7, 1991

3:30 P.M. 5 wheel lines running
3 hand lines running
River pump running

Jackass Overflow Low

DD weir .36

OD weir .29

7-9-91
7:30pm all lines but 1 wheel line running

Jackass overflow low

River Pump running

1:45 PM DD weir .36

2:50 P.M OD weir .16

Took 2 readings w/ Pito

Bottom 32 PSI on wheel line
Top 30 PSI North of Krauel pit road

Took Readings w/ pito in Mr. Dowel

APR 25 1995

July 8

1:30 P.M.
5 wheel lines Running
2 hand lines Running
Jackass over Flow low
R.P. Running
B.P. Not running

1 P.M. D.D. weir .38
1:05 P.M. O.D. weir .29

July 8

4:20 P.M. Jackass over Flow very heavy
2 sprinklers by house
5 wheel lines running
3 hand lines running 3-7-10
River pump running
Booster Pump not running
Photos taken

July 8
1 sprinkler by house
9 P.M. 5 wheel lines
3 hand lines 3-7-10
River pump running
Booster pump not running
Jackass over Flow Low
Photos Taken

APR 25 1995

9:20 PM DD. 36 OD. 14

July-9 2:30

5 wheel lines
3 hand-lines 7-10
1-Sprinkler by house
Jackass over flow medium
River Pump Running

DD weir .36 4:55 P.M.

OD weir .21 5:00 PM

.40 AM
July 10 3 wheel lines (Changing)
1 hand line - 8
R.P. not running Jackass over flow low
BP not running Little Jackass small-fast
8:10 AM DD weir .37
8:15 AM OD weir .28

APR 25 1985

350 PM

7-11-91 Wheel line other side gravel pit W/R
Pasture line - 7

4 wheel lines running
1 hand line - 10
1 hand line - 8
River pump not running est. 500 g.p.m.

DD weir . 36

OD weir . 18

July 12 all lines but w/line behind house

7 Sprinklers pasture

10 hand line

River pump not running
Jackass Over Flow medium est 200 gpm

8:40 DD weir . 37 Little Jackass (high)

8:45 OD weir . 24

July 12 - 3:40 pm

All wheel lines running
3 hand lines 7 - 10 - 5
River Pump not running (Leak by pump)
Jack ass over Flow Low

DD weir . 36

OD weir . 15

APR 25 1995

July 12 9.10 PM

All lines running
Pressure low
River pump not running
Jackass over Flow moderate est 150-200 9 PM
DD weir .35

OD weir .06

July 13 - 930 AM

5 wheel lines
4 hand lines (1-11) (2-4) (1-9)

JACK-Ass over Flow moderate

River Pump not running

10:00 Am DD weir .36

10:05 AM. OD wer .22

July 13 9:25 P.M.

6 Wheel Lines Running
4 hand lines (2-4) (1-11) (1-10)
River pump not running
Jackass over Flow very Low
DD weir .34

O.D. weir .06

APR 25 1995

July 14 6:30 Am

Wells running upper sprinklers empty
Jackass over Flow heavy
River pump Not running
Little Jackass Small Fast Flow
didn't see anyone Changing pipe

7:10Am D.D. weir .37'

7:10Am O.D weir .18'

Installed temporary 18" Lipetti weir in OD ditch above Dowel/Wallace Field #1

8:35Am. Temp. OD weir Field #1 .19' Crest on 18" weir
.417 C.F.S. = almost 21"

9:08 Am.
OD 2' weir .21'
.644 CFS = 32"

Computated by Mr. Dowel

.644 CFS
- .417 CFS
.227 CFS = 35% ditch loss. before Field #1

8:45Am removed Temp. weir photographed everything

There was a slight increase on the OD Porter Cr weir between 7:10Am and 9:08 Am,

This was probably due to the cloud and a light sprinkle around 7Am.

APR 25

July 14

4:25 PM. 6 Wheel lines running
4 hand lines (2-4) (1-14) (1-9)
Little Jackass - Standing water

DD. .38

OD. Weir .11

July 16
8:45 AM 5 wheel lines - Changing the 6th
4 hand lines (1-6) (1-5) (1-10) (1-7)
Jackass Over Flow heavy est. 600 g. PM.
River Pump running
Booster Pump not running
Little Jackass - muddy - NO Flow

9:17 AM DD weir .37

9:23 AM OD weir .10

July 16 2:30 P.M.

5 wheel lines (W-L #2 N.R)
4 hand lines (1-15) (1-5) (1-6) (1-13)
R.P. Running
Jackass Over Flow heavy est. 600 - 800 g PM.
Photos taken
DD weir .36

OD weir .11

APR 25 1995

18 - July
7:30 A.m.
2 wheel lines
1 hand line (7)
Jackass Overflow heavy est. 600+ g.p.m.
Little Jackass Dry
River Pump not running

DD weir .38

OD weir .17

18 July
1:40 P.m.
2 wheel lines
1 hand Line (8)
Jackass Overflow heavy est. 500+ g.p.m.
Little Jackass Dry
River Pump not running

5:20 P.m. DD weir .35

5:25 pm OD weir .08

18 July
9:05 P.m.
3 wheel lines
1 hand line (8)
Jackass Overflow heavy est. 500+ g.p.m.
Little Jackass dry
River Pump not running

9:30 PM DD weir .32

9:35 P.M. OD weir .05

Passed Bernstein Ranger master 9:10 PM
by DD ranch

1995

July 19

10:40 Am

3 wheel lines
1 hand line (8) pasture
Jackass Creek overflow medium est. 600+ gpm
River Pump not running
Little Jackass dry

DD weir .37

OD weir .14

5:20 pm

4 wheel lines
2 hand lines (1-10) (1-8) pasture
Jackass overflow "moderate" est 400 gpm
Little Jackass - dry
River Pump not running

DD weir .27

OD weir .18

July 19

9:20

4 wheel lines
2 hand lines (1-8) (1-11)
Jackass Creek no overflow
Little Jackass dry
River Pump not running
Booster Pump not running

DD weir .26

OD weir .14

APR 25 1995

July 20

10:00Am 4 wheel lines = poor pressure
1 hand line (1) poor pressured
No over Flow Jackass Creek
Little Jackass dry
River Pump not running
booster pump not running

10:55 AM DD .27

10:57 AM OD .28

July 20

2:20pm
4-wheel lines
2-hand lines (1-8) (1-12)
River Pump Not Running
Booster Pump Not Running
Jackass - NO overFlow
Little Jackass dry

7:10 DD weir .27

7:15 OD weir .14

July 20

9:05
4 wheel lines
2 hand lines (1-9) (1-12) Low Pressure
River Pump not running
Booster Pump not running
Jackass Creek no over Flow Little Jackass dry
DD weir .26

OD weir .14

APR 25 1995

July 21

8:25AM
4 wheel lines
1 hand line (12)
Jackass Creek No over Flow
Little Jackass dry
River Pump not running
Booster Pump not running

DD weir .27

OD weir .24

2 PM
4 wheel lines
2 hand lines (1-5) (1-12) 1 sprinkler pasture
Jackass over Flow very small (garden hose) pulsating
River Pump Not running
Booster Pump not running
Little Jackass dry

DD weir .27

OD weir .22

10PM
4 Wheel Lines
2 hand lines (1-5) (1-12) 1 sprinkler pasture
Jackass over Flow very small (garden hose)
River Pump Not running
Booster Pump Not running
Little Jackass dry

DD weir .27

OD weir .15

APR 25 1995

July 22

8AM 3 wheel lines Changing
1 hand line (S)
Jackass Creek NO over Flow
Little Jackass dry
River Pump Not running
Booster Pump Not running

DD weir .28

OD weir .22

4:30pm 4 wheel lines
2 hand lines (-5) (1-11)
River Pump Not running
Booster pump Not running
Jackass Creek no over Flow trickle
Little Jackass med. Flow

DD weir .20

OD weir .25

July 23
8AM 1 wheel line
2 hand lines (1-5) (1-11)
River Pump not running
Booster Pump not running
Jackass - NO Over Flow
Little Jackass NO Flow

DD weir .20

OD weir .30

APR 15 199

July 23

2:15 Wheel lines 1 & 2
2 hand lines (1-5) (1-11)
river pump NOT running
booster pump NOT running
Jackass : NO overFlow
Little Jackass NO Flow

DD weir .20

OD weir .27

July 23
6:30pm
2 wheel lines # 1 & 2
2 hand lines (1-5) (1-11)
Jackass Creek NO overFlow
Little Jackass muddy (rain)
River Pump NOT running
Booster Pump NOT running

DD weir .20

OD weir .35

July 24
7 Am.
2 wheel lines #1 & #2
2 hand lines (1-5) (1-11)
River Pump NOT running
Booster Pump NOT running
Jackass Creek NO over Flow
Little Jackass muddy

DD weir .20

OD weir .40

APR 25 1995

PART II

APR 2 5 1995

July 25

9:25 AM (21)
#1 wheel line
1 sprinkler by pasture
River pump Not running
booster pump Not running
Jackass over flow appx 200+ gpm
Little Jackass - trickle

DD weir .20

OD weir .36

3:45 (19)
1 wheel line
1 hand line pasture
River Pump Not running
Booster Pump Not running
Jackass over Flow Low
Little Jackass muddy no flow

DD weir .20 running 1 Shafer Creek line OFF Porter Creek

OD weir .30

July 26
8:50
#1 wheel line (20) 1 Shafer Creek line running
hand line pasture (7) on porter creek water

Jackass Creek - no over Flow
Little Jackass wet no Flow
River Pump not running
booster Pump Not running

DD weir .20

OD weir .23

APR 25 1995

Jul, 26
7:30 AM

1 hand line (7)
Jackass - NO overFlow
Little Jackass trickle
River Pump Not running
Booster Pump Not running

DD weir .20

OD weir .32

1'25 PM. wheel line #1
appears to be 1 Shafer Creek line OFF
Porter Creek water
River Pump Not running (leak)

1'33PM Jackass overFlow Est 50+ g.p.m.
Little Jackass trickle
DDweir .20

OD weir .33+

July 26

#1 wheel line

5PM Pasture line (7)
Jackass Creek OverFlow Low
Little Jackass NO FLOW
River pump Not running,
Booster Pump not running

DDweir .20

ODweir .27

APR 25 1995

July 27 8 A.M.

#1 wheel line (19)
pasture hand line (7)
River pump Not running
Booster Pump Not running
Jackass overFlow 75 gpm measured by Hank Berntsen

DD weir .20
OD weir .32

July 27 #1 wheel line (19)
horsepasture Line (7)
3:00 P.M. Jackass over Flow appx 70 g.pm
Booster Pump not running
River pump not running

DD. weir .20

OD weir . 31+

July 28 #1 wheel Line (19) water blow out ~~top/bottom~~ #1 sprinkler
pasture Line (7)
7:00 AM Jackass over flow appx 80 gpm.
River Pump not running (leak)
booster pump Not running

DD weir .20

OD weir .29

APR 25 1995

July 28

12:00 P.M. #1 wheel line (19) leak
Pasture hand line (7)
River Pump Not running
booster Pump Not running
Jackass overFlow est. 80+ g.p.m.

DD weir .20

OD weir .28

7/29

8:4m Wheel line #1 (20)
River Pump Not running
Booster Pump Not running
Jackass over Flow est. 80 gpm

DD weir .20+

OD weir .20

7/29

4:pm #2 wheel line (29)
Pasture Line (5)
Jackass overFlow low
River Pump Not running
booster pump Not running

DD weir .20+

OD weir .20

APR 25 1995

July 30

8:45 Wheel line #3
River Pump Not running
Booster Pump Not running
No Jackass over Flow

9:34 AM DD weir .20+

9:26 AM OD weir .25

DD diverting .20 crest or .898 C.F.S. or 404 gpm but beneficially using only #3 wheel line with 24 nozzles x 3.4 g.p.m. = 87 gpm vs. 404 gpm diverted so 79% is being wasted or 4 gallons out of each 5 diverted.

O.D. diverting .25 crest or .836 C.F.S. or 376 g.p.m. but beneficially using only 10 hand line nozzles in that portion of Field #30 east of the fence. With 5/32" nozzles at 40 p.s.i. each nozzle provides 4.16 gpm. Therefore 10 Nozzles would beneficially use only 42 g.p.m. That represents a water waste of slightly more than 89%. In other words. Out of each 10 g.p.m. Oliver Dobson is diverting 9 g.p.m. are being wasted.

Checked Transect in Field #4 Standing water in holes.

Computated by Mr. Oovel

APR 25 1995

July 31

1 hand line -12
Jackass overflow est 90+ 9 PM.
River Pump Not running
Booster Pump Not running

[illegible] pm DD weir .25

330 pm OD weir .14

July 31 5:40 p.m.

WL #2 - 23
WL #3 - 26
1 hL (8)
1 hL (10-12)
1 Sprinkler in pasture
River Pump Not running
Booster pump Not running

DD weir - .24

OD weir .05

Aug. 1 Wheel line #2 - (26)
7:4m Wheel line #3 - (24)
1 Sprinkler in pasture
1 hand line (8)
1 hand line (10)
River Pump Not running
Booster Pump Not running
Jackass overFlow very low

12:00 [illegible]

OD weir

APR 25 1995

Aug 1 1:4 wheel line #2
wheel line #3
1 hand line (4) OFF pasture
1 sprinkler in pasture
1 hand line (18)
wheel line #1 (20)
wheel line #5 (22)
hand Line 7 + wheel line (25)
1 hand line (12)
River Pump running
Jackass over Flow est 90+ 9 p.m.

DD weir .26+

OD weir .08

Aug. 2 7:05 Am. wheel lines #2 & #3
1 sprinkler Pasture
1 hand line (4) OFF pasture
1 hand line (19)
wheel lines #4 & #5
hand line (8) + wheel line (25).
1 hand line (12) leak
River Pump running
Jackass Creek Over Flow est. 80 9 p.m.

DD weir .26 (DD .26 at 11:30

OD weir .10 OD .14 at 11:30)

APR 25 1995

Aug. 3
9:50 A.m. Wheel lines # 3-4-5
1 hand line (14)
1 hand line (16) & 1 hand line (18)
1 hand line (8)
1 hand line (7) + wheel line (22)
1 hand line (12) leak
River Pump running
NO Jackass over FLOW
2 hand lines across Street

DD .26+

OD .14 No sprinkling This date

Aug 4 Wheel lines #s 2-3-5
9:20 Am handline 8
Pasture hand line 7
hand line (7) + wheel line (22)
1 hand line (12) leak
River Pump running
Booster Pump NOT running
NO Jackass overFLOW
2 hand lines across Street

9:50 A.m. D.D. weir .26

9'45 Am O.D. weir .11

Aug. 4 Wheel lines #s 2-3-4-5
2:20 pm. Pasture hand line (7)
2 hand lines across Street
1 hand line (18)
1 hand line (8) Jackass overFlow appx 50+ 9. pm
1 hand line (11)
hand line (5) + wheel line (22) APR River Pump running
hand line (10) leak

OD weir .1+ DD weir .25

August 4, 1991

8:15 PM Wheel lines 3-4 & 5
Pasture hand line (7)
2 lines across road (17) & (18)
1 hand line (18)
1 hand line (8)
1 hand line (11)
River pump running
Jackass over Flow low

8:53 DD .24
8:50 OD .03

August 5

8:15 Am Wheel lines 2-3-4-5
Pasture hand line (7)
2 hand lines across street
1 hand line (18)
1 hand line (8)
1 hand line (11)
River Pump running
Jackass over Flow appx 130' 9 P.M.

DD weir .26

OD weir .14

APR 25 1995

August 5,

Wheel lines 4 & 5
Pasture line (8)
2 hand lines across road
1 hand line (18)
1 hand line (8)
1 hand line (11)
River Pump running
Jackass over Flow very low

DD weir .26

OD weir .14

August 6
8:15AM Wheel lines 2-3-4-5
Pasture hand line (8)
hand line (17)
hand line (7)
2 hand lines across road (17) & (18)
hand line (8)
Jackass over Flow appx. 100+

DD weir .25

OD weir .14

APR 25 1005

August 6, 1991

6:35 PM, wheel lines 3-4-5-6
hand line(17)
hand line(7)
hand line(5)
2 lines across road (17) (18)

DD weir .25

OD weir .14

August 7,

8 Am. wheel lines 1-2-3-4-5-6
hand line 17
handline 7
2 lines across road (17) & (18)
hand line(8)
no Jackass overflow (screen just pulled)

DD weir .25

OD weir .10

8-7 wheel lines 1-2-3-4-5-6
5:10 PM Pasture line (5)
hand line (8)
1 hand line - across road (14)
1 hand line (14)
1 hand line (12)
1 hand line (16)

River Pump running
NO Jackass over flow

APR 25 1995

DD weir .25 OD weir .02

Aug. 8
7:50 am wheel lines 1-2-3-4-5-6
1 sprinkler in pasture
1 hand line (14) 1-(17) across road
1 hand line (14)
1 hand line (5)
River Pump running
Jackass over Flow - low

DD weir .26

OD weir .10

Aug. 8
3:30 p.m. wheel lines 1 & 2 S of gravel pit road
Wheel line #3 by house (27)
Pasture line (5)
Single sprinkler Front Pasture
1 hand line (6) 1 hand line (12) east of road
1 hand line (13)
wheel lines 4-5-6
1 hand line (10)
1 hand line (5)
river pump running
Jackass over flow appx 40 gpm.

DD weir .26

OD weir .02

APR 25 1995

August 8

8:30pm wheel lines 1-2-3-4-5-6
hand line (8)
hand line (12)
Pasture line (6)
hand line (13) east side of road
hand line (14)
hand line (10)
hand line (5)
River Pump running
appx 200+ from Jackass over Flow

DD weir .22

OD weir .02

August 9

7 A.M. Wheel lines 1-2-3-4-5-6
hand line (8)
hand line (12)
Pasture line (6)
hand line (13) east side of road
hand line (14)
hand line (10)
hand line (5)
River Pump running
Jackass over Flow low (water hose)

DD weir .26

OD weir .02

August 9-91 - 11:34 AM

DD weir .25

OD weir .09

AUG 25 1995

Aug 9
11:56 Am .10 OD weir above Field #1 = .16 CFS or 8"
Checked & photographed 2 holes in Center of F
Field #1 Below Oliver Dobson ditch, deep water
in both holes
T Mr. Doud

Aug. 9 9:15 PM

Wheel lines 1-2-3-4-5-
hand line (8)
hand line (12)
pasture line (6)
hand line east side of road
handline (14)
handline (10)
hand line (8) + (25) wheel

DD weir .22

OD weir .02

APR 25 1995

no Jackass over low

River Pump running

August 10

7:10 AM wheel lines 1-2-3-4-5
handline (8)
handline (12)
pasture line (6)
hand line east of road
hand line (14)
hand line (10)
hand line (8) + (25) wheel

D.D. weir .22

O.D. weir .02
no Jackass over Flow
River Pump running

2:45 PM wheel lines 1-2-3-4-5-6
handline (12)
Pasture line (5)
hand line (15) & (5) east of road
River Pump running
Jackass over Flow appx 6 o'q.PM.

D.D. weir .26

O.D. weir ∅

9:00 PM wheel lines 1-2-3-4-5-6
hand line (12)
Pasture line (5)
hand line (15) east of road
River Pump running
Jackass overFlow (garden hose Flow)
DD. 21

OD ∅

APR 25 1995

August 11-91

8:40 Am (5) wheel lines 1-2-3-4-5-changing 6
1-hand line (12)
pasture line (5)
hand line (15) east of road
hand line (10)
hand line (8)
river pump running
Jackass overflow est. 100+

DD weir .25

OD weir ∅ - water leaking past diversion but none diverted to headgate

1005 Am (1/2 mi. Dowel) Checked and photographed water & moisture in all 16 holes in transect in Field #4 standing water in 4 lowest holes OD ditch above field #4 has been dry for 18-20 hrs.

12:30 Pm rechecked & photographed 16 hole transect Field #4 only mud in 4 lowest holes no more water

1 PM, Checked transects Field #1 water in only deep "level" hole shallow mud in other 5 holes, none in 3 NE. holes

2:10 PM DD weir .26

OD weir immeasurable - some water flowing through Oliver-Dobson weir, disappears on Dowel-Wallace property

APR 25 1995

Aug. 12,

9:10 Am | Wheel lines 1-2-3-4-6
hand line (8)
hand line (18)
hand line (7)
River pump running
& Jackass overFlow

DD weir .24
OD weir .04

c/c Mr. Dowel

Inspected OD ditch upstream on Dowell\Wallace property. Ditch was dry all the way to east boundry Fence. at 10:15 Am we encountered ahead of water Flowing down the OD ditch onto the Dowel\Wallace property

10:30 Am Inspected Arlie woods diverson, no water master Control or lock at headgate. Cipoletti weir measures .54' (about 6½") wide at the bottom of the weir notch. The reading at 10:52 Am is .17' of crest. IF this was a 6" weir notch the Flow would be .1185 C.F.S. or almost 6", however the Flow is somewhat higher since the weir notch is ½" wider. The Woods head gate is open sufficiently to permit substancially more water to Flow through this diversion, before it creates a head sufficient to overFlow back into Porter Cr..

11 Am OD weir .07' and increasing. Noticed numerous dead Fish From ditch being dry yesterday. Checked and photographed Scotch thistles on O.D. ditch bank.

APR 25 1995

to Mr. Doves

Aug. 12, 91
11:16 Am. Photographed 6"+ Woods diversion and 7" OD. diversion and estimated 5"-7" Porter Creek over Flow, totaling 20" OF water wasted.

August 13, 91
8:05 Am wheel lines 1-2-3
hand line (7) + (1) single pasture
hand line (19) east of road
hand line (7)
River Pump running
appx 150+ Jackass over Flow

DD weir .22

OD weir 8 water Flowing into ditch (weir pond) at 8:35 Am

August 13, 91
5:30 pm. Wheel lines 1-2-3-4-5-6
Pasture line (5) + (1)
hand line (18) East of road
hand line (10)
hand line (6)
river pump running

DD. .22
OD. 8

APR 25 1995

August 14
8:15Am Wheel line 1-2-3-4-5
Pasture line 5+1
hand line (18) east of road
hand line (10)
hand line (6)
River pump running

D.D. weir .23
O.D. weir ⊗

August 14
630Pm. Wheel lines 1-2-3-4-5-6
hand line (9)
hand line (8)
Pasture line (7)+(1)
hand line east of road (17)
hand line (5) leak
River Pump running
Jackass Overflow (Garden hose)
6 52 DD weir .20
6:50 OD weir ⊗

August 15,
8:45 Am Wheel lines 1-2-3-4-5-6
hand line 10
(8)+(1) pasture
hand line (19) east of road
hand line (7)
hand line (5)

DD weir .23
OD weir ⊗ water starting to flow in to ditch - 9:20 Am

APR 25 1995

August 1:

Wheel lines 1-2-3-4-5-6
1 hand line (8)
Pasture line (6)
hand line (19) East of road
hand line (10)
hand line (5)
NO overflow
River pump running

DD weir .24 5 P.m.
QD weir .04

August 16 Wheel lines 1-2-3-4-5
8:45 AM hand line (8)
Pasture line (6)
hand line (19) east of road
hand line (10)
appx. 100 g.p.m. Jackass overflow
River pump running

DD weir .24
QD weir .04+

August 16
1:45 PM, Wheel lines 1-2-3-4-5-6
handline (8)
Pasture Line (6)
hand line (19) east of road
hand line (10)
appx 60+ gpm overflow
River pump running

D.D. weir .22
Q.D. weir .06+

APR 25 1995

August 17

8:00Am

Wheel lines 1-2-3-4-5-6
Pasture line (7)
hand line (17) east of road
hand line (7)
hand line (5)

DD weir .22
QD weir .06+

August 17

5:30pm.

Wheel lines 1-2-3-4-5-6
hand line (10)
Pasture line (6)
hand line (11) east of road
hand line (10) up hill behind east Field
hand line (13)
River Pump running
no Jackass over Flow

DD weir .23
QD weir .10

APR 25 1995

August 18
8:15 Am

Wheel lines 1-2-3-4-5-6
hand line (10)
hand line (8)
Pasture hand line (6)
hand line (11) east of road
hand line (10) up hill behind Field east of road
hand line (13)
River pump running
Jackass over Flow appx 40 g.p.m.

DD weir .25
QD weir Ø

August 19-91
7:50 A.M.

Wheel lines 1-2-3-4-6
hand Line (5) pasture
hand line (8)
hand line (7) hill behind Field east of road
hand line (12)
no Jackass overFlow
River Pump running

DD weir .22
QD weir .Ø

9:00 Am August 20, 1991

Wheel lines 2-3-4-5-6
Pasture line (7)
hand line east of road (7) up hill (5)
hand line (10)
River Pump running
Jackass o.f. garden h

DD .21 Q.D. Ø

OCT 25 1995

gust 22
heel lines 1-2-3-4-5-6
hand line (13)
hand line east of road (13)
hand line (8)
River pump running
Jackass overFlow appx 60 g.p.m.

DD weir .22

OD weir ~~0~~ water beginning to Flow into ditch 10:05 A.m.

-23-91
10:10 A.m.

Wheel lines 1-3-4-5
hand line (8)
hand line (15)
hand line (5)
Jackass Over Flow appx 80+ g.pm.

DD weir .20
OD weir .06

8-24-91 Wheel lines 1-2-4-5
Pasture line (4)
hand line east of road (15)
appx. 40 gpm. overFlow Jackass Creek

10:15AM DD weir .20+

10:10AM OD weir .03+ headgate appears to be open about 4 turns

APR 25 1995

Page 23

August 25, 9:50 Am

Wheel lines 3-5-6
hand line (15) east of road
hand line (3) pasture
hand line (5)
River Pump Running
Jackass Overflow appx 30 g.p.m.

11:12 Am DD weir .20
11:10 Am OD weir .03+

August 26

8:45 Am

Wheel lines 1-2-3-4-5-6
hand line 9
hand line 15 east of road 3 up hill east of road
River Pump running
appx. 60 mpg. Jackass overflow

DD weir .19
OD weir 0 - (water building up in weir pond)

August 29
8:00 Am

Wheel lines 1-2-4-5
Pasture hand line (8)
hand line (18) East of road
hand line up East hill 3
hand line 8
River Pump running
no Jackass over flow (pond)

8:43 DD weir .19 headgate locked w ½ turn adjust
8:40 OD weir .06 headgate locked w ½ turn adjust

8:45 Ordered to stay OFF property/would be arrested

Sept 3, 1991

5:38 PM #1 Wheel line only sprinkling on entire ranch except for one slight leak + 1 nozzle by house
21 nozzles on #1 (photographed) very slight overflow 5:50 PM about 10 gpm
(11 nozzles to W. of motor, 10 to E.) 21 + 2 at house = 23 X 3.64 = 83.72 gpm + 10 = 94 gpm

DD .18 at 6:27 PM .18 = .768 cfs = 345.6 gpm
94 gpm ÷ 346 gpm = 27% or 73% waste

C/D at 6:33

AW .13 on .54 weir notch at 6:37 PM .13 in 1.0' crest = .158 cfs
.158 cfs X .54 = .085 cfs or 4.3" or 38 gpm

2 5 1995

Sept. 07, 1991

APR 25 1995

Sept. 9, 1991

9:09AM #3 wheel line only 4 lowest sprinklers turning

9:14AM Jackass creek

10:50AM est. 5" water by Dowel/Wallace house

Arlie Woods weir .156 Ft. of Crest = 6"

11:25AM OD weir .105 = appx. 12"

11:38AM DD weir .19 = 42"

Total water wasted appx. 65"

3:15 pm O.D. not irrigating

3:40 p.m. measured Jackass overflow appx. 9.p.m.

APR 25 1995

+ 10, 1991

Woods weir .23 = .20 cfs or 10" without overflow at headgate

O/D weir .12 = .28 cfs or 14" with overflow at headgate

DD weir .18+ = .768+ cfs or about 140"

Estimate 20-30" wasting down creek

Only #3 wheel in operating on DD ranch - has been changed to 2nd set & screens cleaned after 4 days but still a substantial waste at Jackass Cr.

Sept 11, 1991

9:12 AM DD .18+ = .768 cfs+ or 40" plus w/heavy overflow

9:30 AM OD .14 = .352 cfs or 18" w/slight overflow

9:49 AM AW .28 = .271 cfs or 14" w/slight overflow

Estimate 140 or more inches wasting down creek

APR 25 1995

Sept 16

11:10Am. Wheel line # 3 very low pressure
some sprinklers not turning
no Jackass overFlow

Sept 17

10:25 Wheel line #3 very low pressure some sprinklers
not turning no Jackass overFlow

Sept. 18

8:20AM | 1 sprinkler N OF pasture not turning no beneficial use
appx 30 9.pm. Jackass overFlow ↑ small pond

DOVAL SUMMARY OF WATERMASTER WATER DELIVERIES
1988, 1990, 1991 and 1992

1988

7/03	2.39
7/06	2.48
7/07	2.11
7/08	1.60
7/09	1.45
7/11	1.29
7/19	1.81
7/27	1.64
8/03	1.14
8/11	.90
8/17	.71
8/24	.67
9/09	.67

1990

7/12	2.79
7/13	2.09
7/17	.04
7/23	1.04
7/31	.06
8/21	1.81

1991

6/25	2.79
7/03	2 38



7/04	2.25
7/10	2.16
7/18	1.64
7/19	1.48
7/22	.898
7/25	.966
7/27	.82
7/30	1.25
8/04	1.26
8/22	.966
9/11	.421

1992

5/07	2.07
5/10	2.07
5/12	1.56
5/18	1.48
5/22	1.40
5/26	1.48
6/03	1.81
6/04	1.64
6/10	1.25
6/12	1.18
6/14	1.64
6/20	1.48
6/28	1.25
7/07	1.48
7/19	.27
7/24	.528
8/05	.27
8/12	.42
8/19	.528
8/28	.586
9/07	.765

SUMMARY OF DOUBLE DIAMOND WATER USAGE UNDER RIGHT 65-3103 IN 1991

DATE	TIME	WEIR CREST	CFS	MINER'S INCHES	TTL GPM DIVERTED	TTL NOZZLES USED TO APPLY WATER		JACKASS WASTE
6/20		.49	3.42	171	1539	102		H
6/28	0915	.32	1.81	90.5	814.5	125		L
	1925	.34	1.98	99	891	125		L
6/30	0915	.32	1.81	90.5	814.5	125		M
	1710	.32	1.81	90.5	814.5	109		H
	2115	.32	1.81	90.5	814.5	109		M
7/2	0910	.40	2.53	126.5	1138.5	125		H
	1530	.39	2.43	121.5	1093.5	125		H
	2010	.37	2.25	112.5	1012.5	125		M
7/4	1420	.37	2.25	112.5	1012.5	95		H
	2030	.36	2.16	108	972	122		M
7/5	1030	.38	2.34	117	1053	100		M
7/7	1530	.36	2.16	108	972	125		
	1930	.36	2.16	108	972	125		L
7/8	1330	.38	2.34	117	1053	118		L
	2100	.36	2.16	108	972	125		L
7/9	1430	.36	2.16	108	972	124		
7/10	0740	.37	2.25	112.5	1012.5	71	(changing)	L
7/11	1550	.36	2.16	108	972	109		H
7/12	0840	.37	2.25	112.5	1012.5	117		M
	1440	.36	2.16	108	972	147	low press	L
	2110	.35	2.07	103.5	931.5	125		M
7/13	0930	.36	2.16	108	972	127	" "	M
	2125	.34	1.98	99	891	148	" "	L
7/14	0630	.37	2.25	112.5	1012.5	125	" "	H
	1625	.38	2.34	117	1053	147	" "	H
7/16	0845	.37	2.25	112.5	1012.5	146	(changing)	
	1430	.36	2.16	108	972	143	low press	H
7/18	0730	.38	2.34	117	1053	47		H
	1640	.35	2.07	103.5	931.5	48		H
	2105	.32	1.81	90.5	814.5	71		H
7/19	1040	.37	2.25	112.5	1012.5	71		H
	1720	.27	1.40	70	630	102	low press	M
	2120	.26	1.33	66.5	598.5	103	" "	0
7/20	1000	.27	1.40	70	630	95	" "	0
	1820	.27	1.40	70	630	104	" "	0
	2105	.26	1.33	66.5	598.5	105	" "	0
7/21	0825	.27	1.40	70	630	96	"	0
	1400	.27	1.40	70	630	102	" "	0
	1710	.27	1.40	70	630	102	" "	0
7/22	0800	.28	1.48	74	666	68	(changing)	
	1630	.20	.898	44.9	404.1	98	low press	0
7/23	0805	.20	.898	44.9	404.1	38		0
	1415	.20	.898	44.9	404.1	58		0
	1830	.20	.898	44.9	404.1	58		0
7/24	0700	.20	.898	44.9	404.1	58		0



DATE	TIME	WEIR CREST	CFS	MINER'S INCHES	TTL GPM DIVERTED	TTL NOZZLES USED TO APPLY WATER	JACKASS WASTE
7/25	0925	.20	.898	44.9	404.1	22	0
	1545	.20	.898	44.9	404.1	27	L
	2050	.20	.898	44.9	404.1	27	0
7/26	0730	.20	.898	44.9	404.1		0
	1325	.20	.898	44.9	404.1	21	L
	1700	.20	.898	44.9	404.1	21	L
7/27	0800	.20	.898	44.9	404.1	21	L
	1500	.20	.898	44.9	404.1	26	L
7/28	0700	.20	.898	44.9	404.1	26 low press	L
	1200	.20	.898	44.9	404.1	26 " "	L
7/29	0800	.20	.898	44.9	404.1	20	L
	1600	.20	.898	44.9	404.1	33	L
7/30	0845	.20	.898	44.9	404.1	24	0
7/31	0800	.25	1.25	62.5	562.5	12	L
	1740	.24	1.18	59	531	70	0
8/1	0700	.27	1.40	70	630	69	L
	1340	.26	1.33	66.5	598.5	combined with Payette River	
8/2	0705	.26	1.33	66.5	598.5	water this date.	
8/3	0950	.26	1.33	66.5	598.5		
8/4	0920	.26	1.33	66.5	598.5		
	1420	.25	1.25	62.5	562.5		
	2015	.24	1.18	59	531		
8/5	0815	.26	1.33	66.5	598.5		
8/6	0815	.25	1.18	59	531		
	1835	.25	1.18	59	531		
8/7	0800	.25	1.18	59	531		
	1710	.25	1.18	59	531		
8/8	0750	.26	1.33	66.5	598.5		
	1530	.26	1.33	66.5	598.5		
	2030	.22	1.04	52	468		
8/9	0700	.26	1.33	66.5	598.5		
	2115	.22	1.04	52	468		
8/10	0710	.22	1.04	52	468		
	1445	.26	1.33	66.5	598.5		
	2100	.21	.966	48.3	434.7		
8/11	0840	.25	1.18	59	531		
8/12	0910	.24	1.18	59	531		
8/13	0805	.22	1.04	52	468		
	1730	.22	1.04	52	468		
8/14	0815	.23	1.11	55.5	499.5		
	1830	.20	.898	44.9	404.1		
8/15	0845	.23	1.11	55.5	499.5		
	1700	.24	1.18	59	531		
8/16	0845	.24	1.18	59	531		
	1345	.22	1.04	52	468		

DATE	TIME	WEIR CREST	CFS	MINER'S INCHES	TTL GPM DIVERTED
8/17	0800	.22	1.04	52	468
	1730	.23	1.11	55.5	499.5
8/18	0845	.25	1.18	59	531
8/19	0750	.22	1.04	52	468
	0900	.21	.966	48.3	434.7
8/22	0930	.22	1.04	52	468
8/23	1010	.20	.898	44.9	404.1
8/24	1015	.20	.898	44.9	404.1
8/25	0950	.20	.898	44.9	404.1
8/26	0845	.19	.832	41.6	374.4
8/29	0800	.19	.832	41.6	374.4
9/3	1738	.18	.768	38.4	345.6
9/9	1138	.19	.832	41.6	374.4

NOTE: Whenever more than 1.40 cfs was diverted, some of it could not be beneficially applied, regardless of the number of sprinklers used, and was wasted out the Jackass Creek overflow.

JACKASS CREEK WASTE SYMBOLS:

H - in excess of 300 gallons per minute

M - 100 gallons per minute to 300 gallons per minute

L - 10 gallons per minute to 100 gallons per minute

O - no waste

1995





EXHIBIT
K

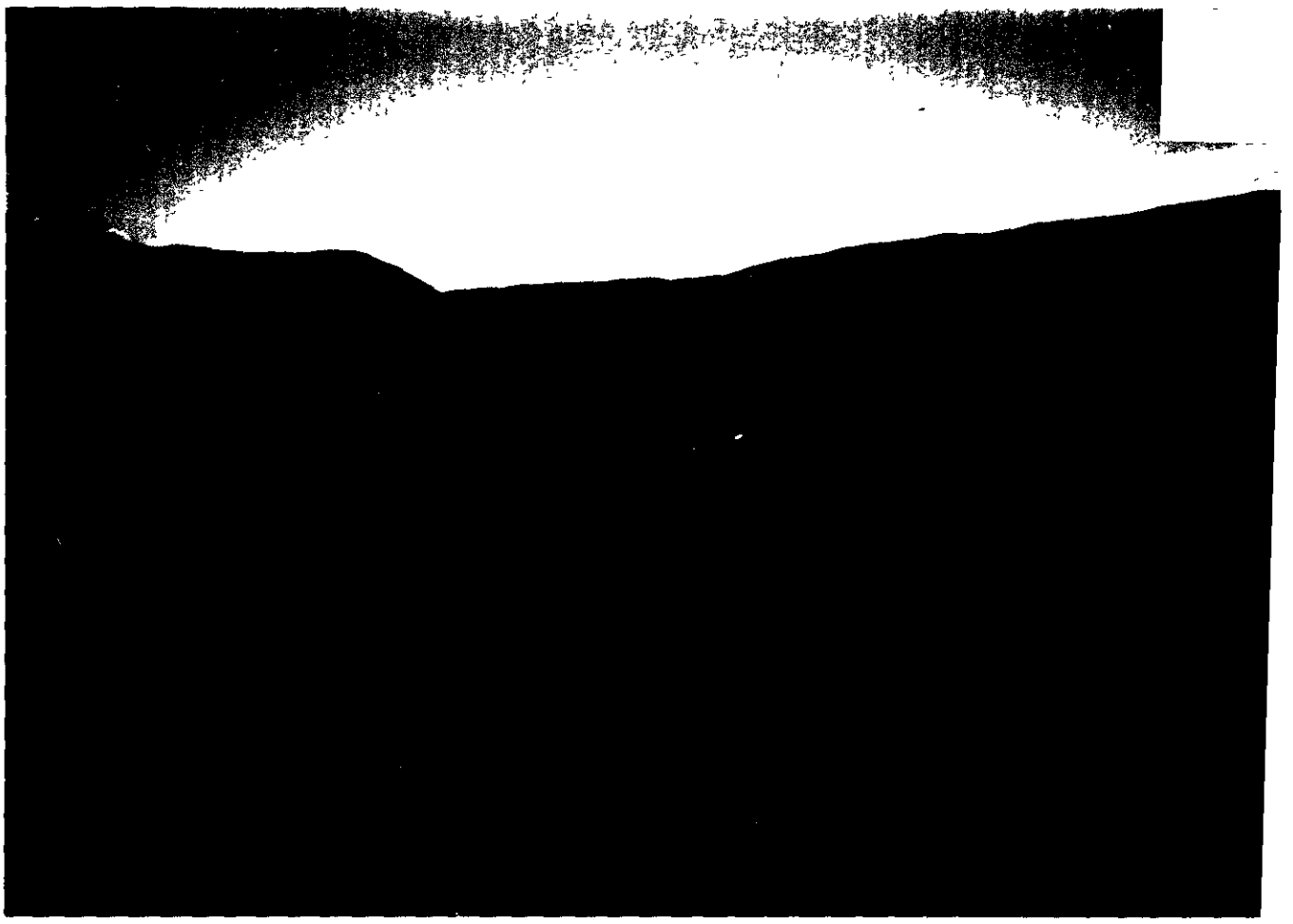
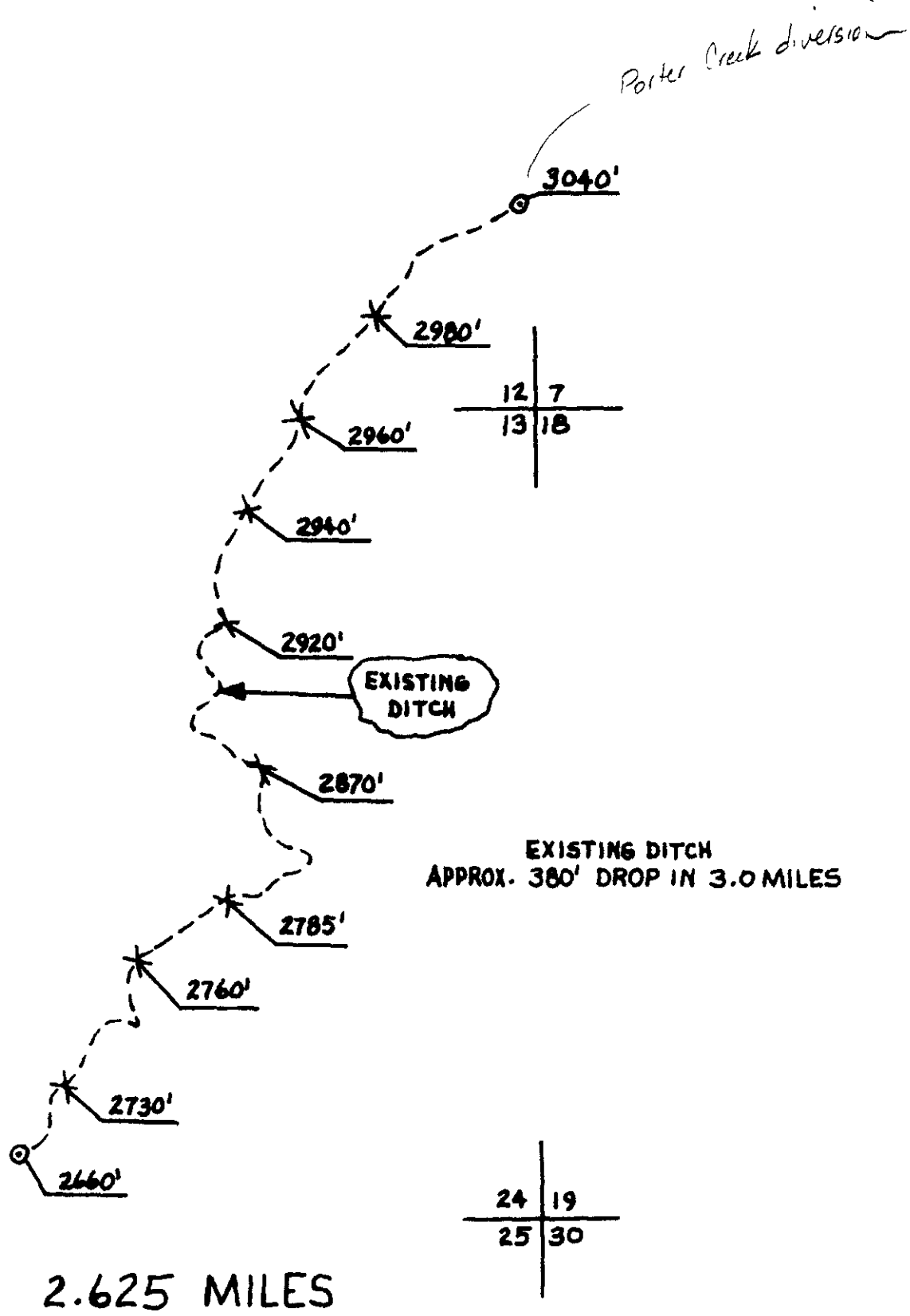


EXHIBIT
L

Measured in 1978.
He was not present. trying to put in
a hydropower plant

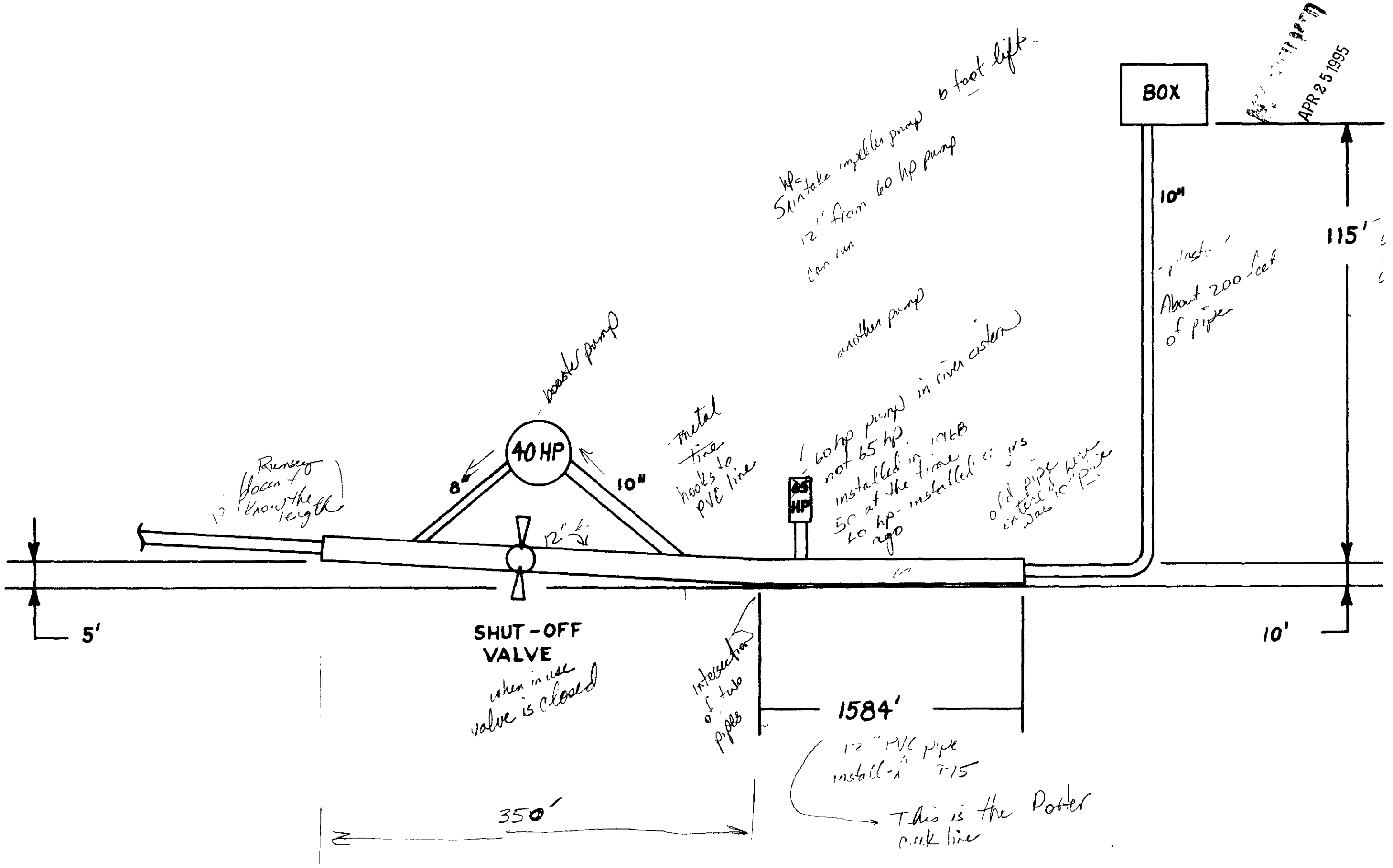


EXISTING DITCH
APPROX. 380' DROP IN 3.0 MILES

2.625 MILES
OPEN DITCH

DOUBLE DIAMOND

RECD
APR 25 1995



hp Skintake impeller pump 6 foot lift
12" from 60 hp pump
can run
another pump
pump in river caster

Month of July 1993

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not tenant.

Protes

Name of Pre Owner		26		27		28		29		30 pc cfs 4.05		31		Total in 24-hour Sec.	Feet	REMARKS
#1 DOUBLE DIAMO	1					2	91		A	1	56		A	8	94	
#2 OLIVER - DOBS	N						0	~	~	~	~	~	~	—	—	SHUT DOWN PIPE BROKE
#3 ADAMS - MILL	S						0	~	~	~	~	~	~	~	~	LOCKED SHUT NO H2O
#4 DOUBLE DIAM	P						822		A		822		A	3	288	± 2" ON MATER
#5 ARLIE WOO	E						04		A		04		A		16	
#6 DOVEL - CEDA	C						35		A		0	~			70	± 150 GPM ON MELON SHUT DOWN FULL BOX
	T															
	I															
	O															
	N															

Exhibit
Protestants AA

Month of JULY 1993

24-hour second fe... Give name of owner of water right... not tenant

Name of Present Owner	WATER RIGHT IDENTIFICATION NO.	Amount Second Feet (cfs)	1	2	3	4	5	RKS
DOUBLE DIAMOND	65 3103							
OLIVER-DOBSON	65 3104							BACK IC
ADAMS-MILLER	65 3939							TO H2O
DOUBLE DIAMOND	6510773							
ARLIE WOODS	6510771							
DOUEL-GEORGE	6510950							SHUT DOWN TO FULL BOX

2 3 9

Month of AUGUST 1993

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant

Name of Present Owner	WATER RIGHT IDENTIFICATION NO.	Amount Second Feet (cfs)	1		2		3 (AF: 2.53)		4		5		REMARKS
#1 DOUBLE DIAMOND	653103	1.56		A		A	1	56		A		A	IDWR 13.
#2 OLIVER - DOBSON	653104	0											
#3 ADAMS - MILLER	65 3539	0											
#4 DOUBLE DIAMOND	65 10773	.822		A		A		822		A		A	IDWR 130.
#5 ARLIS WOODS	65 10771	.04		A		A		04		A		A	IDWR 1300
#6 DOUG GEORGE	6510950	0											

AF: 2.53

Month of AUGUST 19 13

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not tenant

Name of Pr Owner	6	DC 7 3.41		PC 8 283		9		10		11		12		13		14		15		RKS
#1 DOUBLE DIAMO	A	3	01	2	58		A	2	53											IDWR 13.
#2 OLIVER - HOBSC	"	"	"	"	"	"	"	"	"											L
#3 ADAMS - MILLC																				L
#4 DOUBLE DIAM	4		0	—	—	—	—	—	—											IDWR 130
#5 ARLIE WOOD	"		04		04		A		04											IDWR 130
#6 DOUBLE DIA	"	"	04		04		A		"											

2 4 5

Month of Aug. 14 19 13

NOTE — Figures to be given in cubic feet per second for 24-hour periods or 24-hour second feet. Give name of owner of water rights, not tenant

Name of Present Owner	WATER RIGHT IDENTIFICATION NO	Amount Second Feet (cfs)	1	2	3	4	5	RKS
Double Diamond (1)	65-03103	3.82						?. ; WM check
MAXimum DELIVERABLE →		3.39						ot Adjust hdgs
Olivin-Dobson (2)	65-03104	1.60						Lake & Stove
(Billing: show part A & part B)								R. 5/10/93
Double Diamond (4)	65-10773	.92						
Nalia Woods (5)	65-10771	.32						
George Dovel (6)	65-10950	1.61						; MEASURED BY
(7)	65-10951	.84						- State office
								Region office)
								ial situation.
								; thereof over
								to IOwR at
								n. - this del
								ux 4:00 p.m.
								until demand
								, no deliveries
								'93 -BL

APR

2

3

Month of August 19 13

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant

Name of Pre Owner	6	7	8	9	+SL+TL 10	11	-SL 12	13	14	15	RKS
Double Diamond MAx					2 53	A	1 98	A	A	A	8. ; WM check ot adjust hdgs. Luke & Steve WR. 5/10/93
Olivia - Dubois (Billing : show Double Diamond					Ø		Ø				
					Ø		Ø				
Dalia Wood.			did not visit on 10th → ?			A	04	A	A	A	
George Dowd			Right 6+7 delivery		1 11		1 11				; MEASURED B ; - State offic Region offic) ial situation. ; moved ove to Idaho at a. - this de ux 4:00 p.m.
											until demand , no deliverie '93 -SL

2 4 5

Month of August 19 93

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet Give name of owner of water rights, not tenant

Name of Pre Owner	16	17	18	19	20	21	22	23	24	25	RKS
Double Diamo	A	A	A	A	A	A	A	A	0		B. ; WM chec
MAx											ot adjust hdg
Olivin - Dubsu	~	~	~	~	~	~	~	~	0		. Luke & Steve
(Billing : show											NR. 8/10/93
Double Diamo									0		
Arlie Wood	A	A	A	A	A	A	A	A	0		
George Dowel									0		
						8/24 SEE REMARKS 3					
						8/23 = End of water delivieis →					

; MEASURED B
E - State offic
Region Offic)
ial situation.
' ; thawed ove
to flow at
n. - this de
ux 4:00 p.m.

until demand
, no delivei
'93 - BL

Month of August 19 93

NOTE — Figures to be given in cubic feet per second for 24-hour periods, or 24-hour second feet. Give name of owner of water rights, not tenant

Name of Pre Owner	26	27	28	29	30	31	Total In 24-hour Sec Feet	REMARKS
Double Diamond MAX Olivier - Dubsy (Billing : show Double Diamond							46 35	① MEAS. BY HANK B. ; WM check rate but did not adjust hdgs witnessed by Tim Luke & Steve Lester of IDWR. 8/10/93
							4 932	
Dalia Wood.							9 20	
George Duval							14 59	⑥ & ⑦ DELIVERED & MEASURED BY IDWR (Tim Luke - State Office Steve Lester - Region Office) to HANK B. medical situation. Led left district & turned over his wm keys to IDWR at Approx 2:00 p.m. - this del made at approx 4:00 p.m. 8/10/93
								Regulation halted until demand exceeds supply so no deliveries in use 8/24/93 -BL

2 8

Rockhopper's BB

1995

Protestants' (C

APR 05 1995

Protestants' DP

MEMORANDUM

TO: FILE 65-02540

FROM: ~~PAM SKAGGS~~ Carolyn Cendrega

RE: TRANSFER # 4459

DATE: 8-13-93

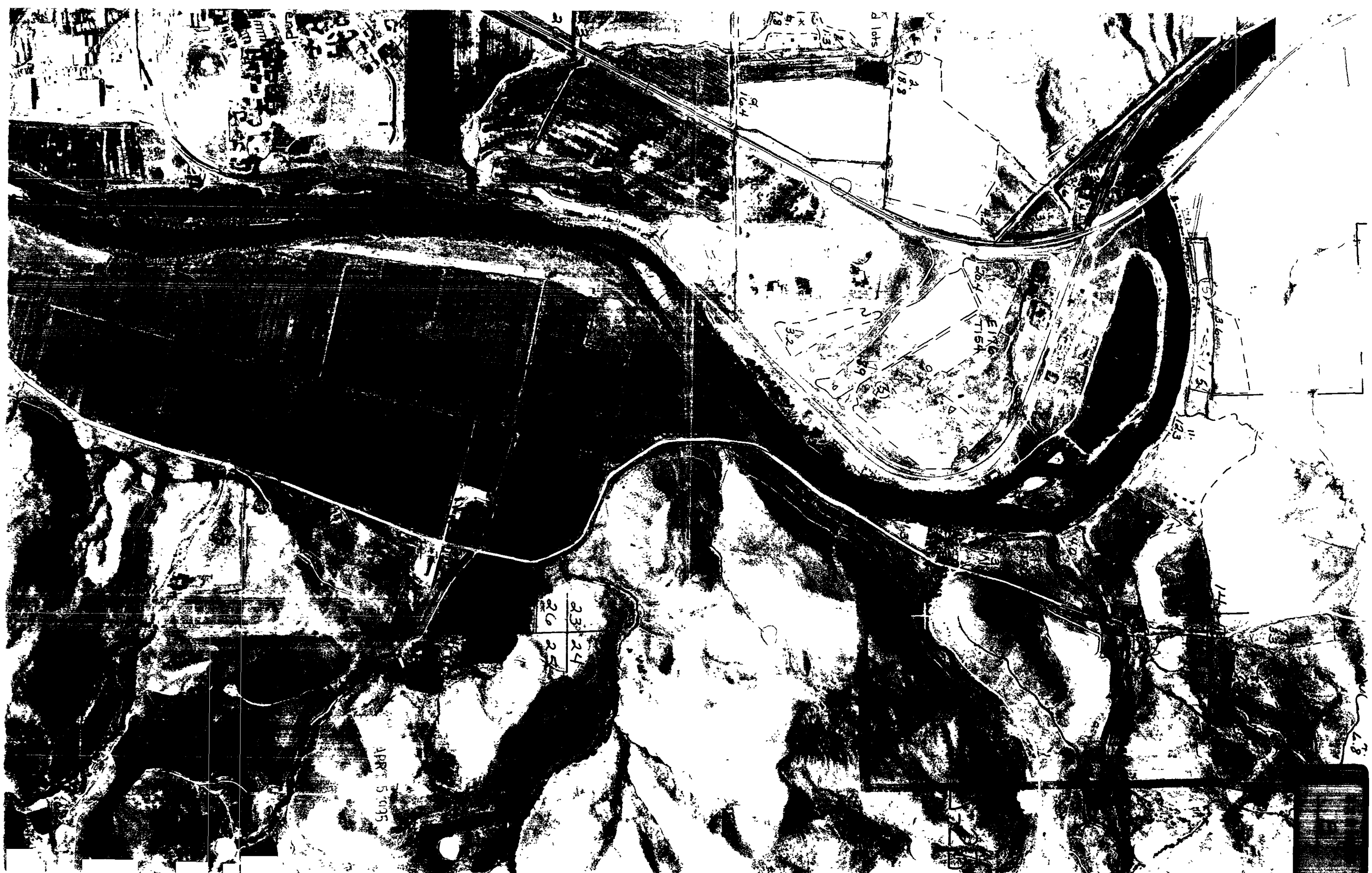
Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 1 of 65-2540.

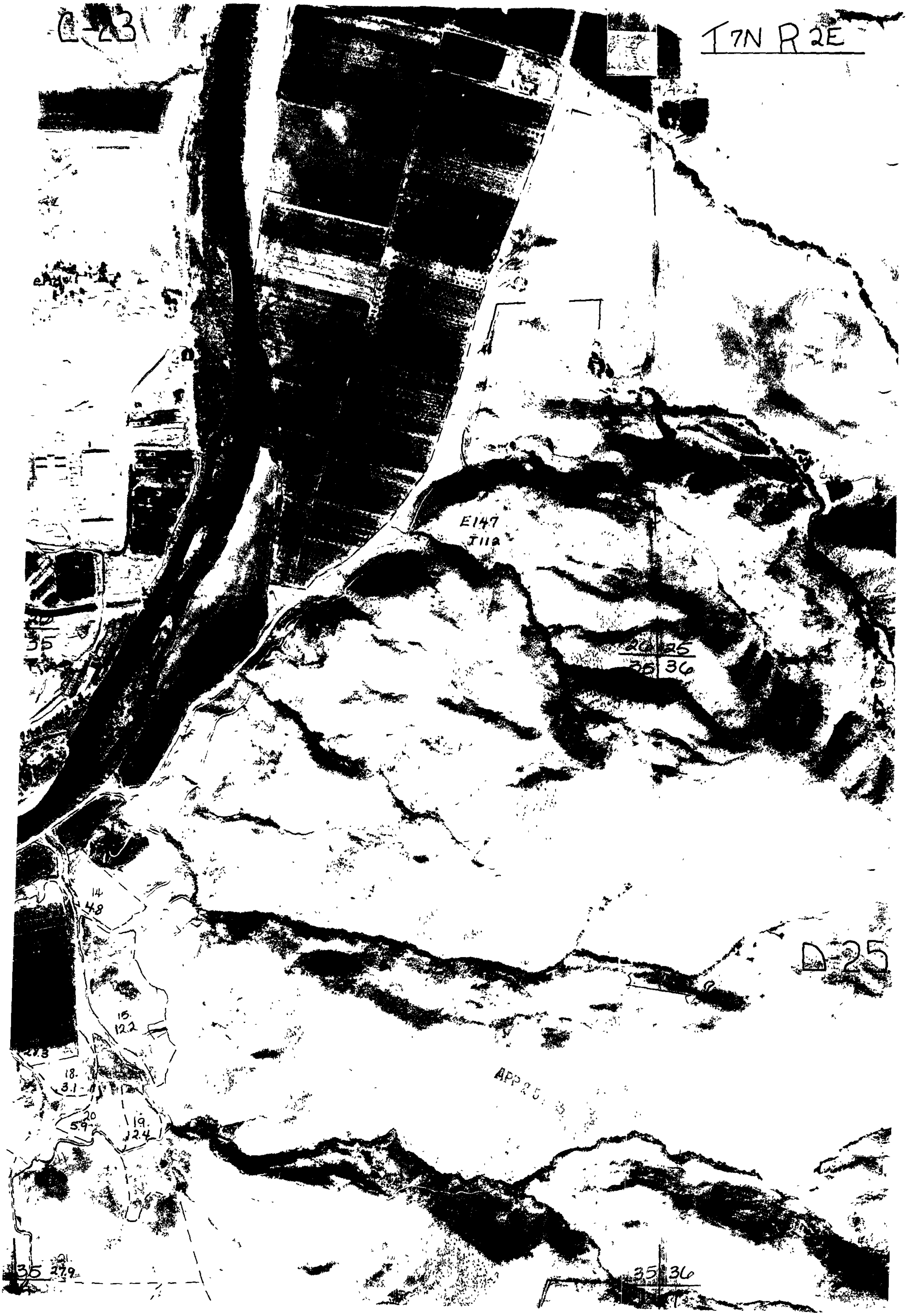
Larger exhibits are located in the small supply room on the vault on a file marker. File is labeled "Large Exhibits - 65-02540".

OCT 25 1995



5 1995


T154
R16E
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24
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25
APR 5 1935


C-23
T7N R2E
E147
J11a
26 25
35 36
D-25
14
4.8
15.
12.2
18.
3.1
20
5.9
19.
12.4
21
35 27.9
35 36

DOUBLE DIAMOND PORTER CREEK FIELDS

Field No.	Total Porter Creek Acres	Priority No. 1 65-3103 Acres	Priority No. 12 65-10746 Acres
1	15.3	13.3	2.0
2	10.0		10.0
3	36.2	34.2 (2 acres no Porter Creek right)	
4	2.1	2.1	
5	3.7	3.7	
6	41.9	41.9	
7	46.7	46.7	
8	23.6	14.6	9.0
	179.5	156.5	21.0

APR 25 1995

Exhibit C

DOUBLE DIAMOND PORTER CREEK FIELDS

Field No.	Total Porter Creek Acres	Priority No. 1 65-3103 Acres	Priority No. 12 65-10746 Acres
1	15.3	13.3	2.0
2	10.0		10.0
3	36.2	34.2 (2 acres no Porter Creek right)	
4	2.1	2.1	
5	3.7	3.7	
6	41.9	41.9	
7	46.7	46.7	
8	23.6	14.6	9.0
	179.5	156.5	21.0



MAR 02, 1979 PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

INDICATES TOTAL SOURCE: PORTER CREEK TRIBUTARY TO: PAYETTE RIVER

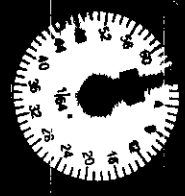
RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-3103	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2540 & 65-10747 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	1/ 1/1872	IRRIGATION	4/ 1 11/ 1	--- AFA 3.82 CFS	NWSE S12 T 7N R 2E	NENE(13) NWNE(40) SWNE(39) SENE(3) NWSE(14) LOT 1(23) LOT 2(22) S26 T 7N R 2E LOT 5(39) S23 T 7N R 2E *193*	DECREE
65-3104	WOLFGRAM, ALFRED C. & WOLFGRAM, MARGARET I. BOX 100, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2858, 65-3903 & 65-10963 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	1/ 1/1883	IRRIGATION	4/ 1 11/ 1	--- AFA 1.60 CFS	NWSE S12 T 7N R 2E	NENE(15) NWNE(16) SWNE(19) SENE(28) SENW(1) LOT 1(11) S11 T 7N R 2E NWSW(6) S12 T 7N R 2E *96*	DECREE
65-3839	CRANDALL, PATRICIA L. ADAMS 1800 TAGGART, BOISE, IDAHO 83705	4/ 1/1885	IRRIGATION	4/ 1 11/ 1	--- AFA .54 CFS	SWNE S 7 T 7N R 3E	SWNW(10) SENW(14) NESW(16) NWSW(12) S 7 T 7N R 3E *52*	BENEFICIAL USE
			STOCKWATER	1/ 1 12/31	1.40 AFA .03 CFS *---*AFA *.54*CFS		SAME AS OTHER USE	
(13)	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1900	IRRIGATION	4/ 1 11/ 1	--- AFA .90 CFS	SWNW S 7 T 7N R 3E	SWNE(33) NWSE(12) S12 T 7N R 2E *45*	BENEFICIAL USE
			STOCKWATER	1/ 1 12/31	.70 AFA .02 CFS *---*AFA *.92*CFS		SAME AS OTHER USE	
65-2000	~~ALLEN, EVERETT K. CASCADE, IDAHO 83611~~ REMARKS: ~~RECOMMENDED~~ AS RIGHT 65-3104.	3/25/1903	IRRIGATION	4/ 1 11/ 1	--- AFA .12 CFS	NWSE S12 T 7N R 2E LOT 1 S22 T 7N R 1W	NWSW(6) S12 T 7N R 2E *6*	LICENSE
65-10771 (Never Used)	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629 REMARKS: POINT OF DIVERSION HAS TWO POINTS IN NWSE.	6/ 1/1905	IRRIGATION	4/ 1 11/ 1	--- AFA .32 CFS	NWSE S12 T 7N R 2E	SESE(8) S11 T 7N R 2E *8*	BENEFICIAL USE
			STOCKWATER	1/ 1 12/31	.70 AFA .02 CFS *---*AFA *.32*CFS		SAME AS OTHER USE	

INDICATES TOTAL SOURCE: PORTER CREEK TRIBUTARY TO: PAYETTE RIVER

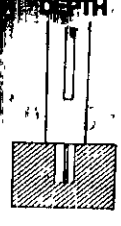
RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-10950	MADARIETA, ANGEL G MADARIETA, ROSE I. HORSESHOE BEND, IDAHO 83629	6/ 1/1908	IRRIGATION	4/ 1 11/ 1	--- AFA 1.61 CFS	SWNW S 7 T 7N R 3E NWSE S12 T 7N R 2E	NESW(31) SWSW(19) SESW(6) S12 T 7N R 2E NWNW(1) S13 T 7N R 2E *57*	BENEFICIAL USE
65-10951	MADARIETA, ANGEL G MADARIETA, ROSE I. HORSESHOE BEND, IDAHO 83629	6/ 1/1912	IRRIGATION	4/ 1 11/ 1	--- AFA .84 CFS	NWSE S12 T 7N R 2E	SESW(15) SWSE(1) S12 T 7N R 2E NENW(11) NWNW(15) S13 T 7N R 2E *42*	BENEFICIAL USE 11 acres Not on Property
65-10946	BURIG, MARY C. HORSESHOE BEND, IDAHO 83629	7/26/1917	DOMESTIC	1/ 1 12/31	1.20 AFA .02 CFS	NESE S 7 T 7N R 3E	NESE S 7 T 7N R 3E	BENEFICIAL USE
65-10770	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1932	IRRIGATION	4/ 1 11/ 1	--- AFA .07 CFS	NWSE S12 T 7N R 2E	NENW(3) S13 T 7N R 2E *3*	BENEFICIAL USE
65-11369	FRY, JACK HORSESHOE BEND, IDAHO 83629	6/ 1/1940	IRRIGATION	4/ 1 11/ 1	--- AFA .38 CFS	NWNW S13 T 7N R 2E NWNE S14 T 7N R 2E	NENE(7) NWNE(3) SWNE(7) SENW(2) S14 T 7N R 2E *19*	BENEFICIAL USE
65-10953	MADARIETA, ANGEL G MADARIETA, ROSE I. HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10952 SHALL PROVIDE NO MORE THAN .04 CFS NOR 1.2 AFA.	6/ 1/1946	DOMESTIC	1/ 1 12/31	1.20 AFA .04 CFS	SWSW S12 T 7N R 2E	SWSW S12 T 7N R 2E	BENEFICIAL USE
65-10746	DOUBLE DIAMOND INC. C/O DON RUNSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2540, 65-10747 & 65-10749 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1960	IRRIGATION	4/ 1 11/ 1	--- AFA .44 CFS	NWSE S12 T 7N R 2E	NENE(11) LOT 3(9) S26 T 7N R 2E LOT 4(2) S23 T 7N R 2E *22*	BENEFICIAL USE

6 inch DIAL CALIPER

DIRECT READING

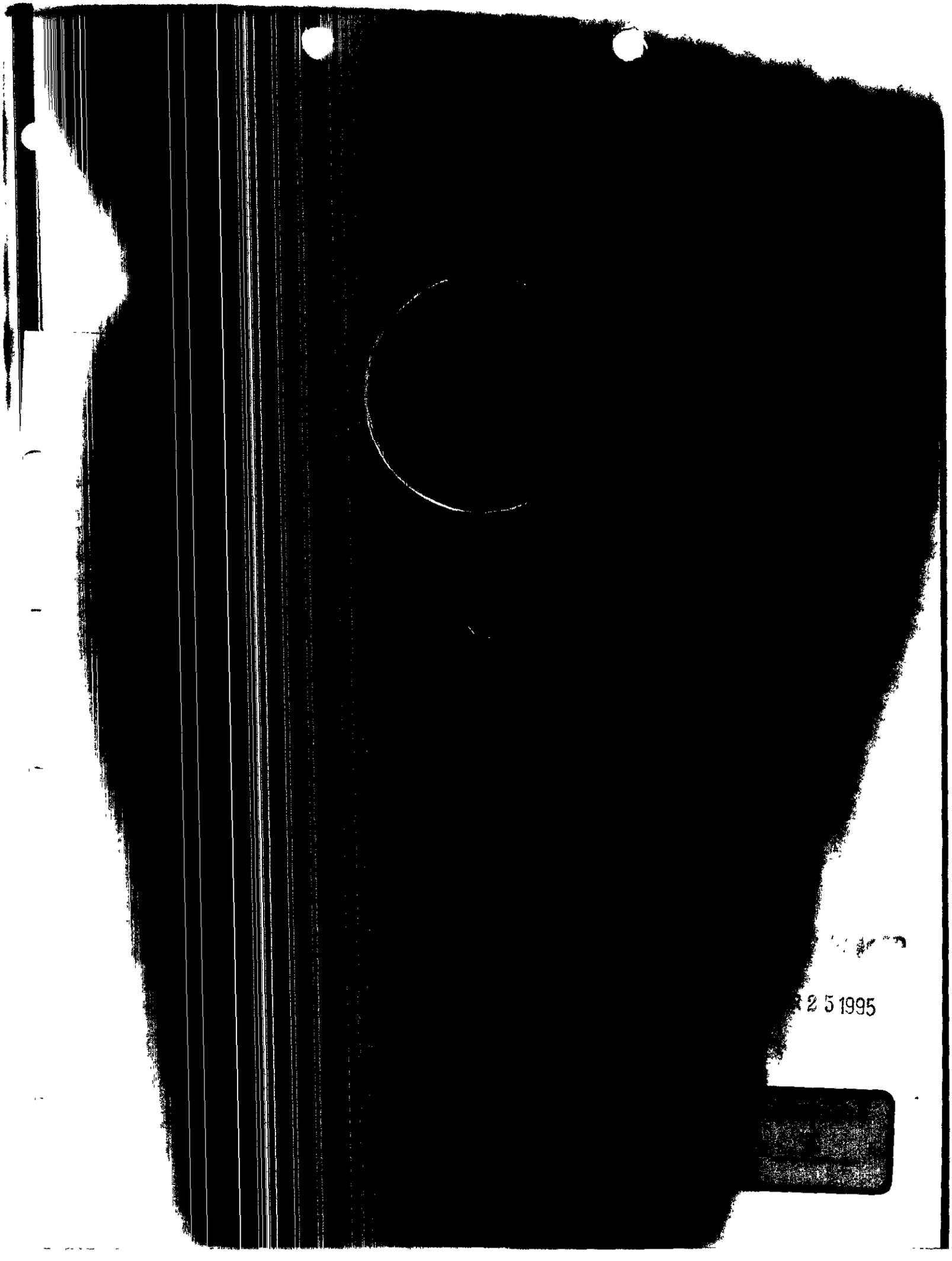


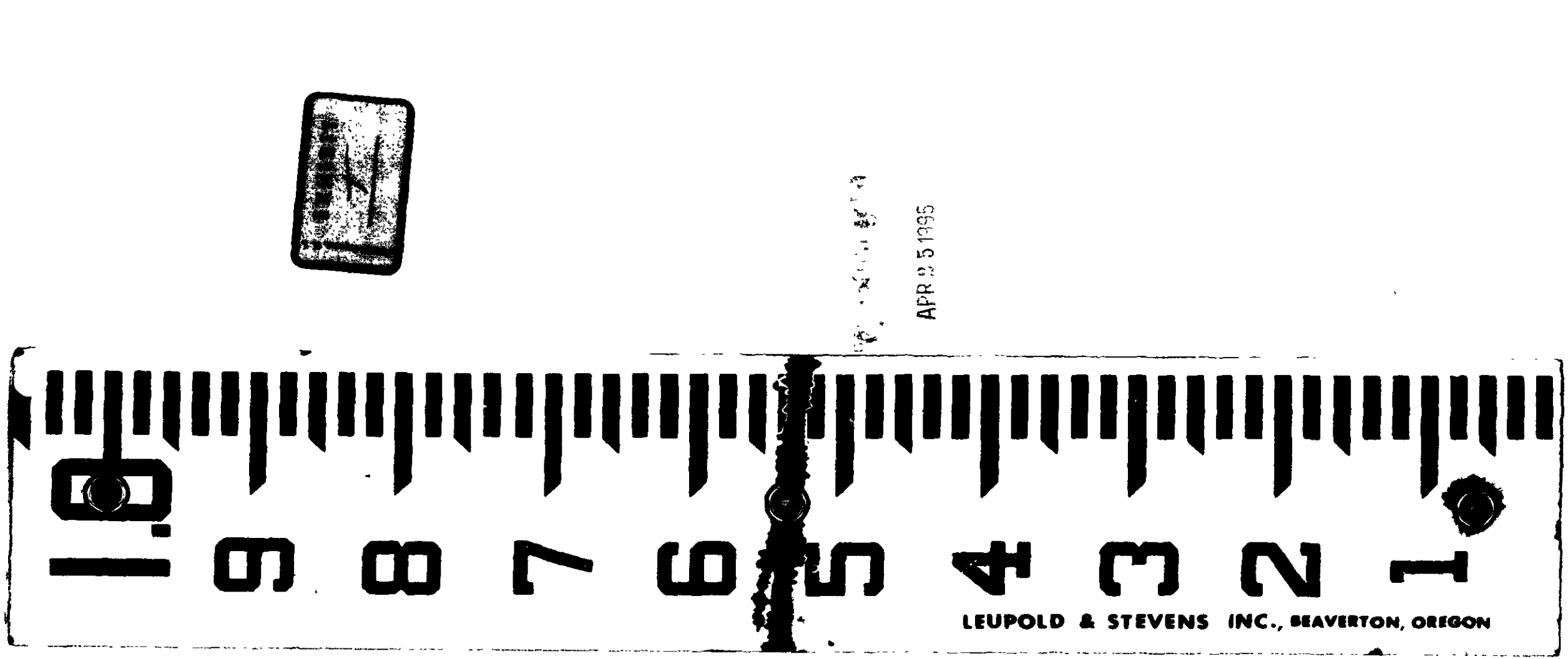
- 4 WAY MEASUREMENT
  - OUTSIDE
  - INSIDE
  - DEPTH
  - STEP
- FRACTIONAL CONVERSION TABLE

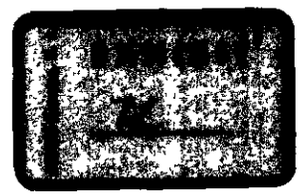


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EXHIBIT R


2 5 1995


APR 25 1995
LEUPOLD & STEVENS INC., BEAVERTON, OREGON



MATERIALS LEASE

Materials Source Bo-51
County of Boise

THIS AGREEMENT, Made and entered into this 26th day of October, 1987, by and between DALE RUMSEY and DONALD RUMSEY, as tenants in common, of 200 Sunrise Rim, Boise, ID 83705, hereinafter called Lessors, and the IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF HIGHWAYS, 3311 West State Street, Boise, ID 83703, hereinafter called the Lessee:

WITNESSETH: That for and in consideration of Eight Thousand and No/100 Dollars ($8,000.00), and other valuable consideration, paid to Lessors by Lessee on Lease Option dated October 30, 1986, receipt whereof is hereby acknowledged, said Lessors have leased and demised and by these presents do lease and demise until October 10, 1992, the following described parcel of land situated in the county of Boise, State of Idaho, to-wit:

$S^{2}NW^{4}NW^{4}NE^{4}$, $SW^{4}NW^{4}NE^{4}$, $W^{2}SW^{4}NE^{4}$, $N^{2}NW^{4}NW^{4}SE^{4}$, and parts of Lots 1, 2, and 3 of Section 26, Township 7 North, Range 2 East, Boise Meridian, as shown on Exhibit "A" and "B", attached hereto and made a part hereof.

Furthermore, it is expressly understood and agreed that the said land is leased subject to the following terms, provisions, and conditions:

1. During the term of this lease, the Lessee or any agent or contractor designated by it shall have the right to go upon the leased premises and remove therefrom materials consisting of earth, rock, sand, or gravel in such amounts as may be needed to supply its requirements at any given time; provided, however, the said Lessee shall not be required to remove any specific amount or any minimum amount of any such materials from the leased premises unless it is otherwise specifically so provided herein.

2. In addition to the above stated consideration paid to Lessors on Lease Option dated October 30, 1986, the Lessee, designated agent, or contractor shall pay Lessors a royalty as follows:

Phase I: For a term of two (2) years, beginning the day of execution of this lease, on a royalty of $0.16 per ton or $0.35 per cubic yard.

Phase II: For a term of three (3) years, immediately following Phase I, on a royalty of $0.18 per ton or $0.40 per cubic yard.

The above stated consideration paid to Lessors on Lease Option shall be deducted from the royalty of the material removed in Phase I before additional royalty payment is made to Lessors.

Said royalties to be based on the engineer's measurements and payable during the first fifteen (15) days of the month next following the one in which the material was taken, or as agreed between the Lessors and the Lessee.

3. The Lessee or the designated agent or contractor shall have the exclusive right to remove materials from the leased premises and neither the Lessors nor any other party shall have such right now or at any time during the term of the lease.

4. The Lessee or the designated agent or contractor shall have the right to set up or install upon the leased premises any machines or structures needed in the excavation and/or production of road building products.

APR 25 1935

5. The Lessee or designated agent or contractor shall have adequate ingress and egress across land owned by the Lessors along the following general route: As shown on Exhibit "B", attached hereto and made a part hereof.

Lessee shall have the right to construct such access roads as it deems necessary and install drainage facilities or other structures as required in connection therewith.

6. Lessee shall have the right to enclose the above described premises with a fence of its own design, which shall remain the property of said Lessee and which shall be removed by it at the termination of this lease; Lessee shall further have the right to remove such portions of Lessors' existing fence as may be required for the construction of access roads or in the course of operation for the removal or processing of said materials.

7. Lessee is hereby granted the right to stockpile on the leased premises and remove processed or manufactured materials from the leased premises at any time during the term of the lease.

8. During the course of stripping operations whereby overburden is removed from over the desired materials, Lessee agrees to place such overburden in the area shown on Exhibit "C", attached hereto and made a part hereof.

WHEREFORE, the above lease has been executed by the respective parties hereto, or by their duly authorized officers or agents, the day and year first above written.

DALE RUMSEY

DONALD RUMSEY

IDAHO TRANSPORTATION DEPARTMENT
DIVISION OF HIGHWAYS

By: _____
J. R. DICK, P.E.
District Three Engineer

STATE OF IDAHO)
) ss.
County of Boise)

On this 26th day of October, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared DALE RUMSEY and DONALD RUMSEY, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for Idaho
Residing at 633 Fulton, Nampa Idaho
My commission expires 5 Oct. 1, 1989

- A1 -

STATE OF IDAHO)
) ss.
County of Ada)

On this 24th day of October, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared J. R. DICK, P.E., known to me to be the District Three Engineer for the IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF HIGHWAYS, whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF HIGHWAYS.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for Idaho
Residing at Meridian
My commission expires 1-25-92

Boise County Idaho ss
Request of
Mtn. View
Time 14 30 M.T
Date 12/14/87
120311

Arlene C Kclar
By Kathie Brady Deputy
Fee 18.00

5 1995

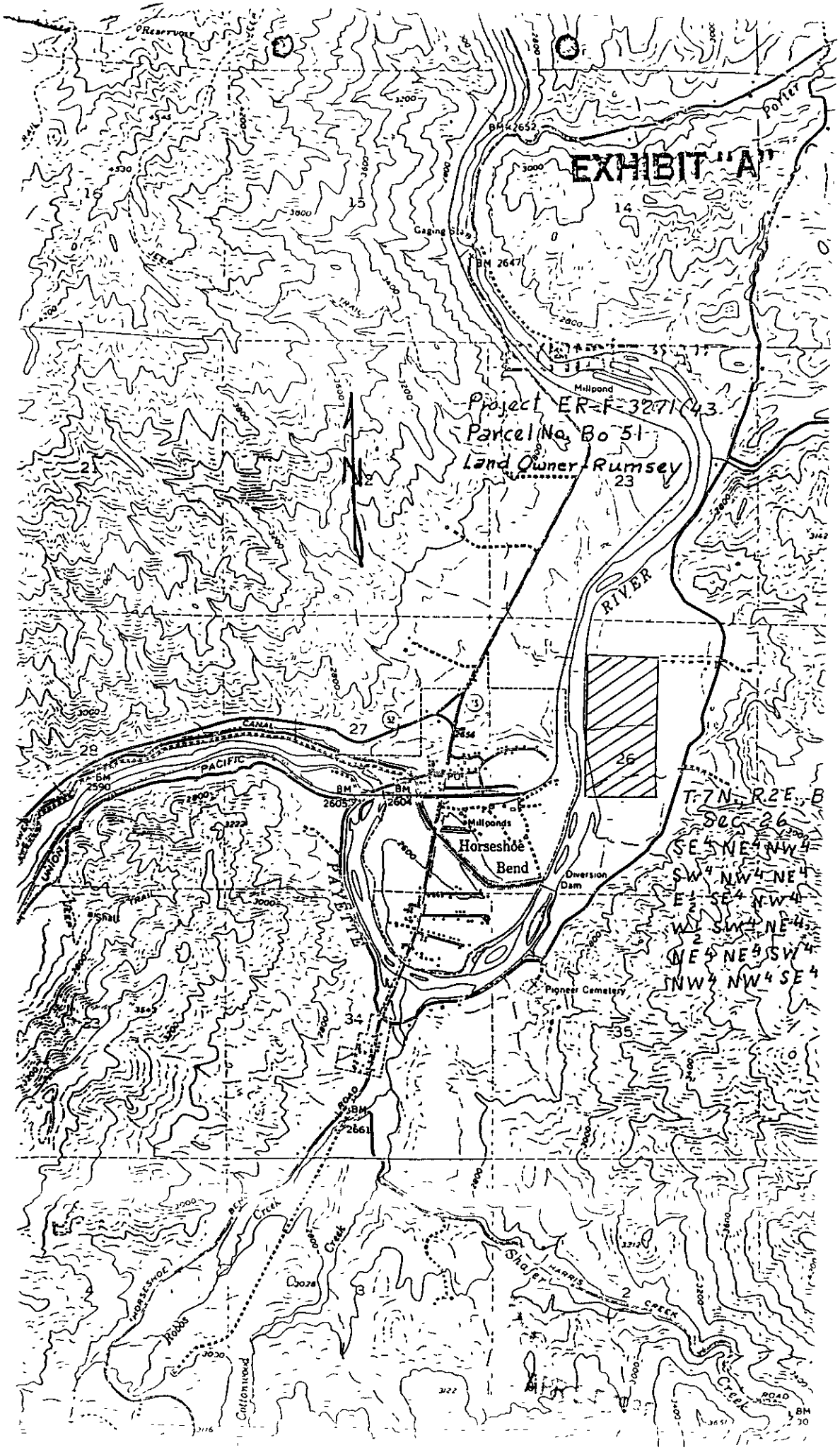
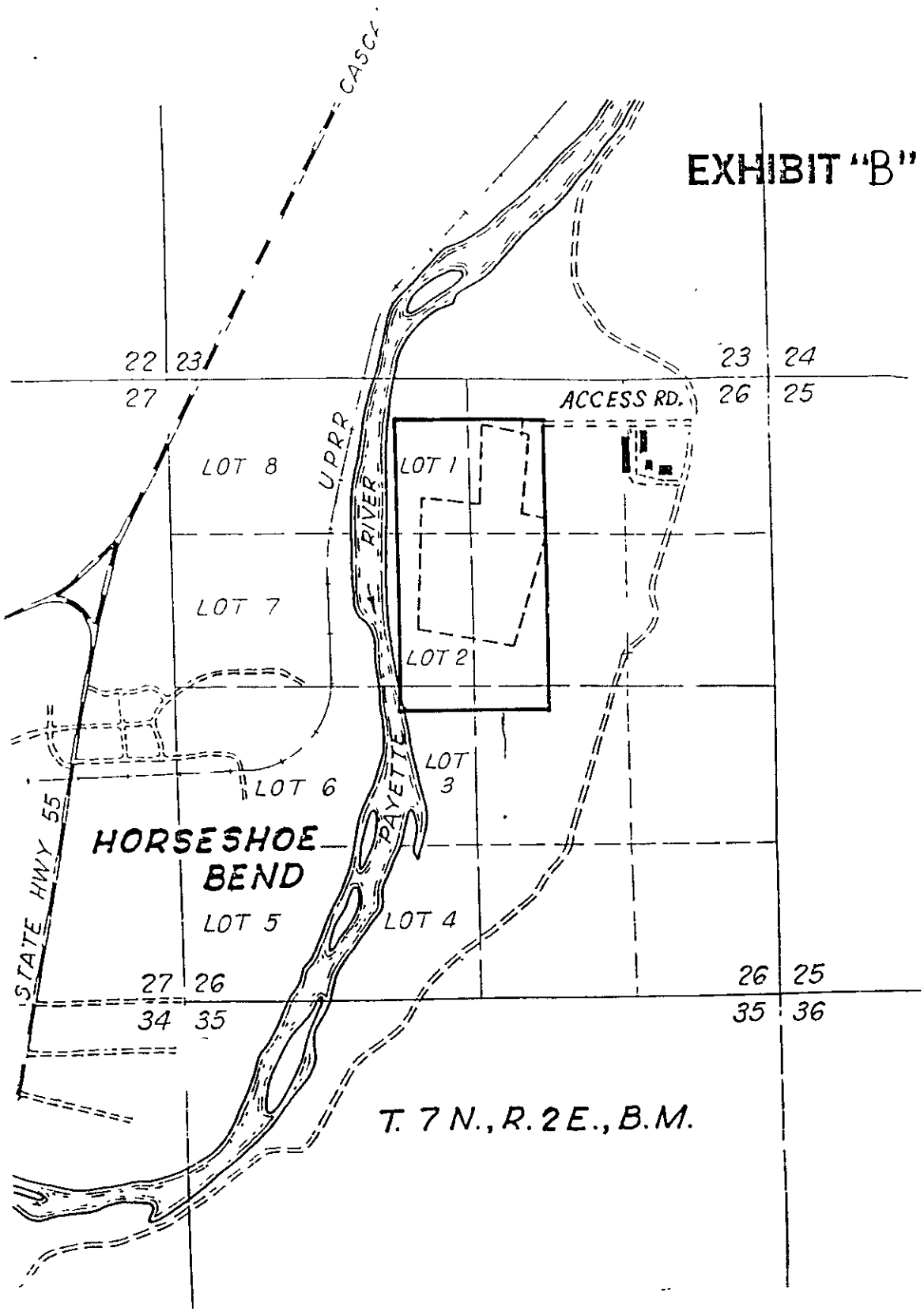

EXHIBIT "A"
Project ER-F-3271(43)
Parcel No. Bo 51
Land Owner Rumsey
T. 7 N. R. 2 E. B
Sec. 26
SE¼ NE¼ NW¼
SW¼ NW¼ NE¼
E½ SE¼ NW¼
W½ SW¼ NE¼
NE¼ NE¼ SW¼
NW¼ NW¼ SE¼
RIVER
CANAL
PACIFIC
PAYETTE
Horseshoe Bend
Millponds
Diversion Dam
Pioneer Cemetery
Millpond
Gaging Sta.
TRAIL
ROAD
Creek
Cottonwood
BM 2590
BM 2605
BM 2604
BM 2661
BM 2647
BM 2652
26
27
34
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14
15
16
21
22
2
3

EXHIBIT "B"



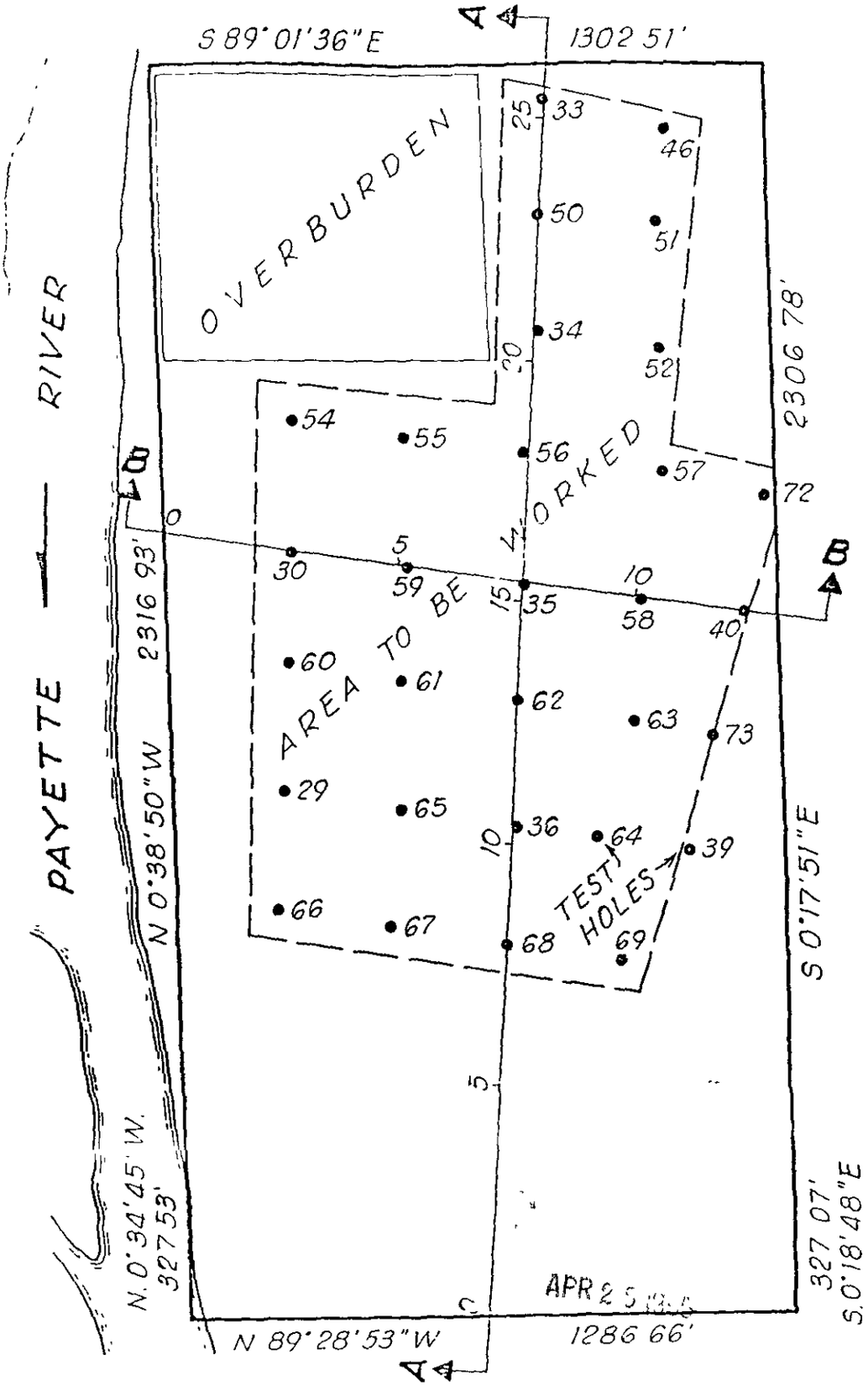
VICINITY MAP

1000 0 3000

Scale in Feet

APR 25 1995

EXHIBIT "C


S 89°01'36"E
1302 51'
OVERBURDEN
RIVER
PAYETTE
N 0°38'50"W
2316 93'
N. 0°34'45" W.
327 53'
N 89°28'53"W
1286 66'
S 0°17'51"E
2306 78'
S 0°18'48"E
327 07'
AREA TO BE WORKED
TEST HOLES
APR 2 5
A
A
B
B
C
C
D
D
25
20
0
5
10
15
10
5
33
46
50
51
34
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55
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72
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SUPPLEMENTAL MATERIALS LEASE

Material Source Bo-51

This is a Supplemental Agreement, made and entered in this ____ day of November, 1988, by and between DALE RUMSEY and DONALD RUMSEY, as tenants in common, of 200 Sunrise Rim, Boise, Idaho 83705, hereinafter called "LESSOR", and the IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF HIGHWAYS, 3311 West State Street, Boise, Idaho 83703, hereinafter called "LESSEE".

WITNESSETH: This Supplemental Materials lease is to correct Item #2 of the original materials lease on Material Source Bo-51 dated October 26, 1987, and recorded as Instrument No. 126311 on December 14, 1987. All other items of the original agreement will remain in full force as originally agreed.

Item #2 is hereby changed to correct an error in the cost conversion from cubic yards to tons, to read as follows:

2. In addition to the above stated consideration paid to Lessors on Lease Option dated October 30, 1986, the Lessee, designated agent, or contractor shall pay Lessors a royalty as follows:

Phase I: For a term of two (2) years, beginning the day of execution of this lease, on a royalty of $0.24 per ton or $0.35 per cubic yard.

Phase II: For a term of three (3) years, immediately following Phase I, on a royalty of $0.275 per ton or $0.40 per cubic yard.

The above stated consideration paid to Lessors on Lease Option shall be deducted from the royalty of the material removed in Phase I before additional royalty payment is made to Lessors.

All royalties paid under this supplemental materials lease shall be retroactive to the initiation of the material removal of said source.

Said royalties to be based on the engineer's measurements and payable during the first fifteen (15) days of the month next following the one in which the material was taken, or as agreed between the Lessors and the Lessee. The final payment to be based upon the remeasurement of the borrow source at termination of said lease.

DALE RUMSEY

Donald Rumsey

DONALD RUMSEY

IDAHO TRANSPORTATION DEPARTMENT
DIVISION OF HIGHWAYS

By: R. T. Irwin
for J. R. Dick, P. E.

APP 5 1990

District Three Engineer

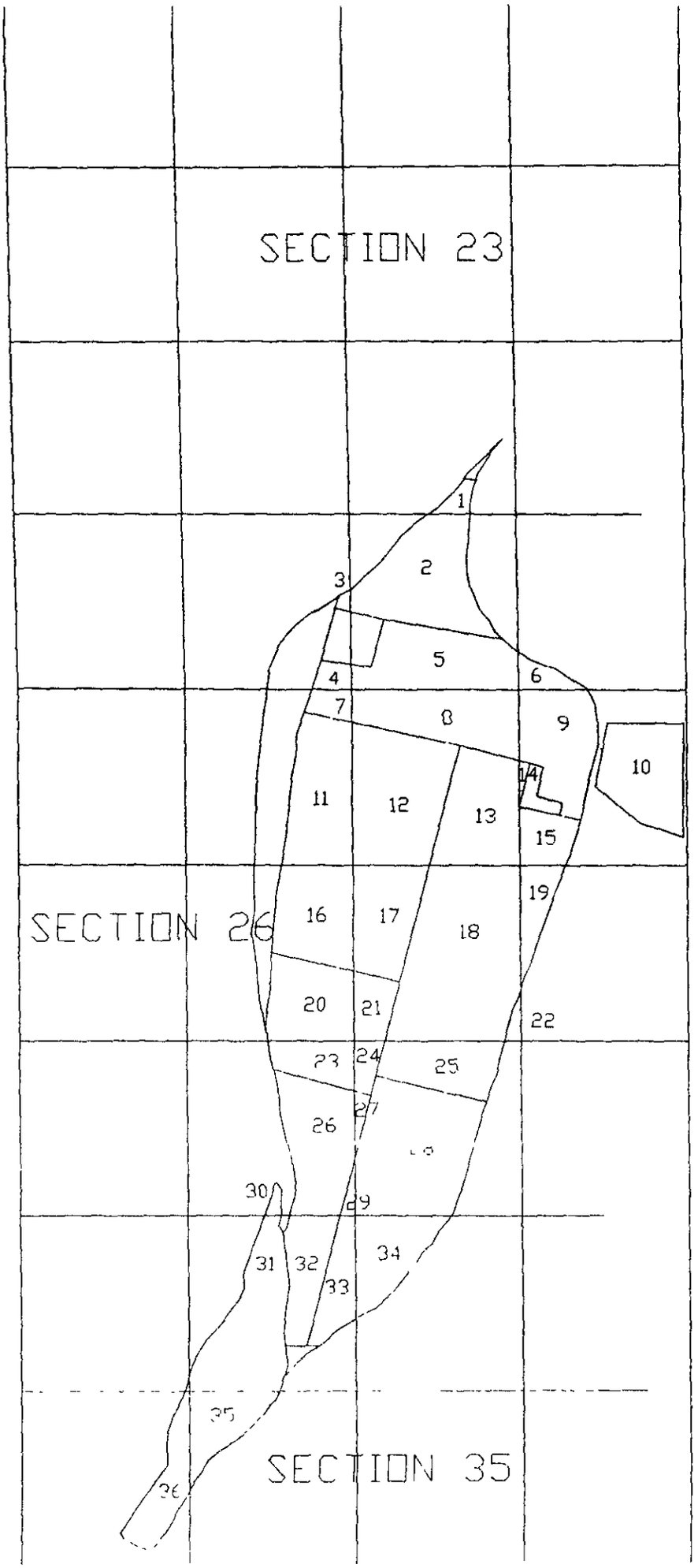
STATE OF IDAHO)
) ss.
County of Boise)

On this ____ day of _____, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared DALE RUMSEY and DONALD RUMSEY, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Catherine M. Keyte
Notary Public for Idaho
Residing at Boise, ID.
My commission expires 4-14-94

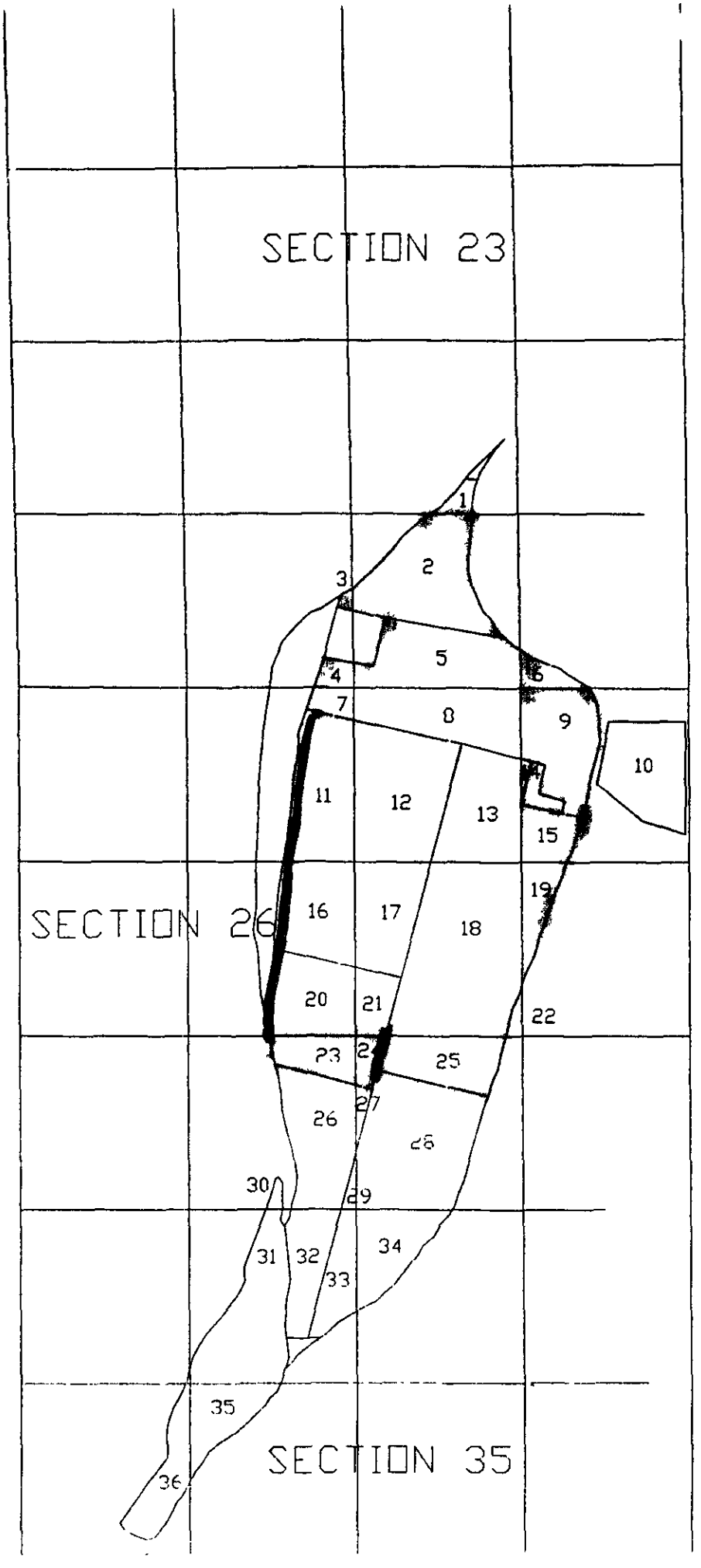
APR 25 1995



1-1.10 ACRES
2-14.10 ACRES
3-.31 ACRES
4-1.29 ACRES
5-11.88 ACRES
6-1.90 ACRES
7-1.66 ACRES
8-11.38 ACRES
9-10.56 ACRES
10-10.47 ACRES
11-12.22 ACRES
12-16.48 ACRES
13-11.27 ACRES
14-.34 ACRES
15-3.84 ACRES
16-10.21 ACRES
17-9.26 ACRES
18-26.05 ACRES
19-3.81 ACRES
20-9.07 ACRES
21-3.35 ACRES
22-.64 ACRES
23-4.48 ACRES
24-1.68 ACRES
25-7.73 ACRES
26-11.71 ACRES
27-.72 ACRES
28-19.07 ACRES
29-.60 ACRES
30-.47 ACRES
31-13.56 ACRES
32-6.54 ACRES
33-4.91 ACRES
34-7.58 ACRES
35-5.89 ACRES
36-5.99 ACRES

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Exhibit
V



1-1.10 ACRES
2-14.10 ACRES
3-.31 ACRES
4-1.29 ACRES
5-11.88 ACRES
6-1.90 ACRES
7-1.66 ACRES
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27-.72 ACRES
28-19.07 ACRES
29-.60 ACRES
30-.47 ACRES
31-13.56 ACRES
32-6.54 ACRES
33-4.91 ACRES
34-7.58 ACRES
35-5.89 ACRES
36-5.99 ACRES

APR 2 5 1995

PORTER CREEK ACRES

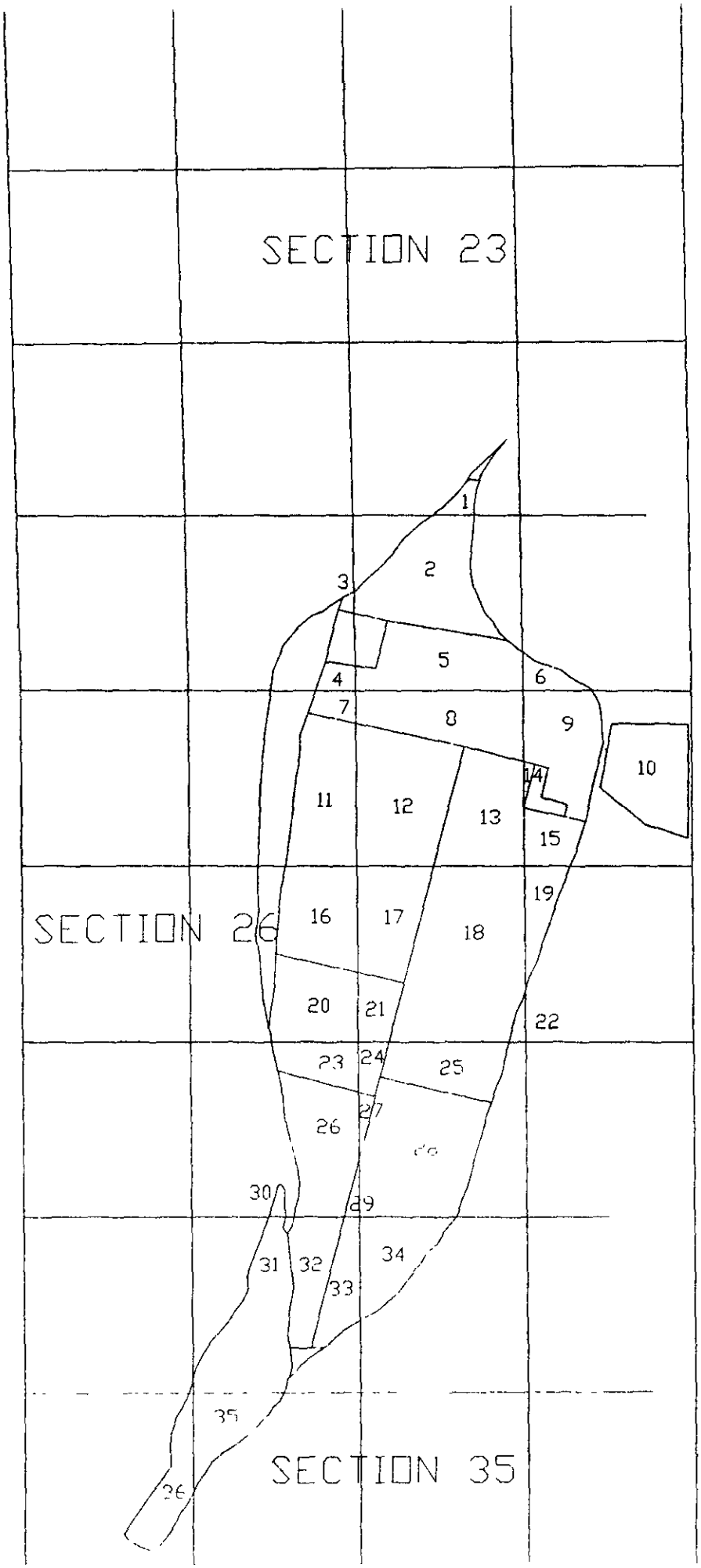
Parcel	Priority No. 1 65-03103 Acres	Priority No. 12 65-10746 Acres	No Porter Creek Water Right
1		1.10	
2	14.10		
3	.31		
4	1.29		
5	11.88		
6			1.90
7	1.66		
8	11.38		
9	10.56		
10		10.47	
11	12.22		
12	16.48		
13	11.27		
14			Blds. .34
15	3.84		
16	10.21		
17	9.26		
18	26.05		
19	3.81		
20	9.07		
21	3.35		
22			.64 out
23		4.48	
24		1.68	
25	7.73		
Totals	164.47	17.73	2.88

APR 2 5 1995

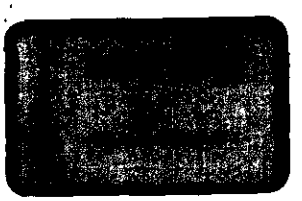
PORTER CREEK GRAVEL PIT ACRES

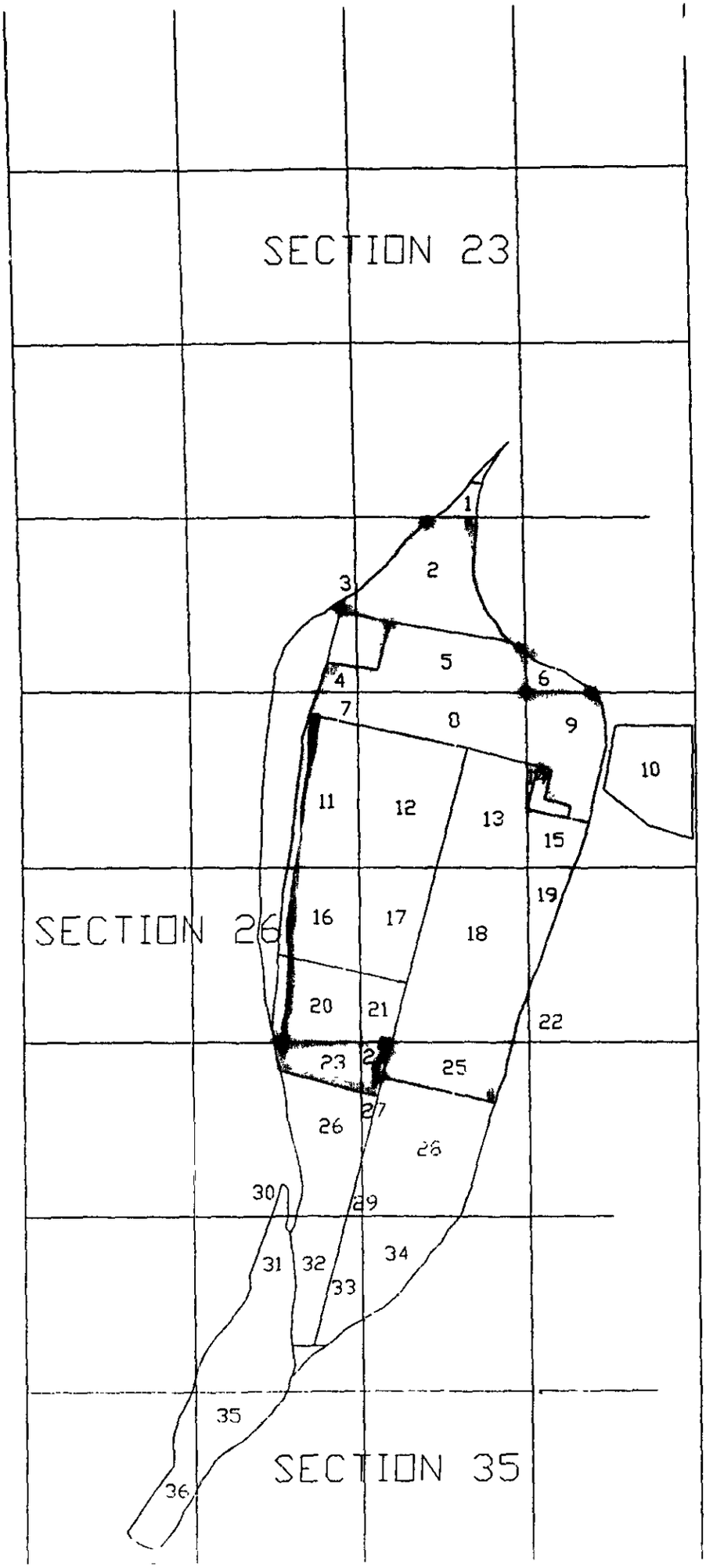
Parcel	Priority No. 1 65-03103 Acres	Priority No. 12 65-10746 Acres
11	12.22	
12	16.48	
16	10.21	
17	9.26	
20	9.07	
21	3.35	
23		4.48
24		1.68
Totals	60.59	6.16
	164.47	17.73
	-60.59	-6.16
	103.88	11.57

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1-1.10 ACRES
2-14.10 ACRES
3-.31 ACRES
4-1.29 ACRES
5-11.88 ACRES
6-1.90 ACRES
7-1.66 ACRES
8-11.38 ACRES
9-10.56 ACRES
10-10.47 ACRES
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14-.34 ACRES
15-3.84 ACRES
16-10.21 ACRES
17-9.26 ACRES
18-26.05 ACRES
19-3.81 ACRES
20-9.07 ACRES
21-3.35 ACRES
22-.64 ACRES
23-4.48 ACRES
24-1.68 ACRES
25-7.73 ACRES
26-11.71 ACRES
27-.72 ACRES
28-19.07 ACRES
29 .60 ACRES
30-.47 ACRES
31-13.56 ACRES
32-6.54 ACRES
33-4.91 ACRES
34-7.58 ACRES
35-5.89 ACRES
36-5.99 ACRES





1-1.10 ACRES
2-14.10 ACRES
3-.31 ACRES
4-1.29 ACRES
5-11.88 ACRES
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7-1.66 ACRES
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36-5.99 ACRES

PORTER CREEK ACRES

Parcel	Priority No. 1 65-03103 Acres	Priority No. 12 65-10746 Acres	No Porter Creek Water Right
1		1.10	
2	14.10		
3	.31		
4	1.29		
5	11.88		
6			1.90
7	1.66		
8	11.38		
9	10.56		
10		10.47	
11	12.22		
12	16.48		
13	11.27		
14			Blds. .34
15	3.84		
16	10.21		
17	9.26		
18	26.05		
19	3.81		
20	9.07		
21	3.35		
22			.64 out
23		4.48	
24		1.68	
25	7.73		
Totals	164.47	17.73	2.88

PORTER CREEK GRAVEL PIT ACRES

Parcel	Priority No. 1 65-03103 Acres	Priority No. 12 65-10746 Acres
11	12.22	
12	16.48	
16	10.21	
17	9.26	
20	9.07	
21	3.35	
23		4.48
24		1.68
Totals	60.59	6.16
	164.47	17.73
	-60.59	-6.16
	103.88	11.57

2 5 1995

RECEIVED
APR 2 8 1995
Department of Water Resources

COPY
NO. _____
FILED
A.M. _____ P.M. _____
APR 2 6 1995
J. DAVID NAVARRO, Clerk
By JAMIE SMITH
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

GEORGE DOVEL,

Protestant/Appellant,

vs.

DOUBLE DIAMOND, INC.,

Applicant/Respondent,

and

IDAHO DEPARTMENT OF WATER RESOURCES,

Respondent.

Case No. CV-OC-95-00926-D

ORDER GRANTING MOTION TO DISMISS

Transfer
4159

The motion of Respondent Double Diamond, Inc., for dismissal of the petition for review filed herein by Petitioner George Dovel came on regularly for hearing before the Court at 3:30 p.m. on April 13, 1995. The movant appeared through its attorney, Jim Jones; Petitioner appeared in person, representing himself; and Respondent Idaho Department of Water Resources appeared through its counsel, Phillip J. Rassier. The parties supplemented their written briefing with oral argument. Following the submission of the matter and after having been fully advised in the premises, the Court determined as follows:

(1) The Final Order from which Petitioner sought relief in this matter was issued on January 30, 1995. Petitioner filed his petition for judicial review on February 28, 1995, the 29th day following issuance of said Final Order.

(2) The Court lacks jurisdiction to hear this matter because the requirement of I.C. § 67-5273(2), that petitions for judicial review must be filed within 28 days of the issuance of a final order, is a jurisdictional requirement that may not be extended.

(3) The Idaho Department of Water Resources failed to serve, along with the Final Order, its standard cover letter describing the effect of the final decision and also describing further procedural options available to the parties.

(4) Idaho Code § 67-5248(1)(b) pertains only to administrative relief and does not require an agency's order to include a statement of available procedures and applicable time limits for judicial relief.

(5) Failure of the Idaho Department of Water Resources to include or serve its standard cover letter with the Final Order, as required by departmental regulations, does not affect the validity of the Final Order nor excuse Petitioner's failure to file the petition for judicial review within the jurisdictional 28-day period.

(6) The petition for judicial review must be dismissed pursuant to I.R.C.P. 12(h)(3) and 83(s) because this Court does not have jurisdiction to entertain said petition.

NOW, THEREFORE, by reason of the law and the premises;

JUN 0 2 2004

IT IS HEREBY ORDERED that the motion to dismiss be, and it is hereby, granted and the petition in this matter is hereby dismissed, with prejudice.

DATED this 26 day of April, 1995.

D. DUFF McKEE

HONORABLE D. DUFF MCKEE
District Judge

AN APPEAL HAS BEEN FILED WITH THE ADA COUNTY FOURTH DISTRICT COURT, Case No. CVOC-9500926 (Judge McKee). Phillip J. Rassier presenting IRDWR.

SEE ATTACHED COPY OF PROTESTANT'S PETITION FOR REVIEW.

8 1995

Fred w/court 2/28/95.

COPY

RECEIVED
MAR 1 1995
Department of Water Resources

George Dovel, Protestant
Pro Se
Route 1, Box 61
Horseshoe Bend, Idaho 83629
Telephone: (208) 793-2768
Facsimile: (208) 793-2768

BEFORE THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

DOUBLE DIAMOND, INC. and DONALD RUMSEY,

Applicant,

GEORGE DOVEL,

Protestant.

Case No. CVOC-9500926

PROTESTANT'S PETITION FOR REVIEW

COMES NOW, the protestant, George Dovel, files this petition for review and alleges as follows:

1.

When used in this petition, the terms following shall have the

FEB 28 1995

meanings following:

(a) "Subject Application for Transfer" means the application for transfer of water rights numbers 65-3103, 65-10746, 65-10747 and 65-02540, attached hereto as **Exhibit A**.

(b) "Subject Protest to Application for Transfer" means the letter of protest by George Dovel dated April 18, 1991, attached hereto as **Exhibit B**.

(c) "Subject Petition to Declare Water Rights Terminated" means the petition filed by George Dovel dated May 13, 1991, attached hereto as **Exhibit C**.

(d) "Subject Notice of Conference 1" means the notice of conference dated July 23, 1991, attached hereto as **Exhibit D**.

(e) "Subject Order on Petition to Declare Water Rights Terminated" means the order dated July 29, 1991, addressing the Subject Petition to Declare Water Rights Terminated, attached hereto as **Exhibit E**.

(f) "Subject Motion to Reset Conference" is the motion to reset conference filed by the applicant herein attached hereto as **Exhibit F**.

(g) "Subject Change of Conference Date" means the change of conference date dated August 9, 1991, attached hereto as **Exhibit G**.

(h) "Subject Amended Application for Transfer" means the amended application for transfer of water right numbers 65-3103, 65-10746, 65-10747 and 65-02540, attached hereto as

8 1995

Exhibit H.

(i) "Subject Notice of Conference 2" means the notice of conference dated August 14, 1992, attached hereto as **Exhibit I.**

(j) "Subject Notice of Hearing 1" means the notice of conference dated February 2, 1993, attached hereto as **Exhibit J.**

(k) "Subject Notice of Continued Hearing" means the notice of continued hearing dated March 10, 1993, attached hereto at **Exhibit K.**

(l) "Subject Applicant's Brief" means the brief submitted by the applicant dated April 2, 1993, attached hereto as **Exhibit L.**

(m) "Subject Protestant's Brief" means the brief submitted by the protestant dated May 6, 1993, attached hereto as **Exhibit M.**

(n) "Subject Applicant's Response Brief" means the responsive brief submitted by the applicant dated May 28, 1993, attached hereto as **Exhibit N.**

(o) "Subject Protestant's Responsive Brief" means the responsive brief submitted by the protestant dated June 14, 1993, attached hereto as **Exhibit O.**

(p) "Subject Recommended Order" means the order addressing the application for transfer dated July 30, 1993, and served August 2, 1993, attached hereto as **Exhibit P.**

8 1995

(q) "Subject Exceptions to Recommended Order" means the exceptions dated August 23, 1993, by the protestant to the recommended order attached hereto as **Exhibit Q.**

(r) "Subject Order for Augmentation of Record" means the order for augmentation of the record dated October 27, 1993, attached hereto **Exhibit R.**

(s) "Subject Notice of Hearing 2" means the notice of hearing dated December 16, 1993, attached hereto as **Exhibit S.**

(t) "Subject Protestant's Motion to Vacate Augmentation Order" means the motion filed by the protestant to vacate the subject order for augmentation of record dated December 23, 1993, attached hereto as **Exhibit T.**

(u) "Subject Order Vacating Augmentation Order" means the order vacating augmentation order and hearing and remanding the matter for additional hearings dated December 29, 1993, attached hereto as **Exhibit U.**

(v) "Subject Notice of Hearing 3" means the notice of hearing dated December 29, 1993, attached hereto as **Exhibit V.**

(w) "Subject Letter Protesting Water Measurements 1" means a letter to the hearing officer written by protestant's attorney dated March 25, 1994, requesting that water measurements be taken as agreed, attached hereto as **Exhibit W.**

(x) "Subject Letter Protesting Water Measurements 2" means a letter to the hearing officer written by protestant's attorney dated April 7, 1994, requesting that water measurements be taken as agreed, attached hereto as **Exhibit X.**

(y) "Subject Letter Protesting Water Measurements 3" means a letter to the hearing officer written by protestant's dated May 27, 1994, protesting the method of water measurements, attached hereto as **Exhibit Y**.

(z) "Subject Amended Notice of Hearing" means the notice of hearing dated February 8, 1994, attached hereto as **Exhibit Z**.

(aa) "Subject Amended Recommended Order" means the amended order addressing the application for transfer dated July 8, 1994, and served July 12, 1994, attached hereto as **Exhibit AA**.

(bb) "Subject Exceptions to Amended Recommended Order" means the exceptions dated August 2, 1994, by the protestant to the amended recommended order attached hereto as **Exhibit BB**.

(cc) "Subject Final Order" means the final order addressing the application for transfer dated January 30, 1995, attached hereto as **Exhibit CC**.

2.

Exhibit A attached hereto and incorporated herein is a true copy of the original Subject Application for Transfer.

3.

Exhibit B attached hereto and incorporated herein is a true copy of the original Subject Protest to Application for Transfer.

4.

Exhibit C attached hereto and incorporated herein is a true copy of the original Subject Petition to Declare Water Rights

2 8 1995

Terminated.

5.

Exhibit D attached hereto and incorporated herein is a true copy of the original Subject of Notice of Conference 1.

6.

Exhibit E attached hereto and incorporated herein is a true copy of the original Subject Order on Petition to Declare Water Rights Terminated.

7.

Exhibit F attached hereto and incorporated herein is a true copy of the original Subject Motion to Reset Conference Date.

8.

Exhibit G attached hereto and incorporated herein is a true copy of the original Subject Change of Conference Date.

9.

Exhibit H attached hereto and incorporated herein is a true copy of the original Subject Amended Application for Transfer.

10.

Exhibit I attached hereto and incorporated herein is a true copy of the original Subject Notice of Conference 2.

11.

Exhibit J attached hereto and incorporated herein is a true copy of the original Subject Notice of Hearing 1.

12.

Exhibit K attached hereto and incorporated herein is a true

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copy of the original Subject Notice of Continued Hearing.

13.

Exhibit L attached hereto and incorporated herein is a true copy of the original Subject Applicant's Brief.

14.

Exhibit M attached hereto and incorporated herein is a true copy of the original Subject Protestant's Brief.

15.

Exhibit N attached hereto and incorporated herein is a true copy of the original Subject Applicant's Response Brief.

16.

Exhibit O attached hereto and incorporated herein is a true copy of the original Subject Protestant's Responsive Brief.

17.

Exhibit P attached hereto and incorporated herein is a true copy of the original Subject Recommended Order.

18.

Exhibit Q attached hereto and incorporated herein is a true copy of the original Subject Exceptions to Recommended Order.

19.

Exhibit R attached hereto and incorporated herein is a true copy of the original Subject Order for Augmentation of Record.

20.

Exhibit S attached hereto and incorporated herein is a true copy of the original Subject Notice of Hearing 2.

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21.

Exhibit T attached hereto and incorporated herein is a true copy of the original Subject Protestant's Motion to Vacate Augmentation Order.

22.

Exhibit U attached hereto and incorporated herein is a true copy of the original Subject Order Vacating Augmentation Order.

23.

Exhibit V attached hereto and incorporated herein is a true copy of the original Subject Notice of Hearing 3.

24.

Exhibit W attached hereto and incorporated herein is a true copy of the original Subject Letter Protesting Water Measurements 1.

25.

Exhibit X attached hereto and incorporated herein is a true copy of the original Letter Protesting Water Measurements 2.

26.

Exhibit Y attached hereto and incorporated herein is a true copy of the original Letter Protesting Water Measurements 3.

27.

Exhibit Z attached hereto and incorporated herein is a true copy of the original Subject Amended Notice of Hearing.

28.

Exhibit AA attached hereto and incorporated herein is a true

copy of the original Subject Amended Recommended Order.

29.

Exhibit BB attached hereto and incorporated herein is a true copy of the original Subject Exceptions to Amended Recommended Order.

30.

Exhibit CC attached hereto and incorporated herein is a true copy of the original Subject Final Order.

31.

On March 8 and 11, 1993, and on March 9, 1994, hearings were held before the Department of Water Resources of the State of Idaho (Subject Administrative Agency herein) on the Subject Application for Transfer and the Subject Amended Application for Transfer.

32.

The Subject Protest to Application for Transfer set forth good and valid objections to the Subject Application for Transfer and the Subject Amended Application for Transfer and should have been allowed.

33.

The Subject Exceptions to Recommended Order and the Subject Exceptions to Amended Recommended Order set forth good and valid objections to the Subject Recommended Order and the Subject Amended Recommended Order which should have been allowed.

34.

The Subject Petition to Declare Water Rights Terminated set

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forth good and valid reasons for one half of the water right to be declared forfeited and should have been allowed.

35.

The Subject Letters Protesting Water Measurements 1, 2 and 3 protesting water measurements set forth good and valid objections to the method of water measurements as agreed upon by the parties and should have been allowed.

36.

Substantial rights of the protestant have been prejudiced because of the delays by the Subject Administrative Agency in resolving the issues involved in the Subject Protest to the Application for Transfer as evidenced by the Subject Notice of Conference 1, Subject Motion to Reset Conference, Subject Change of Conference Date, Subject Notice of Conference 2, Subject Notice of Hearing 1, Subject Notice of Continued Hearing, Subject Notice of Hearing 2, Subject Notice of Hearing 3, and Subject Amended Notice of Hearing.

37.

Following such hearings, the Subject Administrative Agency erroneously issued the Subject Final Order.

38.

Substantial rights of the protestant have been prejudiced because of the administrative findings, inferences, conclusions, or decisions which are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the Subject Administrative Agency;

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(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, the protestant prays as follows:

1. That this Court set a hearing date on this petition for review.

2. That the Subject Protest for Application for Transfer, the Subject Exceptions to Recommended Order, the Subject Exceptions to Amended Recommended Order, and the Subject Petition to Declare Water Rights Terminated (declaring one half of the water right forfeited) be granted; the Subject Final Order be reversed; and the Subject Application for Transfer and the Subject Amended Application for Transfer be denied.

3. That this Court enter its order granting such other and further relief to the protestant as may be just.

4. That the protestant recover his costs and disbursements herein.

SERVICE BY DELIVERY: The undersigned hereby certifies that a true copy hereof was this date delivered to the offices of: **ALAN G. LANCE, ATTORNEY GENERAL, STATE OF IDAHO,** Statehouse, Boise, Idaho 83720; and to **JACK C. RIDDLEMOSER, ATTORNEY AT LAW,** 712 East Fairview Avenue, Meridian, Idaho 83642.

DATED: February 28, 1995

SIGNED: George Dovel

George Dovel, Protestant
Pro Se

MAR 8 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.	)	**FINAL ORDER**

A recommended order was issued on July 30, 1993, attempting to resolve protests against an application for transfer filed by Double Diamond, Inc. Because of unresolved questions of fact, the hearing officer ordered that additional evidence be taken. On March 9, 1994, a supplemental hearing was conducted for the taking of additional evidence. The supplemental hearing was conducted prior to the 1994 irrigation season, and the parties stipulated to measure the flow in the Porter Creek system according to fixed criteria established prior to the measurement at the beginning of the 1994 irrigation season. The flow capacity of the system was measured on May 11th and 12th, 1994.

On July 8, 1994, an amended recommended order was issued. In response to the amended recommended order, the protestant, George Dovel (Dovel), through his attorney, Richard B. Eismann, filed exceptions to the amended recommended order, and requested oral arguments.

EXCEPTION ANALYSIS

Exceptions to Findings of Fact

The exceptions are detailed and lengthy, and prevent a full recitation here. They will be addressed in subject groups.

Dovel alleges that Double Diamond's early priority right may not have been deliverable, or at least not fully deliverable during some years. The allegation does not change the statement in finding of fact number eleven that George Dovel's number six and seven rights were only deliverable in the early part of the irrigation season during low water years.

Dovel argues that when a full supply of Porter Creek water could not be diverted to the Double Diamond properties, Double Diamond diverted its full water supply from the Payette River, and he was able to divert water later in the season. This statement is

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disputed by later testimony by Donald Rumsey, who testified regarding the operation of the system, including when the river pump was turned on, and when the booster pump was operating prior to excavation by the Idaho Department of Transportation. Furthermore, the Department will not hold that a portion of the water right is lost during a part of the year because at times Double Diamond had decided to use its water supply from the Payette River rather than from Porter Creek.

Dovel alleges that excavation of the gravel pit began in 1987, not 1988. Furthermore, Dovel alleges that gravel pit land had not been irrigated with Porter Creek water. The records show that the contract for the Idaho Department of Transportation was signed in 1987, but significant excavation did not begin until 1988. Furthermore, there is testimony in the record that the gravel pit lands were irrigated with Porter Creek water up through 1987. Dovel bore the burden of establishing nonuse on the gravel pit lands for the period he alleges. He did not clearly establish nonuse for any period earlier than 1988 through 1992.

Dovel alleges that the estimate of the total gravel pit excavation, and the finished gravel pit are inaccurate and not supported by the record. The estimates of 56 acres total excavation during the peak of construction, and the area of 22 acres remaining in the gravel pit are supported by the record. Rumsey was the only witness who physically measured the area of the Double Diamond property remaining as the gravel pit.

Nottingham, an employee of the Department of Transportation, testified that reclamation was not complete because a portion of the gravel pit was left as an excavation. He also testified that other partially reclaimed portions, were not completely restored, but gave no testimony whether there was any topsoil or not. In fact, Nottingham testified he lacked knowledge as to whether the topsoil was placed on the land.

At the second hearing held in the spring of 1994, Donald Rumsey testified that all of the land except for the 22 acres within the gravel pit had been irrigated with Porter Creek water during 1993.

Dovel alleges a portion of finding of fact number 17 states that there is sufficient head to operate sprinklers is a misrepresentation. Dovel then seeks to have the decision recite information about the number of sprinkler heads that can operate, and that there were changes made in the system which will increase the flow above his measurements.

Pressure may drop in the system as more sprinklers are added, until the pressure (or more accurately, velocity exiting the nozzles of the sprinklers) will no longer operate the impact sprinklers. Dovel agrees, however, there is sufficient pressure to

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operate some sprinklers, which is all the statement intends to establish.

Dovel states the Department misquotes his testimony in finding of fact number 20. The decision states: "Dovel alleges the system can be managed correctly" by adjusting valves in the Payette River line until there is no overflow. The record reveals Dovel's exception is correct. The misquote is stricken from finding of fact number 20.

Dovel objects to a statement that watermaster records show Double Diamond diverted the full amount of its reduced entitlement of 2.79 cfs. Dovel established at the time that there was water wasted into Jackass Creek when 2.79 cfs was diverted. Therefore the following statement will be added to finding of fact number 25: " Dovel established that water was wasted through the overflow flow pipe into Jackass Creek when 2.79 cfs was diverted."

Dovel alleges that finding of fact number 28 misrepresents the method Dovel used to measure Double Diamond's water diversion. Dovel may have, at times, measured all of the sprinklers in a particular line. The finding of fact, however, tracks Dovel's testimony that he did not always measure every sprinkler, and that at times, he would measure representative sprinkler heads, average the discharge, and multiply by the number of sprinklers. The distinction is not significant.

Dovel alleges that finding of fact number 29 misrepresents his testimony. Dovel clearly testified, however, that he estimated a discharge of 60 inches from the Double Diamond sprinklers.

Dovel also estimated that Double Diamond could divert approximately 2.0 cfs before there was significant waste in Jackass Creek. His estimate of discharge through the system of 1.2 cfs (60 miners inches) is significantly more than 15% of the total output alleged in the exceptions.

Dovel testified once that up to 1.4 cfs could be diverted without any waste to Jackass Creek. Testimony regarding diversion of 2.0 cfs is the testimony that the hearing officer relied upon, however.

Dovel objects to portions of finding of fact number 29 and 30, which discuss a restricted ability of Double Diamond to divert its full water entitlement. Finding of fact number 30 states that "the decrease in irrigated acreage as a result of gravel pit excavation," decreased "the ability of Double Diamond to divert its full water right." Dovel alleges that this statement ignores hydrologic principles, and Dovel's measurements established that any increase in the number of sprinkler heads beyond 148 sprinklers substantially reduced the pressure to where the system would not operate properly.

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Dovel's measurements may or may not be correct. The later measurement of the system capacity by Scott King suggests a higher system capacity than alleged by Dovel.

Dovel alleges that the measurement by Scott King was not conducted according to criteria agreed upon by the parties. At the second hearing, the parties discussed mutually agreeing to measure the capacity of the system. The hearing officer expressed reservation about allowing a post hearing measurement because of fears that the dissatisfied party would object, and, as a result, perhaps raise the specter of a third hearing. Based on assurances from the parties that acceptable criteria could be established for measurement, the Department assigned Scott King, a person who was not familiar with any of the Porter Creek controversy, to establish the criteria with the parties, and measure the water flow. In addition, Dovel hired Sherl Chapman, a professional geologist, to attend and oversee the measurements. The date was prearranged, and the criteria was agreed to by the parties. Mr. Chapman had to leave midway through the measurement.

If the focus of this decision is limited to the gravel pit impact area, as suggested by the amended recommended decision, and is not expanded to a review of the entire flow rate diverted and the total number of acres irrigated, the measurement of total system diversion, and total acreage irrigated is irrelevant. The question of whether the further discussion of the total diversion and place of use measurements should be considered is dependent upon a discussion about the conclusions of law. This discussion is contained in the following analysis of exceptions to conclusions of law.

Dovel argued that certain lands lying between the airstrip and the Payette River had never been irrigated. Again this issue relates to the physical boundaries within which the Department will consider the issue of forfeiture, which is discussed below.

Exceptions to Conclusions of Law

The exceptions to the conclusions of law are better discussed in a narrative form without following the order of the exceptions.

First, I agree with the hearing officer that the scope of the review should be limited to the gravel pit impact area. It is only within the gravel pit impact area that the excavation for the gravel pit took place, and it is to and from the 22 acres remaining as a gravel pit Double Diamond is attempting to transfer water. The status of the entire diversion rate was not brought into question by this application for transfer. Furthermore, the status of the entire place of use described by the right is not brought into question by this application for transfer. The larger issues of forfeiture of the total system flow rate and forfeiture of portions of the entire place of use are now pending before the

adjudication court, and should be resolved there. Conclusion of law number 13 in the amended proposed order, which refers to an interim order by the adjudication judge prohibiting communication with claimants, should not be quoted because the order has been lifted. The conclusion of law should be stricken.

A more difficult question of law is whether a portion of the Double Diamond right within the gravel pit area has been forfeited. I hold that the right originally applied to the gravel pit impact area is not forfeited, and the right sought to be transferred into the gravel pit is not forfeited. There are at least two defenses to forfeiture which could be applied in this case, together with equitable reasons why the rights diverted from Porter Creek should not be forfeited.

Double Diamond filed an application for transfer in March of 1991, two irrigation seasons before a forfeiture could have occurred. The application for transfer was protested by Dovel. Because of a change in the reclamation plan, Double Diamond filed an amended application for transfer in April of 1992, before the fifth irrigation season. Double Diamond was anticipating the change in the place of use. Were it not for protests against the application, the application may have been approved prior to the expiration of the five years. I am not proposing that the filing of a protest tolls the running of the forfeiture period. Double Diamond could have protected itself by seeking an application for extension of time to avoid forfeiture pursuant to Idaho Code § 42-204. Nevertheless, Double Diamond pursued the application for transfer in good faith long before the fifth irrigation season expired.

The first hearing was conducted after the expiration of the fifth irrigation season, but prior to the beginning of the sixth irrigation season. For Double Diamond to have avoided the technical forfeiture provisions of Idaho Code § 42-222, it must have irrigated prior to the expiration of the fifth irrigation season. In other words, to beneficially use the water, Double Diamond must have irrigated a growing crop or planted early enough in 1992 that the water could be beneficially used. At the very least, he must have irrigated sometime in September or October of 1992, before the full five years had expired.

Idaho Courts have recognized a defense to forfeiture when failure to use water is caused by circumstances beyond the control of the waterusers. Hedges v. Trail Creek Irrigation , 78 Idaho 10, 297 P.2d 524 (1956). In this case, the Department of Transportation was reclaiming the land in 1992, a protest to the application for transfer had been filed, impeding quick approval. The irrigation season ended without the legal or physical ability to plant a crop and beneficially use the water before the total five years of nonuse expired. These are cumulative circumstances beyond the control of the wateruser which prevented use before

completion of the forfeiture period.

Shortly before the expiration of the fifth irrigation season, it was impossible for the wateruser to beneficially apply the water because to begin at the end of October or first of November would not have been a beneficial use. Double Diamond's first opportunity to beneficially apply the water was in the spring of 1993. Double Diamond diverted the water from Porter Creek in 1993 for irrigation purposes, and used the water as approved by the original recommended order.

Finally, the defense of resumption of use may apply in this case. I hesitate to apply the resumption of use defense, however, because, if it does apply, it should be applied very narrowly. The early cases which established the resumption of use defense were based on facts where there were no later in time appropriations from a stream which would interfere with the resumption, Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937), or the person alleging forfeiture had no subsequent claim to the water which was alleged to be forfeited, Wagoner v. Jeffery, 66 Idaho 455, 162 P.2d 400 (1945). For streams with appropriations of water junior to the right for which forfeiture is alleged, when the right is forfeited, the junior priority rights advance in their order of priorities.

In this case, Double Diamond could be said to have resumed its right because it had never been forfeited unless the junior users stepped into place following expiration of the fifth irrigation season. Because Double Diamond began using its right in the sixth year, junior users couldn't have relied on the nonuse to move up the ladder of priority.

Having addressed the protestants' exceptions, the following is the final order:

FINDINGS OF FACT

1. Double Diamond, Inc. (Double Diamond) filed an application for transfer on March 9, 1991, and amended the application for transfer on April 22, 1992. The amended application proposes to change the place of use and/or nature of use of two water rights which authorize diversion of water from Porter Creek, and two water rights which authorize diversion from the Payette River.

2. The application for transfer proposes to change the place of use for water right no. 65-03103 (Porter Creek), which bears an 1872 priority, from lands which are not now irrigable because of the construction of a gravel pit, to lands which have been irrigated by water diverted pursuant to right no. 65-10746 (Porter Creek), a 1960 priority water right. The application seeks to transfer right 65-10746 to the gravel pit to sustain a pond in the gravel pit for recreational uses. The application also proposes to

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change the nature of use of the Payette River water rights (65-02540 and 65-10747) by reducing existing irrigation use and adding a use of recreation storage. Correspondence in the files states water will be stored for a fish pond and a wetland area.

3. The rights are described in the Payette River decree as follows:

65-03103
Source: Porter Creek
Flow Rate: 3.82 cfs
Priority: January 1, 1872
Point of Diversion: NW¼SE¼, Sec. 12, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23															39		39
7N	2E	26	13	40	39	3	23			22						14			154
																		TOTAL ACRES	193

65-10746
Source: Porter Creek
Flow Rate: .44 cfs
Priority: April 1, 1960
Point of Diversion: NW¼SE¼, Sec. 12, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2				2
7N	2E	26	11								9								20
																		TOTAL ACRES	22

65-02540

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Source: Payette River
Flow Rate: 3.20 cfs
Priority: April 26,1951
Point of Diversion: Sec. 23, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2		39	1	42
7N	2E	26	13	40	39	3	23			22	9					14			163
																	TOTAL ACRES		205

65-10747
Source: Payette River
Flow Rate: .90 cfs
Priority: April 1, 1960
Point of Diversion: Sec. 23, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2		39	1	42
7N	2E	26	13	40	39	3	23			22	9					14			163
																	TOTAL ACRES		205

4. The application for transfer proposed a change in the place of use as follows for each of the rights:

65-03103

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31		41
7N	2E	26	24	35	32	3				16	9					14			152
																	TOTAL ACRES		193

65-10746 (R is an abbreviation for recreation and recreation

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storage)

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	26		R	R		L1 R			L2 R									
				5	7		4			6									
TOTAL ACRES																			

5-02540 (R is an abbreviation for recreation and recreation storage)

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31	1	42
7N	2E	26	13	35	32	3	19		16	9						14			141
7N	2E	26		R	R		R		R										
TOTAL ACRES																			183

65-10747

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31	1	42
7N	2E	26	13	35 R	32 R	3	19 R			16 R	9					14			141
TOTAL ACRES																			183

5. George Dovel and Horseshoe Bend Hydroelectric Company filed protests against the application for transfer.

6. At hearings conducted on March 8 and 11, 1993, and on March 9, 1994, Double Diamond, Inc. appeared and was represented by Jack Riddlemoser, Attorney at Law. Dovel appeared and was represented by Richard Eismann, Attorney at Law. Horseshoe Bend Hydroelectric Company failed to appear.

7. George Dovel owns the following water rights diverted from

Porter Creek:

Right no.	Priority	Flow rate (cfs)	Use
65-10950	6/1/1908	1.61	Irrigation
65-10951	6/1/1912	0.84	Irrigation
65-10953	6/1/1946	0.04	Domestic

8. Water District no. 65-B was formed to administer delivery of water to users of Porter Creek according to the priority of the water rights. The district refers to the water rights in descending numerical order according to priority. Right no. 65-03103, owned by Double Diamond, is the earliest priority right, and is locally referred to as the number one right. Right no. 65-10746, also owned by Double Diamond, is locally referred to as the number 12 right.

9. Right nos. 65-10950 and 65-10951, both owned by Dovel, are locally referred to as the number 6 and number 7 rights, respectively.

10. Dovel's point of diversion is located upstream of the Double Diamond diversion. The watermaster closes Dovel's headgate when necessary during low water periods to satisfy Double Diamond's calls for water downstream.

11. During low water years, George Dovel's no. 6 and no. 7 rights are only deliverable during the early part of the irrigation season. The number 12 right, owned by Double Diamond, is only deliverable during high flow periods.

12. The Idaho Department of Transportation contracted with Double Diamond to excavate a gravel pit on a portion of the Double Diamond property to which water right no. 65-03103 is appurtenant and a small portion of the Double Diamond property to which water right no. 65-10746 is appurtenant, for the construction of a section of Highway 55 between Boise and Horseshoe Bend.

13. The Department of Transportation began excavating the gravel pit on the Double Diamond property during 1988. Prior to excavation, the land was irrigated with water diverted from Porter Creek pursuant to the first priority right.

14. Dovel testified that 43 acres were not irrigated in 1988. Dovel did not measure or walk the gravel pit boundaries, but observed the work from the other side of the river. His estimate of nonirrigated acreage was not contested by Double Diamond.

15. During the peak of construction, approximately 56 acres could not be farmed because of the gravel pit excavation. Approximately 52 acres of the 56 acres was land irrigated by water diverted pursuant to the number one priority Porter Creek right.

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16. As construction was ending in 1991 and in 1992, the Idaho Department of Transportation reclaimed a portion of the gravel pit, but did not fully complete the reclamation. Approximately 22 acres are still excavated as a gravel pit or not irrigable as a result of the gravel pit construction. Double Diamond does not intend to reclaim any more of the 22 acres.

17. Porter Creek water is deliverable to the Double Diamond property through a combination open channel and closed pressurized system. The diversion from Porter Creek delivers water into approximately two miles of open ditch. The water then enters a headbox at the top of a hill. A pipeline inlet is located in the headbox. The pipeline is constructed from the top of the hill to the bottom, and then extends to the Double Diamond property. Pressure develops in the pipeline because of the change in elevation, and there is sufficient head between the top of the pipe and the bottom to operate sprinklers.

18. A second pipeline is installed in the headbox where the main pipeline begins. The second pipe is an overflow pipe. An overflow spillway in the headbox separates the inlets to the pipes. Presumably, no water flows into the overflow pipe until the elevation of the water rises in the headbox because of increased flow or decreased usage at the end of the mainline, which causes water to spill into the overflow compartment of the headbox, and finally, into the overflow pipe.

19. The overflow pipe parallels the main delivery pipe downhill toward the Double Diamond property. At the base of the hill, the main pipeline crosses Jackass Creek, and the overflow pipe ends with an open orifice which discharges into Jackass Creek. The main pipeline continues onto the Double Diamond property.

20. A second mainline junctions with the Porter Creek pressurized line. The second mainline delivers water pumped from the Payette River. George Dovel testified at the first hearing, that when the Payette River pump is operating, the flow from Porter Creek is more manageable. He explained his earlier testimony at the March 9, 1994 hearing, by stating that when the Payette River pump is pumping, the Porter Creek line will overflow. A valve located in the Payette River pipeline can be closed until pressure in the Payette river line reduces pressure and equalizes with the pressure in the Porter Creek line, and the Porter Creek line no longer overflows.

21. A 40 horsepower booster pump is located in the mainline downstream of the Payette River line - Porter Creek line junction.

22. George Dovel testified that the booster pump was not operated during 1986 through 1992. He does not know whether the booster pump was operated in 1993. Dovel also testified the meter base was removed in 1986, but was replaced in 1993.

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23. In 1990, the Department determined 52 acres were not irrigable because of the gravel pit excavation. The authorized rate of flow was reduced 1.03 cfs from 3.82 cfs to 2.79 cfs.

24. In 1991, Double Diamond was again only allowed to divert 2.79 cfs because 52 acres were not irrigable.

25. Watermaster records show Double Diamond diverted the full amount of reduced entitlement of 2.79 cfs at least once during both the 1990 and 1991 irrigation seasons. Dovel established that water was wasted into Jackass Creek when 2.79 cfs was diverted.

26. In 1992, the authorized rate of diversion was only reduced 0.43 cfs, from 3.82 cfs to 3.39 cfs, because of the anticipated reclamation of the gravel pit.

27. Dovel and his employees have carefully monitored and observed Double Diamond's use of water. In 1991, Christy Shirley, one of Dovel's employees observed and recorded the use of water on the Double Diamond property, and also observed and recorded water being discharged into Jackass Creek through the overflow pipe.

28. In addition to the monitoring by Ms. Shirley in 1991, Dovel measured the water diverted, measured or observed the overflow to Jackass Creek, and also estimated the water applied to the Double Diamond property by measuring pressures in rainbird sprinklers with a pitot gage, averaging the pressures measured, and multiplying the average discharge of a single sprinkler head by the number of sprinklers operating.

29. The maximum discharge from sprinklers estimated by Dovel in 1991 is approximately 60 inches, or 1.2 cfs. His measurements do not account, however, for delivery losses, particularly in the open ditch. The measurements also do not account for the reduction in the authorized diversion rate because approximately 52 acres were not being irrigated.

30. Protestant's Exhibit I summarizes Shirley's and Dovel's observations. Dovel testified that any diversion over 1.4 cfs results in a waste of water into Jackass Creek, but later stated that water significantly wasted only when the diversion rate exceeded 2.0 cfs into Jackass Creek. These estimates do not account for the decrease in irrigated acreage as a result of gravel pit excavation, and the corresponding decrease in the ability of Double Diamond to divert its full water right.

31. On May 11 and 12, 1994, Donald Rumsey, a principal owner of Double Diamond, George Dovel, Sherl Chapman, a consultant hired by Dovel, and Scott King, a Department employee, met at the Double Diamond ranch. Flows, discharges, and pressures were measured according to criteria agreed upon by the parties.

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32. The parties measured 3.57 cfs entering the Double Diamond ditch at the Porter Creek diversion.

33. The discharge of the system was first measured with the booster pump on and then with the booster pump off. The river pumps were off, and the gate valve in the Payette River line was closed, isolating it from the Porter Creek gravity pressure system.

34. One short hand line, was shut off because the average pressure was less than 20 psi. All other lines were operating with sufficient pressure.

35. With the booster pump off, the flow in the Porter Creek pipeline was measured in two ways. Double Diamond installed an inline McCrometer meter which measured 2.58 cfs. The mainline was tapped and a Collins meter was inserted into the line by Mr. King. The Collins meter measured 2.39 cfs.

36. The flow in the pipeline with the booster pump operating could not be measured with a Collins meter or an inline McCrometer meter because the booster pump entrained air in the water. Mr. King measured a flow of 3.12 cfs in the Porter Creek line by measuring the inflow to the collection box, and by subtracting the overflow at Jackass Creek.

37. After the measurements agreed to and observed by Dovel and his consultant, Dovel objected to the results, alleging the Porter Creek line was repaired and lines were added which were never used. These objections were not raised at the time of the test.

38. Several individuals have diverted water from the Double Diamond ditch referred to locally as "courtesy water." The quantity of water diverted is only approximately two inches per user. These diversions are represented by adjudication claims. "Courtesy water" was not delivered in 1993 to the individuals who diverted it in previous years.

39. An engineer, Don Watts, hired by Dovel, computer digitized the boundaries of irrigated fields depicted on Protestant's Exhibit A, and superimposed public survey information on top of the irrigated fields, dividing the fields into segments within each 40 acre tract. Protestant's Exhibit A is a 1992 aerial photograph of the Double Diamond property.

40. Watts plotted each segment and compared his calculations to an ASCS aerial photograph predating the gravel excavations. His calculations were comparable to the acreage shown on an ASCS map predating the gravel pit excavation. Protestant's Exhibit V-1 depicts segment boundaries, and summarizes segment acreage.

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41. Attachments to protestant's Exhibit V conclude the number one priority right irrigates approximately 164.5 acres and the number 12 priority right irrigates approximately 18 acres.

42. The application for transfer proposes use of the no. 12 Porter Creek right (65-10746) when deliverable early in the year, and use of a portion of the Payette River rights (65-02540 and 65-10747) to maintain pond water levels for the remainder of the irrigation season.

43. At the hearing for additional evidence, the parties testified regarding the extent of irrigation in 1993. Except for the 22 acres which was not reclaimed, and remains as a gravel pit and pond, all of the acres which were a part of the original gravel excavation were irrigated with Porter Creek water.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in Section 42-203A(5), Idaho Code; . . ..

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights, and that it is consistent with conservation of Idaho's water.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest of which each is most cognizant, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interest factors which favor the proposal are of greater worth than the public interest considerations with which it conflicts.

4. The applicant carries the burden of proof for all the criteria of Idaho Code § 42-222.

5. The Department may determine the issue of forfeiture when considering an application for transfer. Jenkins v. State of Idaho, 103 Idaho 384, 647 P.2d 1256 (1982).

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6. Forfeiture is not favored and must be established by clear and convincing evidence.

7. Idaho Code § 42-222 is the statute which defines forfeiture:

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

8. Dovel argues Porter Creek water has not been delivered to the gravel pit area (approximately 43-56 acres) for a period of at least five years. Dovel also argues the filing of the application for transfer subjects each of the rights to full forfeiture scrutiny by the Department, and the Department cannot narrowly focus only on the gravel pit, but must review the use of the whole right, including the entire place of use, and the total quantity of water diverted. Evidence presented by Dovel questions the total number of acres described as a place of use, and the total quantity of water capable of being diverted by Double Diamond.

9. Double Diamond contests the expansive review requested by Dovel. Double Diamond argues the application for transfer only seeks a change for the 22 acres within the gravel pit, and argues the Department is not authorized to scrutinize other portions of the place of use or the quantity of water diverted.

10. Jenkins does not state whether the Department may review the entire water right when an application for transfer is filed which seeks to change only a portion of the right.

11. The Department's review of the validity of the right when considering an application for transfer is limited by an initial determination of whether a narrow focus on the portion sought to be transferred, without looking at the entire right, will result in an enlargement, injury to other users, a conflict with the public interest, or is inconsistent with principles of conservation of water. In this case, the Department must review more than the 22 acres identified as the gravel pit because 56 acres were part of the gravel pit during peak construction in 1990 and 1991. The Department cannot rule regarding the forfeiture issue for a portion of the gravel pit area (22 acres) and ignore the rest of the gravel pit, because the excavation of the entire gravel pit was, for the most part, simultaneous, and cannot be separated into a 22 acre parcel and a 34 acre parcel because the ruling will apply to all the gravel pit lands.

12. The review of the Department should be limited to the gravel pit impact area, however, and should not extend to all other elements of the water right. A consideration of the total flow rate authorized, the use of the booster pump and the total acreage irrigated should be reserved for the ongoing Snake River Basin Adjudication.

13. The May 11 and 12, 1994 measurements by Scott King exceeded the flow estimates by Dovel. Both the flow measurement by Dovel, and the flow measurement by Scott King will not be used in this decision for determining the water right of Double Diamond, however. A final determination of the total diversion authorized will be reserved for the adjudication.

14. There is uncontroverted evidence in the record that at least 43 acres were not irrigated during the five irrigation seasons in 1988 through 1992. However, Double Diamond indicated its intent to use the water by filing applications for transfer prior to the end of the fifth irrigation season. Notice of these applications was published.

15. Filing of a protest to the proposed transfer by Dovel, reclamation during 1992, and the difficulty of beneficially using water at the end of the irrigation season prevented Double Diamond from irrigating prior to the expiration of the fifth irrigation season. These circumstances qualify as a defense to forfeiture because Double Diamond was prevented from using water by circumstances beyond its control. Irrigation in 1993 after the transfer was approved, prevented the forfeiture.

16. Dovel should not be allowed to benefit by delays caused be the filing of a protest to an application for transfer.

17. "[F]orfeiture is not effective, if after the five-year period, the original owner or appropriator resumed the use of the water prior to the claim of right by a third party." Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952).

18. The first hearing for this application was conducted on March 8 and 11, 1993, before the commencement of the 1993 irrigation season. The second hearing was conducted on March 9, 1994, after the 1993 irrigation season.

19. Other users could not establish a legal claim of right to the forfeited water until after forfeiture. If Double Diamond resumed its use during the 1993 irrigation season, the other users would not have established a reliance on the water, and the forfeiture is not effective.

20. In 1993, Double Diamond resumed irrigation of all lands in the gravel pit impact area and the lands originally irrigated by

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the no. 12 right with Porter Creek water, except the 22 acres which remained as a gravel pit and pond.

21. Most of the testimony established the area of unrestored gravel pit at approximately 20-22 acres. The measurement and calculation of 22 acres by Donald Rumsey is accepted as the area of the unrestored gravel pit.

22. The protestant established that Double Diamond (or its tenant) does not cautiously use only the water it needs. Substantial waste of valuable Porter Creek water into Jackass Creek has been occurring and is not acceptable, except when Porter Creek fluctuations or other unforeseeable occurrences cause waste.

23. The protestant raised a substantial question about the total number of acres irrigated. These issues should be addressed by the Snake River Basin Adjudication.

24. Double Diamond should know how much water is necessary to operate various sprinkler line combinations. Double Diamond should call for the quantity of water needed.

25. Double Diamond is obligated to operate its irrigation system in a manner that will not result in the waste of a substantial quantity of water during times when sprinkler lines are being moved or modified. Double Diamond is further obligated to inform the watermaster when its reduced diversion rate requirement is such that later priority right holders could make beneficial use of the water.

26. Use of the water for recreational fish rearing and wetlands is a beneficial use.

27. "Courtesy water" should not be delivered to water users who do not hold a valid water right.

28. Failure to appear at a hearing is cause for dismissal of a protest. Horseshoe Bend Hydroelectric Company's protest should be dismissed.

29. Request for oral argument by Dovel should be denied.

ORDER

IT IS HEREBY ORDERED that application for transfer of water right nos. 65-03103, 65-10746, 65-02540, and 65-10747 is APPROVED subject to the following conditions:

1. Use of water under these water rights shall be regulated by the watermaster of State Water District no. 65B.

2. The right holder under this transfer shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

3. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person (s) other than the right owner.

4. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

5. Water shall be used only on the place of use described by the transfer approval document, incorporated and made a part of this decision.

6. The validity of the portion of the water rights not transferred was not determined and may be questioned in a subsequent proceeding, including the Snake River Basin Adjudication.

7. The owner of this right, or his tenant, shall inform the watermaster on a day to day basis of the flow needed to operate his sprinkler system whenever the use changes significantly.

8. Failure to comply with the conditions of this transfer is cause for the director to issue an order to cease and desist pursuant to Idaho Code § 42-352.

9. This right when combined with all other rights shall provide no more than 0.02 cfs per acre no more than 4.5 afa per acre for the lands above.

10. Spill of a substantial quantity of water into Jackass Creek is a waste of water, and is an illegal use of water pursuant to Idaho Code § 42-351. Determination of "substantial quantity" is left to the future determination of the Department and the watermaster.

IT IS FURTHER ORDERED that Horseshoe Bend Hydroelectric Company's protest is dismissed.

IT IS FURTHER ORDERED that Dovel's request for oral argument is DENIED.

Dated this 30TH day of January, 1995.

R. Keith Higginson
Director, Department of Water Resources

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CERTIFICATE OF MAILING

I hereby certify that on this 30th day of January, 1995, I mailed a true and correct copy, postage prepaid, of this **final order** to the following:

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

Jack Riddlemoser
P.O. Box 37
Meridian, ID 83780

David P. Hirshci
Horseshoe Bend Hydroelectric
180 S. 300 W., Ste. 200
Salt Lake City, UT 84101

Richard B. Eismann
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651

Double Diamond, Inc.
C/O Don Rumsey
200 Sunrise River
Boise, ID 83705

IDWR Western Office

Kris Rhodes

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.	**AMENDED RECOMMENDED ORDER**

A recommended order was issued on July 30, 1993, attempting to resolve protests against an application for transfer filed by Double Diamond, Inc. Because of unresolved questions of fact, the hearing officer ordered that additional evidence be taken. On March 9, 1994, a hearing was conducted for the taking of additional evidence. The hearing was conducted prior to the 1994 irrigation season, and the parties stipulated to measure the flow in the Porter Creek system according to fixed criteria established prior to the measurement. The flow capacity of the system was measured on May 11th and 12th, 1994, and will be discussed further in the findings of fact.

Upon submittal of the evidence, the hearing officer, as a representative of the Director of the Department of Water Resources (Department), recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Double Diamond, Inc. (Double Diamond) filed an application for transfer on March 9, 1991, and amended the application for transfer on April 22, 1992. The amended application proposes to change the place of use and/or nature of use of two water rights which authorize diversion of water from Porter Creek, and two water rights which authorize diversion from the Payette River.

2. The application for transfer proposes to change the place of use for water right no. 65-03103 (Porter Creek), which bears an 1872 priority, from lands which are not now irrigable because of the construction of a gravel pit, to lands which have been irrigated by water diverted pursuant to right no. 65-10746 (Porter Creek), a 1960 priority water right. The application seeks to transfer right 65-10746 to the gravel pit to sustain a pond in the gravel pit for recreational uses. The application also proposes to change the nature of use of the Payette River water rights (65-

02540 and 65-10747) by reducing existing irrigation use and adding a use of recreation storage. Correspondence in the files states water will be stored for a fish pond and a wetland area.

3. The rights are described in the Payette River decree as follows:

65-03103
Source: Porter Creek
Flow Rate: 3.82 cfs
Priority: January 1, 1872
Point of Diversion: NW¼SE¼, Sec. 12, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23															39		39
7N	2E	26	13	40	39	3	23			22						14			154
																		TOTAL ACRES	193

65-10746
Source: Porter Creek
Flow Rate: .44 cfs
Priority: April 1, 1960
Point of Diversion: NW¼SE¼, Sec. 12, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2				2
7N	2E	26	11								9								20
																		TOTAL ACRES	22

65-02540
Source: Payette River
Flow Rate: 3.20 cfs
Priority: April 26,1951
Point of Diversion: Sec. 23, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

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7N	2E	23													2		39	1	42
7N	2E	26	13	40	39	3	23			22	9					14			163
																	TOTAL ACRES		205

65-10747
Source: Payette River
Flow Rate: .90 cfs
Priority: April 1, 1960
Point of Diversion: Sec. 23, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2		39	1	42
7N	2E	26	13	40	39	3	23			22	9					14			163
																	TOTAL ACRES		205

4. The application for transfer proposed a change in the place of use as follows for each of the rights:

65-03103

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31		41
7N	2E	26	24	35	32	3				16	9					14			152
																	TOTAL ACRES		193

65-10746 (R is an abbreviation for recreation and recreation storage)

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	26		R	R		L1 R			L2 R									
				5	7		4			6									
																	TOTAL ACRES		

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65-02540 (R is an abbreviation for recreation and recreation storage)

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31	1	42
7N	2E	26	13	35	32	3	19		16	9						14			141
7N	2E	26		R	R		R		R										
																		TOTAL ACRES	183

65-10747

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31	1	42
7N	2E	26	13	35 R	32 R	3	19 R			16 R	9					14			141
																		TOTAL ACRES	183

5. George Dovel and Horseshoe Bend Hydroelectric Company filed protests against the application for transfer.

6. At hearings conducted on March 8 and 11, 1993, and on March 9, 1994, Double Diamond, Inc. appeared and was represented by Jack Riddlemoser, Attorney at Law. Dovel appeared and was represented by Richard Eismann, Attorney at Law. Horseshoe Bend Hydroelectric Company failed to appear.

7. George Dovel owns the following water rights diverted from Porter Creek:

Right no.	Priority	Flow rate (cfs)	Use
65-10950	6/1/1908	1.61	Irrigation

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65-10951	6/1/1912	0.84	Irrigation
65-10953	6/1/1946	0.04	Domestic

8. Water District no. 65-B was formed to administer delivery of water to users of Porter Creek according to the priority of the water rights. The district refers to the water rights in descending numerical order according to priority. Right no. 65-03103, owned by Double Diamond, is the earliest priority right, and is locally referred to as the number one right. Right no. 65-10746, also owned by Double Diamond, is locally referred to as the number 12 right.

9. Right nos. 65-10950 and 65-10951, both owned by Dovel, are locally referred to as the number 6 and number 7 rights, respectively.

10. Dovel's point of diversion is located upstream of the Double Diamond diversion. The watermaster closes Dovel's headgate when necessary during low water periods to satisfy Double Diamond's calls for water downstream.

11. During low water years, George Dovel's no. 6 and no. 7 rights are only deliverable during the early part of the irrigation season. The number 12 right, owned by Double Diamond, is only deliverable during high flow periods.

12. The Idaho Department of Transportation contracted with Double Diamond to excavate a gravel pit on a portion of the Double Diamond property to which water right no. 65-03103 is appurtenant and a small portion of the Double Diamond property to which water right no. 65-10746 is appurtenant, for the construction of a section of Highway 55 between Boise and Horseshoe Bend.

13. The Department of Transportation began excavating the Double Diamond property during the summer of 1988. Prior to excavation, the land was irrigated with water diverted from Porter Creek pursuant to the first priority right.

14. Dovel testified that 43 acres were not irrigated in 1988. Dovel did not measure or walk the gravel pit boundaries, but only observed the work from the other side of the river. His estimate of nonirrigated acreage was not contested by Double Diamond.

15. During the peak of construction, approximately 56 acres could not be farmed because of the gravel pit excavation. Approximately 52 acres of the 56 acres was land irrigated by water diverted pursuant to the number one priority Porter Creek right.

16. As construction was ending in 1991 and in 1992, the Idaho Department of Transportation reclaimed a portion of the gravel pit area as farm land. Approximately 22 acres are still excavated as a gravel pit or not irrigable as a result of the gravel pit

construction. Double Diamond does not intend to reclaim any more of the 22 acres.

17. Porter Creek water is deliverable to the Double Diamond property through a combination open channel and closed pressurized system. The diversion from Porter Creek delivers water into approximately two miles of open ditch. The water then enters a headbox at the top of a hill. A pipeline inlet is located in the headbox. The pipeline is constructed from the top of the hill to the bottom, and then extends to the Double Diamond property. Pressure develops in the pipeline because of the change in elevation, and there is sufficient head drop between the top of the pipe and the bottom to operate sprinklers.

18. A second pipeline is installed in the headbox where the main pipeline begins. The second pipe is an overflow pipe. An overflow spillway in the headbox separates the inlets to the pipes. Presumably, no water flows in the overflow pipe until the elevation of the water rises in the headbox because of increased flow or decreased usage at the end of the mainline, which causes water to spill into the overflow compartment of the headbox, and finally, into the overflow pipe.

19. The overflow pipe parallels the main delivery pipe downhill toward the Double Diamond property. At the base of he hill, the main pipeline crosses Jackass Creek, and the overflow pipe ends with an open orifice which discharges into Jackass Creek. The main line continues onto the Double Diamond property.

20. A second mainline junctions with the Porter Creek pressurized line. The second mainline delivers water pumped from the Payette River. George Dovel testified at the first hearing, that when the Payette River pump is operating, the flow from Porter Creek is more manageable. He explained his earlier testimony at the March 9, 1994 hearing, by stating that when the Payette River pump is pumping, the Porter Creek line will overflow. A valve located in the Payette River pipeline can be closed until pressure in the Payette river line reduces pressure and equalizes with the pressure in the Porter Creek line, until the Porter Creek line no longer overflows. In this way, Dovel alleges the system can be managed correctly.

21. A 40 horsepower booster pump is located in the mainline downstream of the Payette River line - Porter Creek line junction.

22. George Dovel testified that the booster pump was not operated during 1986 through 1992. He does not know whether the booster pump was operated in 1993. Dovel also testified the meter base was removed in 1986, but was replaced in 1993.

23. In 1990, the Department determined 52 acres were not irrigable because of the gravel pit excavation. The authorized

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rate of flow was reduced 1.03 cfs from 3.82 cfs to 2.79 cfs.

24. In 1991, Double Diamond was again only allowed to divert 2.79 cfs because 52 acres were not irrigable.

25. Watermaster records show Double Diamond diverted the full amount of reduced entitlement of 2.79 cfs at least once during both the 1990 and 1991 irrigation seasons.

26. In 1992, the authorized rate of diversion was only reduced 0.43 cfs, from 3.82 cfs to 3.39 cfs, because of the anticipated reclamation of the gravel pit.

27. Dovel and his employees have carefully monitored and observed Double Diamond's use of water. In 1991, Christy Shirley, one of Dovel's employees observed and recorded the use of water on the Double Diamond property, and also observed and recorded water being discharged into Jackass Creek through the overflow pipe.

28. In addition to the monitoring by Ms. Shirley in 1991, Dovel measured the water diverted, measured or observed the overflow to Jackass Creek, and also estimated the water applied to the Double Diamond property by measuring pressures in rainbird sprinklers with a pitot gage, averaging the pressures measured, and multiplying the average discharge of a single sprinkler head by the number of sprinklers operating.

29. The maximum discharge from sprinklers estimated by Dovel in 1991 is approximately 60 inches, or 1.2 cfs. His measurements do not account, however, for delivery losses, particularly in the open ditch. The measurements also do not account for the reduction in the authorized diversion rate because approximately 52 acres were not being irrigated.

30. Protestant's Exhibit I summarizes Shirley's and Dovel's observations. Dovel testified that any diversion over 2.0 cfs results in a waste of water into Jackass Creek. The testimony again ignores the decrease in irrigated acreage as a result of gravel pit excavation, and the corresponding decrease in the ability of Double Diamond to divert its full water right.

31. On May 11 and 12, 1994, Donald Rumsey, a principal owner of Double Diamond, George Dovel, Sherl Chapman, a consultant hired by Dovel, and Scott King, a Department employee, met at the Double Diamond ranch. Flows, discharges, and pressures were measured according to criteria agreed upon by the parties.

32. The parties measured 3.57 cfs entering the Double Diamond ditch at the Porter Creek diversion.

33. The discharge of the system was first measured with the booster pump on and then with the booster pump off. The river

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pumps were off, and the gate valve in the Payette River line was closed, isolating it from the Porter Creek gravity pressure system.

34. One short hand line, was shut off because the average pressure was less than 20 psi. All other lines were operating with sufficient pressure.

35. With the booster pump off, the flow in the Porter Creek pipeline was measured in two ways. Double Diamond installed an inline McCrometer meter which measured 2.58 cfs. The mainline was tapped and a Collins meter was inserted into the line by Mr. King. The Collins meter measured 2.39 cfs.

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37. After the measurements agreed to and observed by Dovel and his consultant, Dovel objected to the results, alleging the Porter Creek line was prepared and lines were added which were never used. These objections were not raised at the time of the test.

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40. Watts plotted each segment and compared his calculations to an ASCS aerial photograph predating the gravel excavations. His calculations were comparable to the acreage shown on an ASCS map predating the gravel pit excavation. Protestant's Exhibit V-1 depicts segment boundaries, and summarizes segment acreage.

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and use of a portion of the Payette River rights (65-02540 and 65-10747) to maintain pond water levels for the remainder of the irrigation season.

43. At the hearing for additional evidence, the parties testified regarding the extent of irrigation in 1993. Except for the 22 acres which was not reclaimed, and remains as a gravel pit and pond, all of the acres which were a part of the original gravel excavation were irrigated.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in Section 42-203A(5), Idaho Code; . . ..

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights, and that it is consistent with conservation of Idaho's water.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest of which each is most cognizant, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interest factors which favor the proposal are of greater worth than the public interest considerations with which it conflicts.

4. The applicant carries the burden of proof for all the criteria of Idaho Code § 42-222.

5. The Department may determine the issue of forfeiture when considering an application for transfer. Jenkins v. State of Idaho, 103 Idaho 384, 647 P.2d 1256 (1982).

6. Forfeiture is not favored and must be established by clear and convincing evidence.

7. Idaho Code § 42-222 is the statute which defines forfeiture:

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

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9. Double Diamond contests the expansive review requested by Dovel. Double Diamond argues the application for transfer only seeks a change for the 22 acres within the gravel pit, and argues the Department is not authorized to scrutinize other portions of the place of use or the quantity of water diverted.

10. Jenkins does not state whether the Department may review the entire water right when an application for transfer is filed which seeks to change only a portion of the right.

11. The Department's review of the validity of the right when considering an application for transfer is limited by an initial determination of whether a narrow focus on the portion sought to be transferred, without looking at the entire right, will result in an enlargement, injury to other users, a conflict with the public interest, or is inconsistent with principles of conservation of water. In this case, the Department must review more than the 22 acres identified as the gravel pit because 56 acres were part of the gravel pit during peak construction in 1990 and 1991.

12. The department need not look beyond the boundaries of the gravel pit. Double Diamond proposes to change the place of use from the gravel pit lands to new lands. Double Diamond is not seeking to change the remainder of the place of use. The definition of the entire place of use and total authorized flow rate can be addressed in the Snake River Basin Adjudication.

13. A recent interim order prohibiting communications between the Director of the Idaho Department of Water Resources and all claimants, signed by Judge Daniel C. Hurlbutt, Jr., states that "the Director and IDWR are prohibited from participating in any settlement discussions or negotiations about any water right or

element thereof for which a notice of claim has been filed in the SRBA as well as any issue raised for judicial resolution in the SRBA."

14. The Department does not interpret Judge Hurlbutt's order as prohibiting a narrow application of the Jenkins reasoning which allows the Department to review issues of forfeiture. The review of the Department should be limited to the gravel pit impact area, however, and should not extend to all other elements of the water right. A consideration of the total flow rate authorized, the use of the booster pump and the total acreage irrigated should be reserved for the ongoing adjudication.

15. The May 11 and 12, 1994 measurements by Scott King established a diversion capacity exceeding the estimates by Dovel. A final determination of the total diversion authorized will be reserved for the adjudication.

16. There is uncontroverted evidence in the record that at least 43 acres were not irrigated during the five irrigation seasons in 1988 through 1992. However, Double Diamond indicated its intent to use the water by filing applications for transfer prior to the end of the fifth irrigation season. Notice of these applications was published.

17. The right to irrigate 43 acres was forfeited at the end of the 1992 irrigation season.

18. "[F]orfeiture is not effective, if after the five-year period, the original owner or appropriator resumed the use of the water prior to the claim of right by a third party." Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952).

19. The first hearing for this application was conducted on March 8 and 11, 1993, before the commencement of the 1993 irrigation season. The second hearing was conducted on March 9, 1994, after the 1993 irrigation season.

20. Other users could not establish a legal claim of right to the forfeited water until after forfeiture. If Double Diamond resumed its use during the 1993 irrigation season, the other users would not have established a reliance on the water, and the forfeiture is not effective.

21. Double Diamond resumed irrigation of all lands in the gravel pit impact area, except the 22 acres which remained as a gravel pit and pond.

22. Most of the testimony established the area of unrestored gravel pit at approximately 20-22 acres. The measurement and calculation of 22 acres by Donald Rumsey is accepted as the area of

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the unrestored gravel pit.

23. The protestant did not establish that the flow rate authorized for diversion should be reduced because of nonuse. Double Diamond diverted the maximum flow to which it was entitled in 1990 and 1991. The restored gravel pit acreage and the new acres (once irrigated by the number 12 right) were irrigated in 1993.

24. The protestant established that Double Diamond (or its tenant) does not cautiously use only the water it needs. Substantial waste of valuable Porter Creek water into Jackass Creek has been occurring and is not acceptable, except when Porter Creek fluctuations or other unforeseeable occurrences cause waste.

25. The protestant raised a substantial question about the total number of acres irrigated. These issues should be addressed by the Snake River Basin Adjudication.

26. Double Diamond should know how much water is necessary to operate various sprinkler line combinations. Double Diamond should call for the quantity of water needed.

27. Double Diamond is obligated to operate its irrigation system in a manner that will not result in the waste of a substantial quantity of water during times when sprinkler lines are being moved or modified. Double Diamond is further obligated to inform the watermaster when its reduced diversion rate requirement is such that later priority right holders could make beneficial use of the water.

28. Use of the water for recreational fish rearing and wetlands is a beneficial use.

29. "Courtesy water" should not be delivered to water users who do not hold a valid water right.

30. Failure to appear at a hearing is cause for dismissal of a protest. Horseshoe Bend Hydroelectric Company's protest should be dismissed.

ORDER

IT IS HEREBY ORDERED that application for transfer of water right nos. 65-03103, 65-10746, 65-02540, and 65-10747 is APPROVED subject to the following conditions:

1. Use of water under these water rights shall be regulated by the watermaster of State Water District no. 65B.

2. The right holder under this transfer shall maintain a

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measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

3. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person (s) other than the right owner.

4. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

5. Water shall be used only on the place of use described by the transfer approval document, incorporated and made a part of this decision.

6. The validity of the portion of the water rights not transferred was not determined and may be questioned in a subsequent proceeding, including the Snake River Basin Adjudication.

7. The owner of this right, or his tenant, shall inform the watermaster on a day to basis of the flow needed to operate his sprinkler system whenever the use changes significantly.

8. Failure to comply with the conditions of this transfer is cause for the director to issue an order to cease and desist pursuant to Idaho Code § 42-352.

9. This right when combined with all other rights shall provide no more than 0.02 cfs per acre no more than 4.5 afa per acre for the lands above.

10. Spill of a substantial quantity of water into Jackass Creek is a waste of water, and is an illegal use of water pursuant to Idaho Code § 42-351. Determination of "substantial quantity" is left to the future determination of the Department and the watermaster.

IT IS FURTHER ORDERED that Horseshoe Bend Hydroelectric Company's protest is dismissed.

Dated this 8th day of July, 1994.

Gary Spackman

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 1994, I mailed a true and correct copy, postage prepaid, of this Amended Notice Of Hearing to the following:

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

Richard B. Eismann, Esq.
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, ID 83651

Jack Riddlemoser, Esq.
P.O. Box 37
Meridian, ID 83780

Double Diamond, Inc.
c/o Donald Rumsey
200 Sunrise River
Boise, Id 83705

David P. Hirschi
Horseshoe Bend Hydroelectric
180 S. 300 W., Ste. 200
Salt lake City, UT 84101

IDWR Western Office
Boise, Idaho

_____
Carolyn Andregg
Secretary

1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 4159, WATER RIGHTS NOS. 65-03103, 65-10746, 65-02540 AND 65-10747, IN THE NAME OF DOUBLE DIAMOND, INC.	**AMENDED NOTICE OF HEARING**

Because of conflicting calendar commitments, THE IDAHO DEPARTMENT OF WATER RESOURCES (Department) HAS **RESCHEDULED** A HEARING ON REMAND FOR TAKING ADDITIONAL EVIDENCE FOR **MARCH 9, 1994.** THE HEARING WILL COMMENCE AT 9:00 A.M., AND CONTINUE UNTIL CONCLUDED. The place for the hearing has not been set, but will either be at the state offices of The Department of Water Resources or at The Division of Environmental Quality. The parties will be notified at a later date. The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

Evidence presented at the augmentation hearing shall be limited to the following issues:

1. How long has the number one Porter Creek right not been used on the gravel pit impact area (56 acres)?

2. What are the present hydraulic characteristics of the Porter Creek and Payette River lines? This evidence may be submitted in the form of an actual water measurement of the flow into the head box, the flow in the waste pipe, and the water flowing in the mainline. If the capacity of the system cannot be measured, then the following system characteristics should be described: pipeline diameters, lengths and construction materials, pump sizes and capacities, location and capacity of boosters, location of valves, elevations of pipe outlets and inlets, and configuration of the head box.

3. What was the maximum quantity of water diverted and total acreage irrigated in 1993? What water, if any, was wasted in 1993 during periods of peak diversion? Were the hydraulic characteristics of the system changed in 1993? If so, what was changed?

4. The Department understands water is diverted out of the Double Diamond ditch by several domestic users. Under what right is water presently diverted?

5. How did the present irrigation system evolve from the early diversion from Porter Creek? Of particular interest is the use of the booster pump. The capacity or horsepower rating of the booster pump should be submitted. When was the booster pump installed and when was its use discontinued?

In addition to presenting evidence relative to the above facts, the parties may also orally argue any fact already in the record, or that will be presented at the hearing. In addition, the issues of law set forth in the recommended decision may also be argued.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 8th day of February, 1994.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of February, 1994, I mailed a true and correct copy, postage prepaid, of this Amended Notice Of Hearing to the following:

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

Jack Riddlemoser, Esq.
P.O. Box 37[illegible]
Meridian, ID 83642

David P. Hirschi
Horseshoe Bend Hydroelectric
180 S. 300 W., Ste. 200
Salt lake City, UT 84101

Richard B. Eismann, Esq.
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3016 Caldwell Blvd.
Nampa, ID 83651

Double Diamond, Inc.
c/o Donald Rumsey
200 Sunrise River
Boise, Id 83705

IDWR Western Office
Boise, Idaho

Carolyn Andregg
Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND INC.	)))))	**ORDER VACATING AUGMENTATION ORDER AND HEARING AND REMANDING THE MATTER FOR ADDITIONAL HEARINGS**

On July 30, 1993, the Idaho Department of Water Resources (Department) issued a recommended order. Protestant George Dovel filed lengthy exceptions to the recommended order. In response to the exceptions, the hearing officer issued an Order for Augmentation of the Record on October 27, 1993, and also issued a Notice of Hearing on December 16, 1993. Both documents scheduled the augmentation hearing for January 5, 1994.

On December 23, 1993, protestant Dovel filed a motion to vacate the augmentation order and hearing based on many alleged flaws, compiled into the following general categories:

1. The hearing record was irrevocably closed after the hearing was completed.

2. Issues of fact identified by the hearing officer in the augmentation order are irrelevant, or have already been sufficiently addressed. The hearing officer could have inspected the system, and facts regarding the issues cannot be gathered before the augmentation hearing.

3. The hearing officer has no statutory authority to order an augmentation hearing.

4. A final decision was not issued within fifty-six (56) days as required by law, and an augmentation hearing cannot be issued eleven (11) days after the 56-day period has expired.

5. Dovel will be deprived of due process if the hearing is held.

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ANALYSIS

Idaho Code § 67-5244 states:

> (2) Unless otherwise required, the agency head shall either:
>
> (a) issue a final order in writing within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties or for good cause shown;
>
> (b) remand the matter for additional hearings; or
>
> (c) hold additional hearings.

In contrast, Rule 720.02.c. of the Department's Rules of Practice and Procedure states:

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

The administrative rules imply the hearing officer has authority to issue an order for further evidentiary hearings. The statute, however, only authorizes the agency head to remand the matter for additional evidence. The order of augmentation was not properly issued.

In addition, the agency head is required to issue a final decision within fifty-six (56) days unless good cause is shown for an additional delay. As mentioned earlier, Dovel filed extensive and detailed exceptions. In addition, Dovel retained a reporter who stenographically recorded the testimony. Dovel refers to testimony according to transcript references, which are not available to the Department. The official record is the electronically taped testimony in the possession of the Department. In trying to reconcile the record with transcript references by Dovel, additional time was necessary.

Finally, after a review of the exceptions, and the taped record, the Department felt sufficient factual and legal questions remain unanswered that further evidence should be taken. The circumstances constitute a good cause for a minor eleven-day delay

in attempting to either issue a final decision, or act alternatively as allowed by Idaho Code § 67-5244.

Idaho statutes and Department rules authorizes the agency head to remand the matter for additional hearings. There are unresolved questions of fact and law. An additional hearing will create a more complete record, and will produce a better reasoned decision. There is good cause both for the issuance of an order to remand the matter and for some minor delay in disposing of the original recommended decision.

Issues raised regarding the relevance of certain issues should be addressed by the hearing officer. Had the hearing officer independently inspected the system, another hearing probably would have been required anyway. Constitutional issues raised by Dovel are unfounded. For purposes of efficiency, the hearing officer who conducted the initial hearing should also hear the additional evidence. I have instructed the hearing officer to issue a notice of hearing to accompany this order.

ORDER

IT IS HEREBY ORDERED that the Order of Augmentation of the Record, dated October 27, 1993, and the hearing scheduled for January 5, 1993, are VACATED.

IT IS FURTHER ORDERED that the Matter of Application for Transfer No. 4159 (Water Rights Nos. 65-03103, 65-10746, 65-0254 and 65-10747) is REMANDED for further hearing pursuant to Idaho Code § 67-5244.

IT IS FURTHER ORDER that the hearing officer shall be Gary Spackman.

Dated this 29TH day of December, 1993.

R. KEITH HIGGINSON
DIRECTOR

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of December, 1993, I mailed a true and correct copy, postage prepaid, of this ORDER VACATING AUGMENTATION ORDER AND HEARING AND REMANDING THE MATTER FOR ADDITIONAL HEARINGS to the following:

George Dovel

Rt 1 Box 61
Horseshoe Bend, ID 83629

Richard B. Eismann Esq
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651

Jack Riddlemoser Esq

PO Box 373
Meridian, ID 83642

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise River
Boise, ID 83705

David P. Hirschi
Horseshoe Bend Hydroelectric
180 S 300 W, Ste 200
Salt Lake City, UT 84101

Claudette J. Kinney
Claudette J. Kinney
Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 4159 (WATER RIGHTS NOS. 65-03103, 65-10746, 65-02540 AND 65-10747) IN THE NAME OF DOUBLE DIAMOND INC.	**NOTICE OF HEARING**

THE IDAHO DEPARTMENT OF WATER RESOURCES (Department) HAS SCHEDULED A HEARING ON REMAND FOR TAKING ADDITIONAL EVIDENCE FOR FEBRUARY 9, 1994, IN THE LARGE CONFERENCE ROOM OF THE IDAHO DEPARTMENT OF WATER RESOURCES, 1301 N. ORCHARD STREET, BOISE, IDAHO 83706. THE HEARING WILL COMMENCE AT 9:30 A.M., AND CONTINUE UNTIL CONCLUDED. The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

Evidence presented at the augmentation hearing shall be limited to the following issues:

1. How long has the number one Porter Creek right not been used on the gravel pit impact area (56 acres)?

2. What are the present hydraulic characteristics of the Porter Creek and Payette River lines? This evidence may be submitted in the form of an actual water measurement of the flow into the head box, the flow in the waste pipe, and the water flowing in the mainline. If the capacity of the system cannot be measured, then the following system characteristics should be described: pipeline diameters, lengths and construction materials, pump sizes and capacities, location and capacity of boosters, location of valves, elevations of pipe outlets and inlets, and configuration of the head box.

3. What was the maximum quantity of water diverted and total acreage irrigated in 1993? What water, if any, was wasted in 1993 during periods of peak diversion? Were the hydraulic characteristics of the system changed in 1993? If so, what was changed?

4. The Department understands water is diverted out of the Double Diamond ditch by several domestic users. Under what right is water presently diverted?

5. How did the present irrigation system evolve from the early diversion from Porter Creek? Of particular interest is the use of the booster pump. The capacity or horsepower rating of the booster pump should be submitted. When was the booster pump installed and when was its use discontinued?

In addition to presenting evidence relative to the above facts, the parties may also orally argue any fact already in the record, or that will be presented at the hearing. In addition, the issues of law set forth in the recommended decision may also be argued.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 29th day of December, 1993.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of December, 1993, I mailed a true and correct copy, postage prepaid, of this Notice of Hearing to the following:

George Dovel

Rt 1 Box 61
Horseshoe Bend, ID 83629

Richard B. Eismann Esq
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651

Jack Riddlemoser Esq

PO Box 373
Meridian, ID 83642

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise River
Boise, ID 83705

David P. Hirschi
Horseshoe Bend Hydroelectric
180 S 300 W, Ste 200
Salt Lake City, UT 84101

Claudette J. Kinney
Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 4159 (WATER RIGHTS NOS. 65-03103, 65-10746, 65-02540 AND 65-10747) IN THE NAME OF DOUBLE DIAMOND INC.	**NOTICE OF HEARING**

On July 30, 1993, a recommended decision was issued for application for transfer no. 4159 in the name of Double Diamond, Inc. Following issuance of the order, George Dovel filed exceptions to the decision. After reviewing the exceptions, and the record, the hearing officer determined that additional information was necessary to finally determine the issues of fact and law. An Order for Augmentation of the Record was issued on October 27, 1993.

THE DEPARTMENT HAS SCHEDULED THE AUGMENTATION HEARING ON JANUARY 5TH, 1993, IN THE LARGE CONFERENCE ROOM OF THE DEPARTMENT OF WATER RESOURCES, 1301 N. ORCHARD STREET, BOISE, IDAHO 83706. THE HEARING WILL COMMENCE AT 9:30 A.M., AND CONTINUE UNTIL CONCLUDED. The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding office at the hearing will be Gary Spackman.

Evidence presented at the augmentation hearing shall be limited to the following issues:

1. How long has the number one Porter Creek right not been used on the gravel pit impact area (56 acres)?

2. What are the present hydraulic characteristics of the Porter Creek and Payette River lines? This evidence may be submitted in the form of an actual water measurement of the flow

into the head box, the flow in the waste pipe, and the water flowing in the mainline. If the capacity of the system cannot be measured, then the following system characteristics should be described: pipeline diameters, lengths and construction materials, pump sizes and capacities, location and capacity of boosters, location of valves, elevations of pipe outlets and inlets, and configuration of the head box.

3. What was the maximum quantity of water diverted and total acreage irrigated in 1993? What water, if any, was wasted in 1993 during periods of peak diversion? Were the hydraulic characteristics of the system changed in 1993? If so, what was changed?

4. The Department understands water is diverted out of the Double Diamond ditch by several domestic users. Under what right is water presently diverted?

5. How did the present irrigation system evolve from the early diversion from Porter Creek? Of particular interest is the use of the booster pump. The capacity or horsepower rating of the booster pump should be submitted. When was the booster pump installed and when was its use discontinued?

In addition to presenting evidence relative to the above facts, the parties may also orally argue any fact already in the record, or that will be presented at the hearing. In addition, the issues of law set forth in the recommended decision may also be argued.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

Dated this 16th day of December, 1993.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of December, 1993, I mailed a true and correct copy, postage prepaid, of this Notice of Hearing to the following:

George Dovel

Rt 1 Box 61
Horseshoe Bend, ID 83629

Richard B. Eismann Esq
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651

Jack Riddlemoser Esq

PO Box 373
Meridian, ID 83642

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise River
Boise, ID 83705

David P. Hirschi
Horseshoe Bend Hydroelectric
180 S 300 W, Ste 200
Salt Lake City, UT 84101

Claudette J. Kinney
Word Processing Specialist

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND INC.	**ORDER FOR AUGMENTATION OF THE RECORD**

After reviewing the recommended decision, the record, and exceptions filed by the parties, several issues of fact are unresolved. The outcome of this dispute may hinge on the resolution of these issues of fact.

Furthermore, the recommended decision determined that the portion of number one right which had irrigated the gravel pit lands had been forfeited, but could be resumed during the 1993 season. Because of the resumption reasoning, the decision could not define the extent of the right. If the department adheres to the reasoning of the recommended decision, it must gather facts to determine the extent of resumption.

Finally, although the recommended decision limited the scope of the Department's review to the gravel pit impact area in determining forfeiture, the hearing officer is not convinced, as yet, that the review shouldn't extend to the entire right.

ORDER

IT IS HEREBY ORDERED that the record shall be augmented at a hearing conducted on January 5, 1993, in the large conference room of the Department of Water Resources, 1301 North Orchard, Boise, Idaho 83720. The hearing will commence at 9:30 a.m. and continue until concluded.

Evidence presented at the augmentation hearing shall be limited to the following issues:

1. How long has the number one Porter Creek water right not been used on the gravel pit impact area (56 acres)?

2. What are the present hydraulic characteristics of the Porter Creek and Payette River lines? This evidence may be submitted in the form of an actual water measurement of the flow into the head box, the flow in the waste pipe and the water flowing in the mainline. If the capacity of the system cannot be measured, then the following system characteristics should be described: pipeline diameters, lengths and construction materials, pump sizes and capacities, location and capacity of boosters, location of valves, elevations of pipe outlets and inlets, and configuration of the headbox.

3. What was the maximum quantity of water diverted and total acreage irrigated in 1993? What water, if any, was wasted in 1993 during periods of peak diversion? Were the hydraulic characteristics of the system changed in 1993? If so, what was changed?

4. The Department understands water is diverted out of the Double Diamond ditch by several domestic users. Under what right is water presently diverted?

5. How did the present irrigation system evolve from the early diversion from Porter Creek? Of particular interest is the use of the booster pump. The capicity or horse power rating of the booster pump should be submitted. When was the booster pump installed and when was its use discontinued?

In addition to presenting evidence relative to the above facts, the parties may also orally argue any fact already in the record, or that will be presented at the hearing. In addition, the issues of law set forth in the recommended decision may also be argued.

Dated this 27th day of October, 1993.

Gary Spackman

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 1993, I mailed a true and correct copy of the foregoing Order for Augmentaion of the Record, postage prepaid, to the following:

George Dovel

Rt 1 Box 61
Horseshoe Bend, ID 83629

David P Hirschi
Horseshoe Bend Hydroelectric
180 S 300 W Ste 200
Salt Lake City, UT 84101

Double Diamond Inc
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

Jack Riddlemoser Esq

PO Box 373
Meridian, ID 83642

Richard Be Eismann Esq
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651

Karen L. Gustafson
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.	**RECOMMENDED ORDER**

A hearing having been held to address protests filed against an application for transfer filed by Double Diamond, Inc., the hearing officer, as a representative of the Director of the Department of Water Resources, recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Double Diamond, Inc. (Double Diamond) filed an application for transfer on March 19, 1991, and amended the application for transfer on April 2, 1992. The amended application proposes to change the place of use and/or nature of use of two water rights which authorize diversion of water from Porter Creek, and two water rights which authorize diversion from the Payette River.

2. The application for transfer proposes to change the place of use for water right no. 65-03103 (Porter Creek), which bears an 1872 priority, from lands which are not now irrigable because of the construction of a gravel pit, to lands which have been irrigated by water diverted pursuant to right no. 65-10746 (Porter Creek), a 1960 priority water right. The application seeks to transfer right 65-10746 to the gravel pit to sustain a pond in the gravel pit for recreational uses. The nature of use of the Payette River water rights (65-02540 and 65-10747) will be amended to reduce existing irrigation use and add a use of recreation storage. Correspondence in the file states water will be stored for a fish

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pond and a wetland area.

3. The rights are described in the Payette River decree as follows:

65-03103
Source: Porter Creek
Flow Rate: 3.82 cfs
Priority: January 1, 1872
Point of Diversion: NW¼SE¼, Sec. 12, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23															39		39
7N	2E	26	13	40	36	3	23			22						14			154
																		TOTAL ACRES	193

65-10746
Source: Porter Creek
Flow Rate: .44 cfs
Priority: April 1, 1960
Point of Diversion: NW¼SE¼, Sec. 12, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2				2
7N	2E	26	11								9								20
																		TOTAL ACRES	22

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65-02540
Source: Payette River
Flow Rate: 3.20 cfs
Priority: April 26, 1951
Point of Diversion: Sec. 23, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2		39	1	42
7N	2E	26	13	40	36	3	23			22	9					14			163
																		TOTAL ACRES	205

65-10747
Source: Payette River
Flow Rate: .90 cfs
Priority: April 1, 1960
Point of Diversion: Sec. 23, T7N, R2E, B.M.
Place of Use:

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23													2		39	1	42
7N	2E	26	13	40	36	3	23			22	9					14			163
																		TOTAL ACRES	205

8 1995

4. The application for transfer proposed a change in the place of use as follows for each of the rights:

65-03103

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31		41
7N	2E	26	24	35	3	19			16	9						14			152
																		TOTAL ACRES	193

65-10746 (R is an abbreviation for recreation and recreation storage)

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23		R	R		R L1			R L2									
7N	2E																		
																		TOTAL ACRES	

65-02540 (R is an abbreviation for recreation and recreation storage)

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31	1	42
7N	2E	26	13	35	32	3	19		16	9						14			141
7N	2E	26		R	R		R		R										
																		TOTAL ACRES	183

8,995

65-10747

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	2E	23												8		2	31	1	42
7N	2E	26	13	35 R	32 R	3	19 R			16 R	9					14			141
																		TOTAL ACRES	183

5. George Dovel and Horseshoe Bend Hydroelectric Company filed protests against the application for transfer.

6. At a hearing conducted on March 8 and 11, 1993, Double Diamond Inc. appeared and was represented by Jack Riddlemoser, Attorney at Law. Dovel appeared and was represented by Richard Eismann, Attorney at Law. Horseshoe Bend Hydroelectric Company failed to appear.

7. George Dovel owns the following water rights diverted from Porter Creek:

Right no.	Priority	Flow rate (cfs)	Use
65-10950	6/1/1908	1.61	Irrigation
65-10951	6/1/1912	0.84	Irrigation
65-10953	6/1/1946	0.04	Domestic

8. Water District no. 65-B was formed to administer delivery of water to users of Porter Creek according to the priority of the water rights. The district refers to the water rights in descending numerical order according to priority. Right no. 65-03103, owned by Double Diamond, is the earliest priority right, and is locally referred to as the number one right. Right no. 65-10746, also owned by Double Diamond, is locally referred to as the number 12 right.

9. Right nos. 65-10950 and 65-10951, both owned by Dovel, are locally referred to as the number 6 and number 7 rights, respectively.

8 1995

10. Dovel's point of diversion is located above the Double Diamond diversion. The watermaster closes Dovel's headgate when necessary during low water periods to satisfy Double Diamond's calls for water downstream.

11. During low water years, George Dovel's no. 6 and no. 7 rights are only deliverable during the early part of the irrigation season. The number 12 right, owned by Double Diamond is only deliverable during high flow periods.

12. The Idaho Department of Transportation contracted with Double Diamond to excavate a gravel pit on a parcel of Double Diamond property to which water right no. 65-03103 is appurtenant for the construction of a portion of Highway 55 between Boise and Horseshoe Bend.

13. The Department of Transportation began excavating the Double Diamond property during the summer of 1988. Prior to excavation, the land was irrigated with water diverted from Porter Creek pursuant to the first priority right.

14. Dovel testified that a large portion of the land was scarified in 1988, and he estimated 43 acres were not irrigated in 1988. Dovel did not measure or walk the gravel pit boundaries, but only observed the work from the other side of the river. His estimate of nonirrigated acreage was not contested by Double Diamond.

15. During the peak of construction, approximately 56 acres could not be farmed because of the gravel pit excavation. Approximately 52 acres of the 56 acres was land irrigated by water diverted pursuant to the number one priority Porter Creek right.

16. As construction was ending in 1991 and in 1992, the Idaho Department of Transportation reclaimed a portion of the gravel pit area as farm land. Approximately 22 acres are still excavated as a gravel pit or not irrigable as a result of the gravel pit construction. Double Diamond does not intend to reclaim any more of the 22 acres. Double Diamond intends to irrigate the reclaimed land in 1993.

17. Porter Creek water is delivered to the Double Diamond

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property through a combination open channel and closed pressurized system. The diversion from Porter Creek delivers water into approximately two miles of open ditch. The water then enters a headbox at the top of a hill. A pipeline inlet is located in the headbox. The pipeline is constructed from the top of the hill to the bottom, and then extends to the Double Diamond property. Pressure develops in the pipeline because of the change in elevation and the gravity pressure is sufficient to operate the Double Diamond sprinklers.

18. A second pipeline is installed in the headbox where the main pipeline begins. The second pipe is an overflow pipe. An overflow spillway in the headbox separates the inlets to the pipes. Presumably, no water flows in the overflow pipe until the elevation of the water rises in the headbox because of increased flow, or decreased usage at the end of the mainline, which causes water to spill into the overflow compartment of the headbox, and finally, into the overflow pipe.

19. The overflow pipe parallels the main delivery pipe downhill toward the Double Diamond property. At the base of the hill, the main pipeline crosses Jackass Creek, and the overflow pipe ends with an open orifice which discharges into Jackass Creek. The main line continues on to the Double Diamond property.

20. Water from the Payette River is pumped through a mainline which junctions with the Porter Creek pressurized line. At an earlier time, a booster pump pressurized water in the mainline when many of the sprinklers were operating and water was also being delivered from the Payette River. The booster pump was located in the Porter Creek pipeline upstream of the junction of the Porter Creek pipeline and the Payette River pipeline, but has not been used in several years.

21. A larger pump was installed in the Payette River which allegedly pressurized the line sufficiently that the booster pump was no longer needed. George Dovel testified that when the Payette River pump is pumping, the flow from Porter Creek is more manageable. This statement implies that the Payette River pump

increases the flow in the Porter Creek line upstream of the Payette River line - Porter Creek line junction.

22. The testimony is inconsistent with hydraulic principles. Increasing the pressure in the Payette River line would also increase the pressure at the junction. Without the booster pump operating, hydraulic head will build in the Porter Creek line to match the head caused by the Payette River pump. More water should spill into the Porter Creek overflow when the Payette River pump is pumping.

23. In 1990, the Department determined 52 acres were not irrigable because of the gravel pit excavation. The authorized rate of flow was reduced 1.03 cfs from 3.82 cfs to 2.79 cfs.

24. In 1991, Double Diamond was again only allowed to divert 2.79 cfs because 52 acres were not irrigable.

25. Watermaster records show Double Diamond diverted the full amount of reduced entitlement of 2.79 cfs at least once during both the 1990 and 1991 irrigation seasons.

26. In 1992, the authorized rate of diversion was only reduced 0.43 cfs, from 3.82 cfs to 3.39 cfs, because of reclamation of the gravel pit.

27. Dovel and his employees have carefully monitored and observed Double Diamond's use of water. In 1991, Christy Shirley, one of Dovel's employees observed and recorded the use of water on the Double Diamond property, and also observed and recorded water being discharged into Jackass Creek through the overflow pipe.

28. In addition to the monitoring by Shirley in 1991, Dovel measured the water diverted, measured or observed Jackass Creek overflowing, and also estimated the water applied to the Double Diamond property by measuring pressures in a single rainbird sprinkler with a pitot gage and by multiplying the discharge of a single sprinkler head at the measured pressure by the number of sprinklers operating.

29. The maximum discharge from the sprinklers measured by Dovel in 1991 is approximately 60 inches, or 1.2 cfs. The measurements do not account, however, for delivery losses,

particularly in the open ditch. The measurements also do not account for the reduction in the authorized diversion rate because approximately 52 acres were not being irrigated. Finally, the measurements of sprinkler discharge are not correlated to water availability. There may not have been any more water available for diversion, minus losses, than Dovel measured.

30. Protestant's Exhibit I summarizes Shirley's and Dovel's observations. Dovel testified that any diversion over 2.0 cfs results in a waste of water into Jackass Creek. The testimony again ignores the decrease in irrigated acreage as a result of gravel pit excavation, and the corresponding decrease in the ability of Double Diamond to divert its full water right.

31. Several individuals divert water from the Double Diamond ditch as "courtesy water." While the quantity of water diverted is only approximately two inches per user, no rights to this water are found in records of the Department of Water Resources.

32. An engineer, Don Watts, hired by Dovel, computer digitized the boundaries of irrigated fields depicted on Protestant's Exhibit A, and superimposed public survey information on top of the irrigated fields, dividing the fields into segments within each 40 acre tract. Protestant's Exhibit A is a 1992 aerial photograph of the Double Diamond property.

33. Watts plotted each segment and compared his calculations to an ASCS aerial photograph predating the gravel excavation. His calculations were comparable to the acreage shown on an ASCS map predating the gravel pit excavation. Protestant's Exhibit V-1 depicts segment boundaries, and summarizes segment acreage.

34. Attachments to protestant's Exhibit V conclude the number one priority right irrigates approximately 164.5 acres and the number 12 priority right irrigates approximately 18 acres.

35. The application for transfer proposes use of the no. 12 Porter Creek right (65-10746) when deliverable early in the year, and use of a portion of the Payette River rights (65-02540 and 65-10747) to maintain pond water levels for the remainder of the irrigation season.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in Section 42-203A(5), Idaho Code; . . ..

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights, and that it is consistent with conservation of Idaho's water.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest of which each is most cognizant, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interest factors which favor the proposal are of greater worth than the public interest considerations with which it conflicts.

4. The applicant carries the burden of proof for all the criteria of Idaho Code § 42-222.

5. The Department may determine the issue of forfeiture when considering an application for transfer. Jenkins v. State of Idaho, 103 Idaho 384, 647 P.2d 1256 (1982).

6. Forfeiture is not favored and must be established by clear and convincing evidence.

7. Idaho Code § 42-222 is the statute which defines forfeiture:

> All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the

> beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; . . ..

8. Dovel argues Porter Creek water has not been delivered to the gravel pit area (approximately 43-56 acres) for a period of at least five years. Dovel also argues the filing of the application for transfer subjects each of the rights to full forfeiture scrutiny by the Department, and the Department cannot narrowly focus only on the gravel pit, but must review the use of the whole right, including the entire place of use,and the total quantity of water diverted. Evidence presented by Dovel questions the total number of acres irrigated, and the total quantity of water capable of being diverted by Double Diamond.

9. Double Diamond contests the expansive review requested by Dovel. Double Diamond argues the application for transfer only seeks a change for the 22 acres within the gravel pit, and argues the Department is not authorized to scrutinize other portions of the place of use or the quantity of water diverted.

10. Jenkins does not state whether the Department may review the entire water right when an application for transfer is filed which seeks to change only a portion of the right.

11. The Department's review of the validity of the right when considering an application for transfer is limited by an initial determination of whether a narrow focus on the portion sought to be transferred, without looking at the entire right, will result in an enlargement, injury to other users, a conflict with the public interest, or is inconsistent with principles of conservation of water. In this case, the Department must review more than the 22 acres identified as the gravel pit because 56 acres were part of the gravel pit during peak construction in 1990 and 1991.

12. The department need not look beyond the boundaries of the gravel pit. Double Diamond proposes to change the place of use from the gravel pit lands to new lands. Double Diamond is not

seeking to change the remainder of the place of use. The definition of the entire place of use and total authorized flow rate can be addressed in the Snake River Basin Adjudication.

13. There is uncontroverted evidence in the record that at least 43 acres were not irrigated during the five irrigation seasons in 1988 through 1992. However, Double Diamond indicated its intent to use the water by filing applications for transfer prior to the end of the fifth irrigation season. Notice of these applications was published.

14. Technically, the right to irrigate 43 acres was forfeited at the end of the 1992 irrigation season.

15. "[F]orfeiture is not effective, if after the five-year period, the original owner or appropriator resumed the use of the water prior to the claim of right by a third party." Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952).

16. The hearing for this application was conducted on March 8 and 11, 1993, before the commencement of the 1993 irrigation season.

17. Other users could not establish a legal claim of right to the forfeited water until after forfeiture. If Double Diamond resumes its use during the 1993 irrigation season, the other users will not have established a reliance on the water,and the forfeiture is not effective.

18. Most of the testimony established the area of unrestored gravel pit at approximately 20-22 acres. The measurement and calculation of 22 acres by Donald Rumsey is accepted as the area of the unrestored gravel pit.

19. The protestant did not establish that the flow rate authorized for diversion should be reduced because of nonuse. Double Diamond diverted the maximum flow to which it was entitled in 1990 and 1991. When the restored gravel pit acreage and the new acres (once irrigated by the number 12 right) are irrigated more water will be needed.

20. The protestant established that Double Diamond (or its

tenant) does not cautiously use only the water it needs. Substantial waste of valuable Porter Creek water into Jackass Creek is not acceptable.

21. The protestant raised a substantial question about the total number of acres irrigated. These issues should be addressed by the Snake River Basin Adjudication.

22. Double Diamond should know how much water is necessary to operate various sprinkler line combinations. Double Diamond should call for the quantity of water needed.

23. Spill into Jackass Creek of a substantial quantity of water is not acceptable except when Porter Creek fluctuations or other unforeseeable occurences cause waste.

24. Double Diamond is obligated to operate its irrigation system in a manner that will not result in the waste of a substantial quantity of water during times when sprinkler lines are being moved or modified. Double Diamond is further obligated to inform the watermaster when its reduced diversion rate requirement is such that later priority right holders could make beneficial use of the water.

25. Approval of this transfer will not injure other water rights.

26. Approval of this transfer will not result in an enlargement. Approval does not confirm the irrigation of the entire place of use, and the issues of forfeiture and abandonment may be raised in the Snake River Basin Adjudication.

27. Approval of this transfer will not conflict with the local pubic interest.

28. If Double Diamond, including its tenant, timely informs the watermaster of changes in its delivery, the transfer will be consistent with principles of conservation of water within the state of Idaho.

29. Use of water for recreational fish rearing and wetlands is a beneficial use.

30. "Courtesy water" should not be delivered to water users who do not hold a valid water right.

1995

31. Failure to appear at a hearing is cause for dismissal of a protest. Horseshoe Bend Hydroelectric Company's protest should be dismissed.

ORDER

IT IS HEREBY ORDERED that application for transfer of water rights nos. 65-03103, 65-10746, 65-02540, and 65-10747 is APPROVED subject to the following conditions:

1. Use of water under these water rights shall be regulated by the watermaster of State Water District No. 65B.

2. The right holder under this transfer shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

3. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

4. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

5. Water shall be used only on the place of use described by the transfer approval document, incorporated and made a part of this decision.

6. The validity of the portion of the water rights not transferred was not determined and may be questioned in a subsequent proceeding, including the Snake River Basin Adjudication.

7. The owner of this right, or his tenant, shall inform the watermaster of the flow needed to operate his sprinkler system whenever the use changes significantly.

8. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

9. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre for the lands above.

10. Spill of a substantial quantity of water into Jackass

Creek is a waste of water, and is an illegal use of water pursuant to Idaho Code §42-351. Determination of "substantial quantity" is left to the future determination of the Department and the watermaster.

IT IS FURTHER ORDERED that Horseshoe Bend Hydroelectric Company's protest is dismissed.

Dated this 30th day of July, 1993.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of August, 1993, I mailed a true and correct copy of the foregoing Recommended Order and Order Issuing the Recommended Order, postage prepaid, to the following:

George Dovel

Rt 1 Box 61
Horseshoe Bend, ID 83629

David P Hirschi
Horseshoe Bend Hydroelectric
180 S 300 W Ste 200
Salt Lake City, UT 84101

Double Diamond Inc
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

Jack Riddlemoser Esq

PO Box 373
Meridian, ID 83642

Richard Be Eismann Esq
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651

Karen L Gustafson

Karen L. Gustafson
Secretary/Records Manager

I hereby certify that on the 30th day of July, 1993, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Carolyn Andregg
Secretary

Double Diamond, Inc.
% Donald Rumsey
200 Sunrise Rim
Boise, Idaho 83705

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

Jack C. Riddlemoser, Esq.
712 E. Fairview
P.O. Box 373
Meridian, Idaho 83642

Richard B. Eismann, Esq.
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416

Transfer 70464 Reference Sheet

DATE: April 23, 2004

TO: File(s) 65-2869, 65-1151, 65-1317, 65-2138, 65-2532A, 65-2540, 65-10747, 48, 49, 65-11393A, 65-22775, 76

Original Transfer Application form,

correspondence and review documents

regarding Transfer 70464 are located within

Water Right file 65-3103.

SCANNED
MAY 0 4 2004

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 24, 1995

Don Rumsey
Double Diamond Ranch
311 4th Street No. Ext.
Nampa, ID 83687

RE: TRANSFER NO. 4159 OF WATER RIGHT NOS. 65-03103, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

Dear Mr. Rumsey:

Your letter to Steve Lester of the department's Western Regional Office requesting more time to install measuring devices has been forwarded to me for response.

On January 30, 1995, The department issued the Final Order approving the transfer with certain conditions and limitations including Condition of Approval No. 2 which required you to maintain a measuring device and lockable controlling works of a type approved by the department and Condition of Approval No. 4. which required that you complete the change authorized by the transfer within one (1) year.

While your letter is not explicitly clear, it appears that your concern is not completing the installation of the measuring devices and lockable controlling works within one year of the transfer approval i.e. by January 30, 1996.

The department will grant more time in which to install the measuring devices and controlling works provided the installation is complete and operable on or before May 1996 or by the time the watermaster is called to duty, whichever is earlier.

I also noted that your letter refers to right no. 65-10746 from Porter Creek and right no. 65-10747 from the Payette River. The transfer involved four (4) water rights, all of which must be measured under terms of approved transfer no. 4159.

Sincerely,

Gary Spackman

GARY SPACKMAN, Mgr
Water Distrib. Sec.

c: IDWR - W. Region
George Dovel

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED
NOV 17 1995
Department of Water Resources

November 16, 1995

Mr. Don Rumsey
Double Diamond Ranch
311 4th Street No. Ext.
Nampa, ID 83687

RE: TRANSFER NO. 4159 FOR PAYETTE RIVER AND PORTER CREEK RIGHTS

Dear Don:

Your November 7 letter requesting more time to complete the work related to the above-referenced transfer is being forwarded to the department's State Office Water Allocation Bureau. You should be hearing something from that office regarding your request.

Transfer No. 4159 includes Payette River rights 65-02540 and 65-10747 plus Porter Creek rights 65-03103 and 65-10746.

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

Sincerely,

Steve Lester
Water Rights Supervisor

Mailed
NOV 17 1995

DOUBLE DIAMOND RANCH
HORSESHOE BEND, IDAHO
311 4TH STREET NO EXT • NAMPA ID 83687
(208) 466-3680 Fax (208) 466-1941

RECEIVED
NOV 14 1995
WATER RESOURCES
WESTERN REGION

November 7, 1995

Mr. Steve Lester
State of Idaho
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Dear Steve:

I am writing in response to the two water rights which were transferred to the Double Diamond gravel pit, nos. 65-10746 @ .44 CFS and 65-10747 @ .90 CFS.

Steve, I would like an extension until May 1996 to facilitate the installation of a gate valve and meter to accurately measure this water. I am sorry for the delay in this matter, and ask for your full consideration in granting my request.

Sincerely,

Don Rumsey

Don Rumsey
Owner

ORIGINAL

Richard B. Eismann
Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/vn/8

RECEIVED
AUG 0 2 1994
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

EXCEPTIONS BY PROTESTANT, GEORGE DOVEL, TO AMENDED RECOMMENDED ORDER AND REQUEST FOR ORAL ARGUMENT

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

--- "Double Diamond" means the applicant for transfer, Double Diamond Inc.

--- "DD-1-priority" means Double Diamond's number one Porter Creek water right.

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3016 CALDWELL BLVD
NAMPA, IDAHO 83651-6416
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--- "DD-12-priority" means Double Diamond's number twelve Porter Creek water right.

--- "Dovel" means the protestant, George Dovel.

--- "Department" means the Idaho Department of Water Resources.

--- "Director" means the Director of the Idaho Department of Water Resources.

--- "Donald Rumsey" means one of the partners who owns Double Diamond.

--- "Lester" means the Department agent, Steve Lester.

--- "Nottingham" means the Idaho Department of Transportation geologist, Keith Nottingham.

--- "Shirley" means the witness, Christie Shirley, who was employed by Dovel to irrigate during the years 1988-1992 and who took water measurements in 1991.

--- "Chapman" means Sherl Chapman, a geologist and consultant hired by Dovel.

--- "King" means Scott King, a Department employee who measured the flows, discharges and pressures of the Double Diamond irrigation system.

--- "Watts" means Don Watts, an engineer hired by Dovel to determine accurate irrigated Porter Creek acreage.

APR 25 1995

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EXCEPTIONS: The protestant hereby makes each exception to the Amended Recommended Order following:

(FINDING OF FACT)

11. *During low water years, George Dovel's no. 6 and no. 7 rights are only deliverable during the early part of the irrigation season. The number 12 right, owned by Double Diamond, is only deliverable during high flow periods.*

The protestant excepts to the finding because such finding is incomplete and partially incorrect. Clear and unrefuted testimony and evidence presented by Dovel showed:

(a) That the DD-1-priority Porter Creek water right is also only deliverable during the early part of the irrigation season in low water years.

(b) That until 1986 Double Diamond had historically used a booster pump in the Porter Creek pipeline to deliver sufficient water to operate six wheel lines early in the season.

(c) That during low water years, once the supply of Porter Creek water reaching the Double Diamond pipeline at Jackass Creek was insufficient to operate the six wheel lines: (1) the booster pump was shut off; (2) the Payette River pump was turned on supplying only Payette River water (with rights overlapping the Porter Creek rights) to the six wheel lines; and (3) the Porter Creek water was returned to Dovel pursuant to his 6 and 7 rights and one other junior Porter Creek water user.

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(d) That Dovel has always been able to use his 6 and 7 rights to irrigate his crops during the middle and latter part of the irrigation season when Double Diamond's irrigation is shut down in order to dry down and harvest their crops.

(FINDING OF FACT)

12. *The Idaho Department of Transportation contracted with Double Diamond to excavate a gravel pit on a portion of the Double Diamond property to which water right no.* 65-03103 *is appurtenant and a small portion of the Double Diamond property to which water right no.* 65-10746 *is appurtenant, for the construction of a section of Highway* 55 *between Boise and Horseshoe Bend.*

The protestant excepts to the finding because such finding is incomplete. The parcel excavated for the gravel put actually contained a single irrigated field, with water right 65-03103 appurtenant to only a part of that field while number 15 Porter Creek water right 65-10746 was appurtenant to the remainder of the field. The entire parcel could only be irrigated with a single water right by using either of the overlapping Payette River water rights.

(FINDING OF FACT)

13. *The Department of Transportation began excavating the Double Diamond property during the summer of* 1988. *Prior to excavation, the land was irrigated with water diverted from Porter Creek pursuant to the first priority right.*

The protestant excepts to this finding because the finding

5 1995

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states facts not found in or supported by the evidence, and disregards the unrefuted testimony and evidence presented by Dovel and his witnesses which are contrary to the finding as follows:

(a) Both Dovel and Nottingham testified that test excavation began in 1987 and that gravel was already stockpiled on the site by the last day of spring, June 20, 1988.

(b) Dovel testified that he had never seen water from the DD-1-priority Porter Creek right used to irrigate any of the gravel pit land, and that he would have noticed any such irrigation had it occurred because that land had never been irrigated with Porter Creek water when Dovel's rights were reduced or shut down since it was considered to have only a DD-12-priority Porter Creek water right.

(c) Shirley testified that she had never seen the land irrigated during the preceding five years.

(d) Dovel testified that only Payette River water had been used during the past 12 years to irrigate the gravel pit land, and Double Diamond did not refute the testimony.

(e) Double Diamond offered no testimony or evidence that any of the gravel pit acres have been irrigated with Porter Creek water. Their evidence was simply that the lands had been irrigated. The only testimony as to the source of the irrigation water was Dovel's testimony that Payette River water was used.

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(FINDING OF FACT)

15. *During the peak of construction, approximately* 56 *acres could not be farmed because of the gravel pit excavation. Approximately* 52 *acres of the* 56 *acres was land irrigated by water diverted pursuant to the number one priority Porter Creek right.*

The protestant excepts to the finding because the finding states facts not found in or supported by the evidence, and disregards the unrefuted testimony presented by Dovel and his witnesses that none of the gravel pit area was irrigated using the number one priority Porter Creek water right. (See evidence stated in Exception to Finding of Fact No. 13).

(FINDING OF FACT)

16. *As construction was ending in* 1991 *and* 1992, *the Idaho Department of Transportation reclaimed a portion of the gravel pit area as farm land. Approximately* 22 *acres are still excavated as a gravel pit or not irrigable as a result of the gravel pit construction. Double Diamond does not intend to reclaim any more of the* 22 *acres.*

The protestant excepts to the finding because the finding states facts not found in or supported by the evidence, and disregards all of the testimony and evidence contrary to the finding as follows:

(a) Nottingham testified that the Idaho Transportation Department did not complete reclamation of any portion of the gravel pit area as farmland because they were stopped from doing so by Double Diamond. This testimony was not refuted by

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Double Diamond.

(b) Dovel testified and produced dated photographic evidence showing that, in addition to the 22 acres remaining as gravel pit and gravel storage, most of the remainder had not been reclaimed as farm land at the time of the hearing in March 1993. This testimony was not refuted by Double Diamond.

(c) Dovel produced photographs showing that additional access roads and fenced storage areas had been constructed south of the gravel pit by March 1993, and showing that only a small area further to the south had the potential to be irrigated or raise crops. This testimony was not refuted by Double Diamond.

(d) Dovel also presented testimony that the area between the 22 acre gravel pit and the Payette River had not been farmed and was not prepared for farming. This testimony was not refuted by Double Diamond.

(e) Lester admitted that he had never measured the area that was supposedly reclaimed but instead took a Double Diamond representative's word for the size in order to file the transfer application.

(f) Double Diamond presented no evidence or testimony claiming (1) that any of the former gravel pit area had been reclaimed, or (2) that they had irrigated any of that land with Porter Creek water.

(FINDING OF FACT)

17. *Porter Creek water is deliverable to the Double Diamond property through a combination open channel and*

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closed pressurized system. The diversion from Porter Creek delivers water into approximately two miles of open ditch. The water then enters a headbox at the top of the hill. A pipeline inlet is located in the headbox. The pipeline is constructed from the top of the hill to the bottom, and then extends to the Double Diamond property. Pressure develops in the pipeline because of the change in elevation, and there is sufficient head drop between the top of the pipe and the bottom to operate sprinklers.

The protestant excepts to the finding because the portion of the finding that is emphasized by underlining is incomplete and misleading. The finding should also include the statement that uncontested evidence and testimony showed (1) that during the preceding eight years before the pipeline was altered to increase its capacity in April and May of 1984, the gravity head alone was sufficient to deliver only 190 gallons per minute through 64 sprinklers at low pressure; and (2) that when more sprinklers were added, they would not operate property and the pipeline seals were broken, causing the water to leak from the gaskets.

(FINDING OF FACT)

20. A second mainline junctions with the Porter Creek pressurized line. The second mainline delivers water pumped from the Payette River. George Dovel testified at the first hearing, that when the Payette River pump is operating, the flow from Porter Creek is more manageable. He explained his earlier testimony at the March 9, 1994, hearing, by stating that when the Payette River pump is pumping, the Porter Creek line will overflow. A valve located in the Payette River pipeline

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can be closed until pressure in the Payette River line reduces pressure and equalizes with the pressure in the Porter Creek line, until the Porter Creek line no longer overflows. In this way, Dovel alleges the system can be managed correctly.

The protestant excepts to the finding because the finding states facts not found in or supported by the evidence, and disregards or misinterprets all of the testimony and evidence. Dovel did not allege that the system can (could) be managed correctly by partially closing the Payette River valve but instead, provided uncontested testimony that this caused the system to operate inefficiently. The cavitation this caused could be heard in either of the two videotapes provided by Dovel as evidence supporting his testimony.

(FINDING OF FACT)

25. *Watermaster records show Double Diamond diverted the full amount of reduced entitlement of 2.79 cfs at least once during both the 1990 and 1991 irrigation seasons.*

The protestant excepts to the finding because this finding is incomplete and misleading. Ample documentation by Dovel exists in the Department's District 65-B file to prove that all of the 2.79 cfs turned in briefly in 1990 was wasted at Jackass Creek.

Substantial unrefuted testimony by Dovel at the hearing, corroborated by Shirley's diary, watermaster notes and records and videotape, prove that the 1991 turn-in of 2.79 cfs resulted in a massive around the clock waste of Porter Creek

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water at Jackass Creek until the water was promptly substantially reduced by the watermaster.

These one-time excessive diversions at the beginning of each season of more water than could be applied beneficially are a violation of Idaho Code Section 18-4302 which makes it a criminal offense to wantonly waste irrigation water by diverting it for an unnecessary purpose or by allowing such water to run into a dry channel so that it cannot be used for irrigation, nor reach the original channel of the stream from which it has been diverted.

The fact that these diversions were ordered by Lester does not alter the fact that they were unlawful and were promptly reduced by the watermaster as soon as Dovel pointed that out.

By omitting the fact that much of the diversion was unlawfully wasted, the statement of facts concerning the amount beneficially diverted each season is completely misleading.

(FINDING OF FACT)

26. *In 1992, the authorized rate of diversion was only reduced 0.43 cfs, from 3.82 cfs to 3.39 cfs, because of the anticipated reclamation of the gravel pit.*

The protestant excepts to the finding because this finding is contrary to the evidence as follows:

(a) At the hearing, Lester made the claim which has been accepted as true by this finding. But, Lester's claim was refuted during cross examination by Dovel when Lester admitted that he had never measured the quantity of land

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actually reclaimed but had simply taken the information from an agent of Double Diamond as the amount of gravel pit land intended to be reclaimed when the transfer application was filed before the 1992 irrigation season.

(b) Neither the watermaster records nor the watermaster's field notes reflect the 3.39 cfs as being authorized in 1992. The records list a maximum allowable diversion of 2.79 cfs (as in the two preceding years) despite the fact that even this quantity had resulted in massive water waste at Jackass Creek.

(c) Both the watermaster's records and field notes reflect a maximum 1992 DD-1-priority diversion of only 2.07 cfs which was turned in for only five days early in May and which still resulted in a waste of water at Jackass Creek until it was substantially reduced by the watermaster on May 12, 1992.

(FINDING OF FACT)

28. *In addition to the monitoring by Ms. Shirley in 1991, Dovel measured the water diverted, measured or observed Jackass Creek, and also estimated the water applied to the Double Diamond property by measuring pressures in rainbird sprinklers with a pitot gauge, averaging the pressures measured, and multiplying the average discharge of a single sprinkler head by the number of sprinklers operating.*

The protestant excepts to the finding because this finding, while providing a general explanation of one of the methods of measurement used, does not include the extensive measurements that were actually used by Dovel in order to obtain accurate data.

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Dovel testified that he always measured the output from at least two sprinklers in a line which had a constant grade, with the sprinklers on each end always being measured to assure accurate averages, and sometimes measured all of the sprinklers in a line to verify the accuracy of his average measurements. Dovel also testified that he calibrated the pitot gauge used and also used an accurate dial caliper to determine whether nozzles had excessive wear or had been rebored. In addition Dovel testified that he also verified the accuracy of pitot pressure measurements by using a stop watch and a measured container during both 1990 and 1991.

(FINDING OF FACT)

29. *The maximum discharge from sprinklers estimated by Dovel in* 1991 *is approximately* 60 *inches, or* 1.2 *cfs. His measurements do not account, however, for delivery losses, particularly in the open ditch. The measurements also do not account for the reduction in the authorized diversion rate because approximately* 52 *acres were not being irrigated.*

The protestant excepts to the finding because the finding states erroneous conclusions, states facts not found in or supported by the evidence, and is contrary to the evidence as follows:

(a) Dovel's testimony clearly stated that the maximum total sprinkler output he had ever measured on Double Diamond in either 1990 or 1991 was between 51 and 52 inches, not 60 inches as claimed. This can easily be verified by multiplying the normal average output per sprinkler when 124 total 9/16 inch nozzles were used (3.14 gpm adjusted to 3.2

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gpm for excessive wear) times the total number of sprinklers shown either in the Shirley diary (Prot. Ex G) or the 1991 summary of Double Diamond water usage (Prot. Ex. I).

The resulting total of 396.8 gpm or approximately 44.1 inches (3.2 X 124 divided by 9) represents the normal maximum daily output of the Double Diamond system. It will be noted from Protestant's Exhibits G and I that whenever Double Diamond increased the number of sprinklers beyond 125, the pressure was always noticeably reduced even though the river booster pump was running, thus verifying the 51.5 inch maximum with 148 sprinklers operating.

(b) The bold assertion that Dovel's measurements do not take into account the 52 acres not being irrigated ignores the obvious maximum capacity of the Double Diamond Porter Creek pipeline system. Dovel testified and produced manufacturer's charts (Prot. Ex. F) proving that even at 3.2 gpm output with only 125 nozzles, the sprinklers do not have sufficient pressure or coverage to meet the manufacturer's minimum recommendation for irrigation.

The inference that Double Diamond could somehow add even more than 147 nozzles to the system and somehow overcome the additional friction loss to irrigate an additional 52 acres truly ignores hydraulic principles. As Dovel testified, the additional sprinklers would not even turn, much less irrigate properly.

(c) The bold assertion that Dovel's measurements do not account for delivery losses, particularly in the open ditch, is simply not true. Dovel's testimony was that he had added an additional 15 percent to total a maximum output of 60

inches on the Double Diamond lands to include losses in the irrigation system.

In addition, Dovel recorded the transportation losses in the open ditch by recording the quantity diverted at the headgate and then subtracting the total amount applied through the pipeline irrigation system and the measured or estimated amount wasted through the overflow waste pipe at Jackass Creek (See Prot. Ex. I).

In fact the Dovel videotape in the District 65-B file thoroughly documents these ditch losses and the measurements at Jackass Creek and even shows the simple steps by which these ditch losses were calculated under a variety of conditions with varying amounts of water diverted through the DD-1-priority headgate.

(d) The bold assertion that the sprinkler measurements are not correlated to water availability totally ignores the massive evidence provided by Dovel at the hearing as well as information contained in the District 65-B file. For seven consecutive irrigation seasons the combined watermaster records and watermaster field notes have shown that Double Diamond has either wasted substantial quantities of water or permitted junior water users, including Dovel, to use about half of the DD-1-priority water right because the Double Diamond irrigation system, including ditch losses, could not apply any more of the water right beneficially.

The speculation in the last sentence of the finding that there may not have been any more water available for diversion in 1991 ignores (1) the 1991 watermaster records (Prot. Ex. D) which clearly shows that water was also being delivered to

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three other water users with rights junior in priority to Double Diamond, and (2) summary of Double Diamond water usage under right 65-3103 in 1991 (Prot. Ex. I) which clearly shows that excessive water was already being diverted and wasted out the Jackass Creek overflow. But, even if such evidence did not exist, the assumption that there may not have been any more water available for diversion during some hypothetical period is not appropriate in determining the issue of forfeiture.

The "use it or lose it" concept of western water law clearly requires that the amount of water that has actually been diverted and applied to beneficial use is the true "duty of water" which must be used at the time of a proposed transfer in determining what portion of a decreed right has been forfeited.

(e) The statement that the Dovel "measurements also do not account for the reduction in the authorized diversion rate because approximately 52 acres were not being irrigated" is in error.

A sprinkler line in a field is designed to cover only a portion of that field on each setting and to be moved across that field periodically to cover the whole field within a given number of days. The period between sprinkler line moves may be from eight to thirty-six hours, and the number of moves to cover the whole field may be from five to twelve moves.

Regardless of whether fewer acres or more acres are irrigated in any given season, the amount of water used at any given time during the irrigation season cannot exceed the maximum capacity of the system. In this case, Dovel determined the

capacity of the Double Diamond system to be a maximum of 51.5 inches to operate 148 sprinklers.

In the case of Double Diamond's irrigation, it has used all of the sprinkler nozzles that could efficiently apply water in its pipeline system. Yet, Double Diamond has never diverted and applied beneficially anywhere near the maximum quantity of its adjudicated DD-1-priority water right even when that quantity was reduced during the years of the gravel pit excavation.

Double Diamond never used more than 148 sprinkler nozzles to apply water before or after the excavation began. The assumption that Double Diamond might have used more water if the water had been declared available to Double Diamond by the Department is illogical and is in error because it did not use more than 148 sprinkler nozzles.

When more water was turned in for one or two days at the beginning of each of two seasons, the excess water was always wasted out the Jackass Creek overflow because Double Diamond's system could not apply it to a beneficial use.

(FINDING OF FACT)

30. *Protestant's Exhibit I summarizes Shirley's and Dovel's observations. Dovel testified that any diversion over 2.0 cfs results in a waste of water into Jackass Creek. The testimony again ignores the decrease in irrigated acreage as a result of gravel pit excavation, and the corresponding decrease in the ability of Double Diamond to divert its full water right.*

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The protestant excepts to the finding because that portion of the finding that is emphasized by underlining states facts or assumptions that are contrary to the testimony and evidence and which also flies in the face of logic.

The uncontested testimony and evidence showed that any quantity of water diverted to Double Diamond exceeding 2.0 cfs was always wasted and was subsequently promptly reduced by the watermaster following a request from Dovel to halt the waste. This occurred even when Double Diamond was permitted to divert 2.79 cfs and when Lester instructed the watermaster to divert that quantity.

When 2.79 cfs was diverted through Double Diamond's number one priority headgate, at least .79 cfs was wasted out the Jackass Creek overflow pipe because it exceeded the system capacity which was 2.0 cfs including ditch losses. If 10.0 cfs had been diverted through that headgate, at least 8.0 cfs would have been similarly wasted.

(FINDING OF FACT)

31. *On May 11 and 12, 1994, Donald Rumsey, a principal owner of Double Diamond, George Dovel, Sherl Chapman, a consultant hired by Dovel, and Scott King, a Department employee, met at the Double Diamond ranch. Flows, discharges, and pressures were measured according to criteria agreed upon by the parties.*

The protestant excepts to the finding because that portion of the finding that is emphasized by underlining states facts or assumptions that are untrue. Flows and discharges were not measured according to criteria established by the parties.

(FINDING OF FACT)

33. *The discharge of the system was first measured with the booster pump on and then with the booster pump off. The river pumps were off, and the gate valve in the Payette River line was closed, isolating it from the Porter Creek gravity pressure system.*

The protestant excepts to the finding because, contrary to the agreed upon criteria, nozzles from all of the lines in operation with the booster pump on were not measured and nozzles from most of the lines were not measured with the booster pump off. Also, the valve separating Porter Creek and Shafer Creek water was not closed as agreed upon when most of the sprinkler nozzle pressures were measured. When the valve was later closed, a noticeable change occurred in the Porter Creek system indicating that some Porter Creek water had been diverted into the Shafer Creek lines when most of the measurements were taken.

(FINDING OF FACT)

36. *The flow in the pipeline with the booster pump operating could not be measured with a Collins meter or an inline McCrometer meter because the booster pump entrained air in the water. Mr. King and Mr. Chapman measured a flow of 3.12 cfs in the Porter Creek line by measuring the inflow to the collection box, and by subtracting the overflow at Jackass Creek.*

The protestant excepts to the finding because it is inaccurate. Chapman was not present and did not participate in either the measurement of water flowing in the ditch or the

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measurement with the Collins meter cited in Finding of Fact No. 35. Both Chapman and Dovel were always present during the times scheduled for measurements, but these measurements were taken by King when Chapman was attending another previously scheduled appointment in the area on the day after the Double Diamond measurements were scheduled to take place.

(FINDING OF FACT)

37. *After the measurements agreed to and observed by Dovel and his consultant, Dovel objected to the results, alleging the Porter Creek line was prepared and lines were added which were never used. These objections were not raised at the time of the test.*

The protestant excepts to the finding because it is inaccurate. Once Dovel learned that the system had been changed, he discussed with King the improved system and the newly installed gate valve and the fact that these changes had radically increased the system capacity. Dovel also requested that King make additional measurements of all the sprinkler nozzle pressures following the closing of the valve which permitted Porter Creek water to flow in to the Shafer Creek pipeline. After measuring only a single nozzle on one wheel line, King declined to measure the rest of the nozzles as Dovel had requested and left before Dovel's consultant, Chapman, returned as agreed upon, to conduct further measurements and further discussion.

Chapman had discussed with Dovel and agreed to protest to King on his return to the site shortly after 3:00 p.m.: (1) the newly discovered system improvements which negated the value of the tests for determining the previously existing system

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capacity; (2) the existence of a substantially smaller flow with far fewer sprinklers and lower nozzle pressures that he had personally observed on a visit two weeks earlier; (3) the inappropriate use of only 20 psi as a working pressure for FCN and 5/32 inch nozzles; (4) the addition of a substantial number of sprinkler lines that had heretofore never been used in that location and which were strategically placed at lower elevations to maximize pressures and nozzle delivery volume; and (5) the inability of Chapman and King to make accurate estimates of flows from each lateral due to a wide variance in nozzle sizes encountered.

Because King expressed displeasure with Dovel for requesting more than the single admittedly inaccurate measurement King had taken and because King also did not wait for Chapman's return as agreed upon, the additional objections were not permitted to take place at the site. Also, as explained above, the measurements of both ditch and pipeline flow were not witnessed by Chapman as stated.

(FINDING OF FACT)

38. *Several individuals have diverted water from the Double Diamond ditch referred to locally as "courtesy water." The quantity of water diverted is only approximately two inches per user. These diversions are represented by adjudication claims. "Courtesy water" was not delivered in* 1993 *to the individuals who diverted it in previous years.*

The protestant excepts to that portion of the finding which states that the quantity of water diverted is "only approximately two inches per user," because that statement is

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contrary to the evidence as follows:

In addition to Dovel's unrefuted testimony that some of these users divert water for irrigation as well as domestic and stock water purposes, there are numerous examples in the District 65-B file showing that substantially more than 2 inches per user has been diverted but not recorded:

1. In 1990, while acting as the Porter Creek watermaster, Lester diverted 13 inches (.26 cfs) of courtesy water for use by Arlie Woods and entered the diversion in his watermaster field notes for July 17, 1990, as .26 cfs diverted to Arlie Woods as "courtesy water." Yet, Lester entered the diversion in the watermaster records for July 17, 1990, as only .04 cfs and charged it to the DD-1-priority diversion.

2. In 1992, Watermaster Berntsen diverted .528 cfs (26 inches) through the DD-1-priority headgate on July 24th and permitted that quantity to be used by the three unlicensed out-of-priority courtesy users through August and into September.

The significance of these diversions is that they are in excess of Double Diamond's normal ditch losses and should be included in the Findings of Fact as part of the Double Diamond right which has not been used by Double Diamond and has therefore been forfeited.

(FINDING OF FACT)

43. *At the hearing for additional evidence, the parties testified regarding the extent of irrigation in* 1993. *Except for the* 22 *acres which was not reclaimed, and*

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remains as a gravel pit and pond, all of the acres which were a part of the original gravel excavation were irrigated.

The protestant excepts to the finding because the finding implies facts not found in or supported by the evidence and disregards testimony from Dovel. There was no testimony or evidence offered at either hearing to claim that all but the 22 acres that were part of the original gravel pit were irrigated in 1993 with Porter Creek water.

(CONCLUSION OF LAW)

10. *Jenkins does not state whether the Department may review the entire water right when an application for transfer is filed which seeks to change only a portion of the right.*

The protestant excepts to the conclusion because it relates a point which has never been argued by either the Double Diamond or by the protestant in any of the four briefs that were submitted.

The language both in Idaho Code Section 42-222 and in Jenkins v. State, 103 Idaho 384, at 387, 647 P.2d 1256 (1982) is plain and precise:

> The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether the transfer would injure other water rights.
>
> 109 Idaho at 387 (emphasis added).

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In this proposed transfer Double Diamond is attempting to transfer not one but two water rights with some portions of each of the two rights being transferred to new locations while other portions will remain at the same locations. The hearing officer's attempts to dissect these rights and claim that only this or that specific parcel of one of the two rights should be examined for forfeiture or expansion of use or injury to other rights, is without precedent.

There is nothing in the statute which permits the Director to examine only one-fourth or some other portion of the right, and the Director has always examined the whole right in the past when only a portion of the right was actually being transferred.

Conclusions of Law 11 and 12 are likewise without merit. The conclusion that the Department need not look beyond the boundaries of the gravel pit denies the existence of that portion of the entire right which has been forfeited by the failure to apply the water beneficially at any time during the previous seven irrigation seasons.

Pretending that such forfeiture does not apply to lands within the 56 acre gravel pit or to lands within the 22 acre hole in the ground stretches the boundaries of reason and common sense.

(CONCLUSION OF LAW)

11. *The Department's review of the validity of the right when considering an application for transfer is limited by an initial determination of whether a narrow focus on the portion sought to be transferred, without looking at the entire right, will result in an*

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enlargement, injury to other users, a conflict with the public interest, or is inconsistent with principles of conservation of water. In this case, the Department must review more than the 22 acres identified as the gravel pit because 56 acres were part of the gravel pit during peak construction in 1990 and 1991.

AND

12. The department need not look beyond the boundaries of the gravel pit. Double Diamond proposes to change the place of use from the gravel pit lands to new lands. Double Diamond is not seeking to change the remainder of the place of use. The definition of the entire place of use and total authorized flow rate can be addressed in the Snake River Basin Adjudication.

The protestant excepts to these conclusions for the reasons stated in Exception to Conclusion of Law No. 10.

(CONCLUSION OF LAW)

13. A recent interim order prohibiting communications between the Director of the Idaho Department of Water Resources and all claimants, signed by Judge Daniel C. Hurlbutt, Jr., states that "the Director and IDWR are prohibited from participating in any settlement discussions or negotiations about any water right or element thereof for which a notice of claim has been filed in the SRBA as well as any issue raised for judicial resolution in the SRBA."

AND

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14. *The Department does not interpret Judge Hurlbutt's order as prohibiting a narrow application of the Jenkins reasoning which allows the Department to review issues of forfeiture. The review of the Department should be limited to the gravel pit impact area, however, and should not extend to all other elements of the water right. A consideration of the total flow rate authorized, the use of the booster pump and the total acreage irrigated should be reserved for the ongoing adjudication.*

The protestant excepts to the conclusion because it is contrary to the provisions of Idaho Code Section 42-222 and it is not in conflict with Judge Hurlbutt's order.

(CONCLUSION OF LAW)

15. *The May 11 and 12, 1994 measurements by Scott King established a diversion capacity exceeding the estimates by Dovel. A final determination of the total diversion authorized will be reserved for adjudication.*

The protestant excepts to the conclusion because the statement is incomplete and therefore misleading. The measurements by King, if accurate, establish only that the present diversion capacity of Double Diamond's irrigation system exceed the historical capacity from 1986 through April 15, 1994, as determined by overwhelming testimony and evidence which was never refuted.

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(CONCLUSION OF LAW)

20. *Other users could not establish a legal claim of right to the forfeited water until after forfeiture. If Double Diamond resumed its use during the 1993 irrigation season, the other users would not have established a reliance on the water, and the forfeiture is not effective.*

The protestant excepts to the conclusion because it is contrary to all of the facts in evidence and contrary to law.

After forfeiture, even if it occurred only at the end of the 1992 season, if a third party files a "claim of right" before the original owner or appropriator resumes use, the forfeiture is effective. This is the statement of law contained in the cases cited by the hearing officer himself in Conclusion No. 18. The facts here show forfeiture at the end of the 1992 season and a claim of right by Dovel before any resumption of use. The fact that the 1993 irrigation season did not start until after the claim was filed is not relevant. What is relevant is that the forfeiture occurred and Double Diamond did not resume use before a claim of right was filed. The facts in this record show that:

(a) On May 13, 1991, more than five years after one half of the DD-1-priority Porter Creek water right 65-03103, including the gravel pit area, had been forfeited by nonuse, Dovel filed a third party claim as a junior user to move up the ladder of priority involving the quantity of the right that was forfeited.

(b) For five years prior to the filing of that petition to

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cancel one half of the DD-1-priority Porter Creek right, Dovel began enjoying the benefits of the forfeited right and has therefore established a reliance on the water for the past eight consecutive years. A copy of the Petition to Declare Water Rights Terminated, lodged by the Department on May 13, 1991, is attached hereto as **Exhibit A**.

(c) Despite the petition and claim by Dovel, Double Diamond has made no attempt to reclaim any portion of the forfeited right by applying Porter Creek water beneficially to any of the forfeited acres or by increasing the capacity of its irrigation delivery system until after April 15, 1994.

(CONCLUSION OF LAW)

21. *Double Diamond resumed irrigation of all lands in the gravel pit impact area, except the 22 acres which remained as a gravel pit and pond.*

The protestant excepts to this conclusion for the reasons stated in the Exception to Finding of Fact No. 43. There is no evidence or testimony in the record indicating that any of those acres have been irrigated with Porter Creek water since 1986.

(CONCLUSION OF LAW)

22. *Most of the testimony established the area of unrestored gravel pit at approximately 20-22 acres. The measurement and calculation of 22 acres by Donald Rumsey is accepted as the area of the unrestored gravel pit.*

The protestant excepts to the conclusion because it is not

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supported by the findings of fact and is contrary to all of the evidence and testimony as follows:

While it is evident that the area containing the hole in the ground and the gravel piles is approximately 20-22 acres, even Lester testified that the remainder of the area had not been restored at the time of his May 1992 inspection, one month after the alleged approval of restoration had been signed.

Dovel presented substantial evidence, including several 1992 and 1993 photographs, indicating that most of the entire gravel pit area has not been restored as farm land. In fact, Dovel's testimony was the only testimony claiming that any of the area had been restored. All of the lands in the gravel pit area except the 22 acres still have not been reclaimed as farm land.

(CONCLUSION OF LAW)

23. *The protestant did not establish that the flow rate authorized for diversion should be reduced because of nonuse. Double Diamond diverted the maximum flow to which it was entitled in* 1990 *and* 1991. *The restored gravel pit acreage and the new acres (once irrigated by the number* 12 *right) were irrigated in* 1993.

The protestant excepts to the conclusion because the conclusion that Double Diamond diverted the maximum flow for beneficial use is contrary to the facts in evidence as follows:

The evidence shows that the one time turn in of maximum flow in 1990 and 1991 constituted waste in violation of Idaho Code, Section 42-351 and 18-4302.

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While it may be difficult to establish who was guilty of the misdemeanor offense since Lester accomplished the brief turn in of excessive water, the hearing officer certainly cannot conclude that this unlawful act constituted a beneficial use for purposes of enlarging or restoring the already forfeited portion of the water right. Waste is not a beneficial use.

The protestant also excepts to this conclusion for the reasons stated in Exception to Conclusion of Law No. 20. Dovel presented uncontested evidence and testimony of the forfeiture through nonuse of one half of the DD-1-priority water right number 65-03103 through nonuse of that quantity of water from January 1986 through March 1993.

For whatever reason, the hearing officer appears to be attempting to tie the forfeiture of this substantial quantity of unused water to gravel pit acres that were not irrigated with any source of water from 1987 through 1992.

The statement that, "The protestant did not establish that the flow rate authorized for diversion should be reduced for nonuse" is grossly incorrect. Perhaps the hearing officer is confusing flow rate with annual consumptive use.

When a senior wateruser diverts only one half of his decreed right for five consecutive years and uses that reduced flow twice as long, his annual consumptive use requirement may remain the same, but other junior appropriators have established a history of beneficial use of the other one half of the maximum decreed diversion. Therefore, the junior users are entitled to a continuation of their established beneficial use of the water, and there is no precedent for the Department's failure to declare a forfeiture of the other one

half of the senior right that has historically not been used.

Idaho Code Section 42-222 states in part:

> **42-222. Change in point of diversion, place of use, period of use, or nature of use of water under established rights -- Forfeiture and extension -- Appeals. --**
>
> . . . .
>
> (2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter.
>
> Idaho Code Section 42-222 (1990).

In Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), the Idaho Supreme Court stated:

> (T)he director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other water rights. While ordinarily abandonment and forfeiture are to be determined in a separate proceeding, it is clear that when a water right is sought to be transferred and protestors allege that it has been abandoned or forfeited, and that to allow resumption of that right would cause some injury, a determination of abandonment or forfeiture is necessary for the performance of his powers of determining injury. The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure

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APR 25 1995

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other water rights. If a water right has indeed been lost through abandonment or forfeiture, the right to use that water reverts to the state and is subject to further appropriation. I.C. Section 42-222(2); Graham v. Leek, 65 Idaho 279, 144 P.2d 475 (1943). Other parties may then perfect a water right in those waters. Sears v. Berryman, 101 Idaho 843, 623 P.2d 455 (1981); Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976). Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost, Sears v. Berryman, supra, and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceedings, clearly injury would result to otherwise junior appropriators. Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder. See Id. Const.Art. 15, Section 3; Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966). See also Farmers Irrigation Co. v. Game & Fish Comm'n., 149 Colo. 318, 369 P.2d 557 (1962); Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist., 605 P.2d 1060, 1069 (Mont.1979).

103 Idaho at 387-388 (emphasis added).

Permitting the senior right holder, in this case, Double Diamond, to improve their irrigation system and divert additional water while applying it to additional acres will create a very real harm to Dovel and to numerous other junior appropriators in the Snake River Basin.

(PROPOSED ORDER)

The protestant objects to the proposed order for the following reasons:

Overwhelming evidence of the waste of tens of millions of

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gallons of Porter Creek irrigation water by Double Diamond and the forfeiture of approximately half of the DD-1-priority Porter Creek water right exists in the Department's District 65-B file but has not been addressed in the Recommended Order.

Failure of the Department to declare half of Porter Creek water right 65-03103 forfeited will result in removal of that water from Dovel and other junior water users who have enjoyed the use of the forfeited water for at least the past eight years.

Failure of the Department to reduce the number of acres in accordance with Watts' testimony and exhibits assures erroneous calculation of the duty of water and paves the way for further enlargements via future transfers.

The continuing irrigation of the lands historically irrigated with right 65-03103 plus the irrigation of 22 additional acres which have never been irrigated with Porter Creek's number one priority right constitutes an increase in the total number of acres which would be irrigated following approval of the transfer. Increased acreage is evidence of increased use in volume or time or both.

The forfeiture of part of Porter Creek water right 65-10747 also has not been addressed in the order.

Paragraph 9 of the Order does not even address the testimony proving the reduced volume and consumptive use of the duty of water diverted under Double Diamond's 65-3103 right. In fact paragraph 9 provides an increased seasonal consumptive use limit which is nearly double the previously established limit for the Oliver/Dobson number two priority Porter Creek water

APR 25 1995

right.

Approval of this transfer will conflict with the local public interest. The order is contrary to overwhelming evidence presented at the hearing and is incorrect because: the use of DD-1-priority Porter Creek water to irrigate those lands which have historically only been irrigated with Payette River water once Porter Creek water becomes scarce will result in those lands being irrigated when the Porter Creek water would normally have been returned to Dovel while the historical senior priority lands are being dried down and harvested.

This in turn will result in the loss to Dovel of thousands of dollars worth of hay crops which cannot be irrigated and harvested as they have been historically. As both Shirley and Dovel testified, this also results in the layoff of several local area employees as well as increased costs to local consumers, all of which represents a substantial loss to the economy of the local area.

The order does not even consider this substantial unrefuted testimony concerning harm to the local economy. The order also ignores the fact that there was no testimony concerning alleged benefits or lack of harm to the local economy, despite the legislative mandate that the Director must consider such testimony and that the applicant must offer proof that the transfer will not adversely affect the citizens in the area.

By ordering a hearing for the taking of additional evidence and conducting the tests conducted on the Double Diamond irrigation system, the Department has assumed jurisdiction to determine all of the issues relating to forfeiture which it now declines to exercise. This has resulted in great

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additional expense to the parties and the Department. The Department should continue to exercise the jurisdiction it previously assumed on all of the issues of forfeiture.

The protestant excepts to the entire order because it is contrary to the evidence and testimony presented at the protest hearing in violation of Idaho Code Section 42-222.

REQUEST FOR ORAL ARGUMENT: Oral argument on these exceptions is hereby requested by the protestant.

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this day mailed, United States Mail, postage prepaid, to each of the following: **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83608-0037; **DAVID P. HIRSCHI, HORSESHOE BEND HYDROELECTRIC**, 180 South 300 West, Suite 200, Salt Lake City, Utah 84101; and **DOUBLE DIAMOND, INC., C/O DONALD RUMSEY**, 311 4th Street North Extension, Nampa, Idaho 83687-3247.

DATED: AUG - 2 1994

SIGNED: _____
Richard B. Eismann
Counsel for the protestant

SIGNED: _____
George Dovel, the protestant

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2 5 1995

COPY

Richard B. Eismann
Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/vn/8

MAY 13 1991

Department of Water Resources

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

GEORGE DOVEL and ELISABETH V. WALLACE,

Petitioners,

-vs-

DOUBLE DIAMOND, INC.; PATRICIA MILLER; and ARLIE L. WOODS and PAULINE WOODS, husband and wife,

Respondents.

PETITION TO DECLARE WATER RIGHTS TERMINATED

COME NOW the petitioners, George Dovel and Elisabeth V. Wallace, and by this petition show:

1. Porter Creek is a tributary to the Payette River and is situated in Boise County, Idaho.

2. On the date of December 20, 1985, or thereabouts, the District Court of the Third Judicial District for the State of

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Idaho, County of Gem, entered a decree (herein called decree) establishing the priority and use of water and water rights from Porter Creek.

3. The cut off date for determining water rights under the decree was October 19, 1977.

4. The priority of the water rights and maximum diversion for such water rights established by the decree for the petitioners are as follows:

Petitioners	Right No.	Priority	Maximum Diversion
George Dovel/ Elisabeth V. Wallace	65-10950	6	1.61 cfs.
George Dovel/ Elisabeth V. Wallace	65-10951	7	.84 cfs.

5. The priority of the water rights and the maximum diversion of waters for such water rights established by the decree for the respondents are as follows:

Respondent	Right No.	Priority	Maximum Diversion
Double Diamond, Inc.	65-3103	1	3.82 cfs.
Patricia Miller	65-3839	3	.54 cfs.
Arlie L. Woods/ Pauline Woods	65-10771	5	.32 cfs.

6. The respondent, **Double Diamond, Inc.**, is no longer entitled to divert all of the water under the water right decreed to such respondent for each of the reasons following:

EXHIBIT A

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(a) Such respondent has abandoned one half of the water right established by the decree for such respondent by failing to use more than one half of such water right pursuant to the decree since the cutoff date.

(b) Such respondent has forfeited one half of the water right established by the decree for such respondent by failing to use more than one half of such water right pursuant to the decree since the cutoff date.

7. The respondent, **Patricia Miller**, is no longer entitled to divert water under the water right decreed to such respondent for each of the reasons following:

(a) Such respondent has abandoned the water right established by the decree for such respondent by failing to use such water right pursuant to the decree since the cutoff date.

(b) Such respondent has forfeited the water right established by the decree for such respondent by failing to use such water right pursuant to the decree since the cutoff date.

8. The respondents, **Arlie L. Woods and Pauline Woods, husband and wife**, are no longer entitled to divert water under the water right decreed to such respondents for each of the reasons following:

(a) Such respondents have abandoned the water right established by the decree for such respondents by failing to use such water right pursuant to the decree since the cutoff date.

(b) Such respondents have forfeited the water right established by the decree for such respondents by failing to

5 1995
EXHIBIT A

use such water right pursuant to the decree since the cutoff date.

WHEREFORE, the petitioners request that an order be entered fixing a hearing on this petition, determining that each respondent has abandoned and has forfeited the water right decreed to each such respondent as set forth above, and granting to the petitioners such other and further relief as may be just.

DATED: MAY 13 1991

SIGNED: George Dovel

George Dovel, petitioner
Route 1, Box 61
Horseshoe Bend, Idaho 83629

SIGNED: Richard B. Eismann

Richard B. Eismann
Counsel for the petitioners

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RICHARD B. EISMANN
DEBRA L. EISMANN

May 27, 1994

DELIVERED BY FACSIMILE

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WATER RESOURCES
WESTERN REGION

GARY SPACKMAN, HEARING OFFICER
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751/Double Diamond, Inc.

Dear Mr. Spackman:

Despite our letter to you dated April 7, 1994, objecting to any alteration of the Double Diamond pipeline distribution system prior to the measurements which were scheduled to be taken on April 11, 1994, the scheduled measurements were not taken, and the pipeline was substantially repaired or altered before the measurements were finally taken on May 11-12, 1994.

A field examination of the Double Diamond irrigation conducted by Sherl Chapman prior to the April 15, 1994, deadline revealed only four wheel lines and two hand lines operating with substantially reduced pressures without the booster pump running.

In addition to the subsequent repair of numerous leaks in the pipeline, Mr. Rumsey admitted to replacing the badly leaking gate valve that was supposed to prevent Porter Creek water from flowing out of the pipeline into the Payette River at the river pump. The failure of this valve to perform that function was clearly illustrated in the videotape submitted by Mr. Dovel to the Department in 1992 which became part of the District 65-B file.

In that video, when the Payette River pump was not running, a substantial quantity of Porter Creek water could be heard leaking through the faulty valve and flowing back into the sump and the Payette River. At the same time, the system pressure of several of the wheel lines reduced

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sufficiently that the gasket seals were broken and many of the upper sprinklers failed to function, as seen in the video.

While the measurements taken by Mr. King in May perhaps illustrate the potential capacity of the system after extensive repairs were accomplished, they do not reflect the condition of the system prior to May 1, 1994, as indicated by the testimony during the hearing and substantiated by watermaster records.

Mr. Chapman does not agree that the minimum pressure of 20 psi is adequate for irrigation purposes, and Mr. King declined to obtain sprinkler nozzle pressures from most of the lines with the booster pump off, as agreed upon.

Most of the measurements that were taken with the booster pump running were taken when the valve between Shafer Creek and Porter Creek water sources was part way open, thereby permitting the two water sources to be mixed. The potential inaccuracy of these measurements is obvious.

We strenuously object to these measurements from a pipeline system that was altered after the April 15th deadline being used in your determination of the quantity of Porter Creek water forfeited by Double Diamond during the five year period.

Thank you for your attention to this matter.

Very truly yours.

Richard B. Eismann
RBE/vn/8
CLT: Client
Jack C. Riddlemoser
David R. Tuthill, Jr.

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SEP 0 3 2000

MEMORANDUM

To: Gary Spackman
From: Scott King
Date: May 20, 1994

Subject: Results of Porter Creek flow measurements

May 11, 1994, 2:00 p.m.
Don Rumsey, George Dovel, Sherl Chapman, and I met at the Double Diamond Ranch. I installed the department's ultrasonic flowmeter on the 10 inch steel pipeline crossing Jackass Creek. Unfortunately, excessive air in the pipe prevented use of the ultrasonic meter, so Sherl and I installed a collins meter.

The amount of air in the system was so excessive that the collins meter provided inaccurate results. We shut down some lines in order to reduce the amount of air entering the pipeline, but this effort was unsuccessful. It was agreed that the best method to measure the flow under these conditions was to current meter the ditch near the pipe entrance, and measure the overflow with a bucket and stopwatch. As it was getting late, we agreed to make these measurements the next day.

May 12, 1994, 10:00 a.m.
Upon arriving at the ranch, I measured the flow over the 3' cipoletti weir at the Porter Creek diversion. At 0.50' of head, 3.57 cfs was entering the ditch.

I then used the Swoffer 2100 current meter to measure the flow in the ditch before it entered the pipeline. This flow was 3.19 cfs, or 1431 gpm. At this time, all the flow entered the main pipeline, and none was overflowing. The owner's recently installed propeller type flowmeter (McCrometer) indicated a flow of 1430 gpm, which agreed with the open channel measurement.

Don, Sherl, George, and I then inspected the system. The in-line booster pump was running. The river pumps were off and the gate valve closed, thereby isolating these pumps from the system and preventing water from flowing from the system into the Payette River.

One short hand line on the uppermost portion of the system was shut off because the average pressure was below 20 psi. All other lines were operating adequately (after some adjustment by the owner).

SEP 25 1995

The gate valve located at the end of the 8" mainline was closed. This valve isolates the Porter Creek system from the other system(s).

Upon verifying that the proper valves were closed and that all lines were operating adequately, we measured the overflow at the Jackass Creek crossing using a 6 gallon bucket and stopwatch. The average time to fill the 6 gallon bucket was 11 seconds, resulting in an overflow of 33 gpm. Thus, the system capacity with the in-line booster pump **on** is 3.12 cfs, or 1400 gpm.

System Flow = Ditch Flow - Overflow
= 3.188 cfs - 0.073 cfs
= 3.115 cfs

At this flow rate, 265 nozzles were operating at an average pressure of about 37 psi. Nozzle sizes were varied, ranging from 9/64" to 11/64" smooth bore commingled with 5 gpm flow control nozzles. Due to the variety of nozzle sizes and types, exact measurement using nozzles would be very time consuming. However, assuming equal distribution of nozzle sizes and types operating at 37 psi results in a flow of about 1200 gpm. Worn nozzles and leaks could easily account for another 15-20% above this flow rate. These measurements therefore confirm the previous measurements.

The booster pump was then turned off, and two more lines were shut down due to low pressure (one short hand line in the uppermost portion of the system, and one wheel line in the southwest end of the system). With a total of 230 nozzles, all lines were now operating adequately. The average pressure had dropped by about 10-11 psi.

Sherl and I tried to measure the overflow with the bucket and stopwatch, but the flow was too excessive, filling the bucket in under two seconds. I then set up to use the collins meter. Sherl left to attend to a another appointment.

Since there was no longer any air in the system, the collins meter measurement went much better. However, moss plugged the impact tube several times during the measurement. I cleaned the instrument as soon as the problem was observed, and continued with the measurement. Results of this measurement indicated a flow rate of 2.39 cfs, or 1074 gpm. The owners' McCrometer flow meter indicated 1160 gpm. It is likely that the collins measurement may be slightly low due to partial plugging at some stations, and I would therefore recommend that the McCrometer reading of 1160 is more accurate. In any case, these measurement are within 10% difference and should be considered acceptable.

Therefore, the system capacity with the booster pump **off** is:

Flow (McCrometer) = 2.58 cfs or 1160 gpm

Flow (Collins) = 2.39 cfs or 1074 gpm

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 12, 1994

RE: In the matter of Transfer No. 4159 in the name of Double Diamond, Inc.

Dear Interested Party:

The accompanying order is a **"amended recommended order"** issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer 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 twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

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ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, 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 recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

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 agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

for L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosures

CONVERSATION MEMORANDUM

DATE 7/18/94

FILE 65-C2540 Psycho R.
-C3163 Porter Ck.
etc.

NAME OF PARTY Carolyn A. Caulfield

EMPLOYEE Ken Wester

RECEIVED
JUL 20 1994
Division of

RE: STATUS

"AMENDED RECOMMENDED ORDER" with cover letter sent 7/12/94.

NO APPROVED YET UNTIL Director signs FINAL ORDER.

CALLED ALJ SECRETARY 7/19/94 with his calendar info. (Hank B. 385-4020) Will send copy to him when I receive it.

cc: -5-B file (Gail)

MAR 29 1995

65-2540

MEMORANDUM

To: Gary S.
From: Scott K. Date: April 7, 1994

Subject: Double Diamond--Rumsey proposes to replace leaky mainline crossing Jackass Creek, Dovel protests.

I contacted both parties today to notify them of proposed measurement protocol. Faxed copy to Dovel.

Rumsey wants to replace the steel mainline which crosses Jackass Cr. When I tapped this pipe for the Collins meter, I noticed that it was old, rusty, and had some small holes in it. He said he was going to replace it at the first of next week or earlier. He is going to be gone on Monday. He will contact me when his system is ready.

I contacted Dovel again to notify him of this change. He said he is going to protest the pipe replacement as Rumsey is "changing the system." I explained that although new pipe will have lower friction losses which may increase flow, flow will probably be reduced due to less leaks, and that the bottom line will not amount to a hill of beans. He still protested the principal of the change.

I again contacted Rumsey and notified him of Dovel's protest.

A new test date has not been set.

MAR 29 1995

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Department of Water Resources

MAY 27 1994

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MAY 3 1 1994

WATER RESOURCES
WESTERN REGION

EISMANN LAW OFFICES

3016 CALDWELL BLVD.

NAMPA, IDAHO 83651 - 6416

Telephone (208) 467-3100
Facsimile (208) 466-4498

RICHARD B. EISMANN
DEBRA L. EISMANN

COPY ATTACHED - MAILED ☒ DELIVERED ☐ FAXED ☐ TO:

FOR YOUR INFORMATION AND RECORDS.

DAVID R. TUTHILL, JR., P. E.
MANAGER, WESTERN REGIONAL OFFICE
STATE OF IDAHO DEPARTMENT WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

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FEB 0 3 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER WATER RIGHTS 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.	**ORDER GRANTING LEAVE TO CONDUCT DISCOVERY.**

On March 3, 1994, a telephonic hearing was conducted to address the protestants motion to compel discovery. After discussing the motion, the attorneys for the parties, Jack Riddlemoser and Richard Eismann agreed to arrange an inspection of the irrigation system owned by Double Diamond, Inc. by the protestant, George Doval, and also agreed to attempt the taking of a deposition of Donald Rumsey, a principal in Double Diamond , Inc., prior to the hearing scheduled for March 9, 1994.

ORDER

IT IS HEREBY ORDERED that the protestants motion to compel discovery is GRANTED.

IT IS FURTHER ORDERED that the parties will cooperate to complete the discovery requested prior to March 9, 1994.

Dated this 4th day of March, 1994.

Gary Spackman

Gary Spackman
Hearing Officer

MAR 2 9 1995

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of March 1994, I mailed a true copy postage prepaid of the Order Granting Leave To Conduct Discovery to the following:

Richard Eismann
Eismann Law Office
3016 Caldwell Boulevard
Nampa, Idaho 83651

David P. Hirschi
Horseshoe Bend Hydroelectric
180 South 300 West Ste. 200
Salt Lake City, Utah 84101

Jack C. Riddlemoser
Attorney at Law
PO box 37
Meridian, ID 83608

IDWR Regional Office
Boise, ID

Kris Rhodes

Kris Rhodes
Secretary

ORIGINAL

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MAR 0 4 1994
Department of Water Resources

Richard B. Eismann
Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/vn/8

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

NOTICE TO TAKE DEPOSITION OF DONALD RUMSEY

NOTICE OF DEPOSITION: Notice is hereby given that the undersigned will take the deposition of the deponent named below upon oral examination pursuant to the applicable rules of the Department and of civil procedure before the below named notary or before some other officer authorized by law to administer oaths, at:

Deponent --- Donald Rumsey

Time --- 11:00 o'clock A.M.

Date --- March 8, 1994

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MAR 2 9 1995

EISMANN LAW OFFICES
3016 CALDWELL BLVD.
NAMPA, IDAHO 83651-6416
(208) 467-3100

Place --- Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416

Notary --- Capitol Reporters

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this date mailed to: **GARY SPACKMAN, HEARING OFFICER, IDAHO DEPARTMENT OF WATER RESOURCES**, 1301 North Orchard, Statehouse Mail, Boise, Idaho 83720; **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83608-0037; **DOUBLE DIAMOND INC., C/O DONALD RUMSEY**, 200 Sunrise River, Boise, Idaho 83705; and to **DAVID P. HIRSCHI, HORSESHOE BEND HYDROELECTRIC**, 180 South 300 West, Suite 200, Salt Lake City, Utah 84101.

DATED: MAR - 3 1994

SIGNED:

Richard B. Eismann
Counsel for the protestant,
George Dovel

EISMANN LAW OFFICES
3016 CALDWELL BLVD.
NAMPA, IDAHO 83651-6416
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Telephone (208) 467-3100
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EISMANN LAW OFFICES

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NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

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Department of Water Resources

March 3, 1994

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751/Double Diamond, Inc.

Gentlemen:

Enclosed please find the original and one (1) copy of a Notice to Take Deposition of Donald Rumsey in the above-entitled action.

Please file the original Notice, conform the copy thereof and return the conformed copy to my office in the enclosed business reply envelope.

Thank you for your assistance.

Very truly yours,

Richard B. Eismann
RBE/vn/8
Encs.
CLT: Client

MAR 2 9 1995

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MAR 0 4 1994
Department of Water Resources

Richard B. Eismann
Eismann Law Offices
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Telephone: (208) 467-3100
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

NOTICE TO TAKE DEPOSITION OF DONALD RUMSEY

NOTICE OF DEPOSITION: Notice is hereby given that the undersigned will take the deposition of the deponent named below upon oral examination pursuant to the applicable rules of the Department and of civil procedure before the below named notary or before some other officer authorized by law to administer oaths, at:

Deponent --- Donald Rumsey

Time --- 11:00 o'clock A.M.

Date --- March 8, 1994

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Place --- Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416

Notary --- Capitol Reporters

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this date mailed to: **GARY SPACKMAN, HEARING OFFICER, IDAHO DEPARTMENT OF WATER RESOURCES**, 1301 North Orchard, Statehouse Mail, Boise, Idaho 83720; **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83608-0037; **DOUBLE DIAMOND INC., C/O DONALD RUMSEY**, 200 Sunrise River, Boise, Idaho 83705; and to **DAVID P. HIRSCHI, HORSESHOE BEND HYDROELECTRIC**, 180 South 300 West, Suite 200, Salt Lake City, Utah 84101.

DATED: MAR - 3 1994

SIGNED: Original signed by Richard B. Eismann
Richard B. Eismann
Counsel for the protestant,
George Dovel

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(208) 467-3100

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1994

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

Jack Riddlemoser
Attorney at Law
P.O. Box 37
Meridian, ID 83642

Re: Double Diamond Hearing. Water Right No. 65-02540

Dear Sirs:

The hearing rescheduled for March 9, 1994, will be conducted in the second floor conference room of the Idaho Department of Water Resources at 1301 N. Orchard Street, Boise, Idaho.

The hearing will commence at 9:00 a.m. and continue until concluded.

Sincerely,

Gary Spackman

GS:ca

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

PROTESTANT'S MOTION TO COMPEL DISCOVERY AND TO SHORTEN NOTICE REQUIRED FOR HEARING THIS MOTION ORAL ARGUMENT REQUESTED - TELEPHONE CONFERENCE CALL

THE PARTIES, THEIR COUNSEL, ETC.: When used herein, the references to the parties and other matters are as follows:

--- "Double Diamond" means Double Diamond Inc., the applicant for transfer of water rights.

--- "Dovel" means George Dovel, the protestant.

--- "Department" means the Idaho Department of Water

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Resources.

--- "subject hearing" means the hearing which was held on March 8 and March 11, 1993.

--- "additional hearing" means the hearing scheduled to be held on March 9, 1994.

THIS MOTION RE TO COMPEL DISCOVERY: This motion is made by Dovel to have the Department enter its order permitting entry upon the Double Diamond premises for inspection of the complete Double Diamond irrigation system and the taking of the deposition of Donald Rumsey.

THIS MOTION RE SHORTENING NOTICE: This motion is also made to have the Department enter its order providing that the prior notice required by the applicable rules of the Department and civil procedure for the hearing on this motion is shortened and that such hearing shall be held at the time hereinafter specified in this motion or at such other time as may be ordered by the Department.

GROUNDS OF MOTION RE SHORTENING NOTICE: The grounds of this motion for shortening notice are the following:

1. **Time not sufficient to give required notice of hearing on this motion**. There is not sufficient time to give the notice required by the rules of the Department and the applicable rules of civil procedure before the additional hearing.

2. **This motion should be heard forthwith**. The hearing on this motion should be held forthwith and the decision thereon

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made forthwith.

3. **Substantial economies will result by shortening notice**. Substantial economies in time and money will be realized by the Department and by the parties by shortening notice as requested by this motion.

4. **Ends of justice served**. The ends of justice will be served by shortening notice as requested by this motion.

RULES APPLICABLE: This motion is made under all of the rules of the Department and the Idaho Rules of Civil Procedure applicable to this motion including, but not limited to, the following:

I.D.A.P.A. 260.	Motions - Defined - Form and Contents - Time for Filing.
I.D.A.P.A. 520.	Kinds and Scope of Discovery Listed.
I.D.A.P.A. 521.	When Discovery Authorized.
I.D.A.P.A. 524.	Production Requests or Written Interrogatories and Requests for Admission.
I.R.C.P. 34(a).	Production of documents and things and entry upon land for inspection and other purposes -- Scope.
I.R.C.P. 34(b).	Procedure.
I.R.C.P. 6(d).	For motions - Affidavits.

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I.R.C.P. 6(e)(2). Setting hearings by court.

I.R.C.P. 7(b)(1). Motions and other papers.

I.R.C.P. 7(b)(3). Briefs and arguments on motions.

GROUNDS OF MOTION RE TO COMPEL DISCOVERY: This motion is made on the grounds following:

1. Inspection of the complete Double Diamond irrigation system is essential to Dovel's ability to respond to the issues raised by the hearing officer for the additional hearing.

2. Dovel has previously requested permission to inspect the Double Diamond irrigation system but received no response to such request.

3. The deposition of Donald Rumsey is necessary so that Dovel may adequately prepare for the additional hearing.

4. The ends of justice will be served by granting this motion.

BASIS OF MOTION: This motion is made and based upon the testimony and evidence produced at the subject hearing on this matter and all of the records and files in this proceedings.

ORAL ARGUMENT REQUESTED - TELEPHONE CONFERENCE CALL: Oral argument on this motion is hereby requested by the undersigned. It is further requested that such oral argument be held by telephone conference call, or if such argument cannot be held by telephone conference call, then the

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Department by a telephone conference call fix the time, date, and place of hearing such oral argument.

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this date mailed to the offices of: **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83608-0037; **DOUBLE DIAMOND INC., C/O DONALD RUMSEY**, 200 Sunrise River, Boise, Idaho 83705; and **DAVID P. HIRSCHI, HORSESHOE BEND HYDROELECTRIC**, 180 South 300 West, Suite 200, Salt Lake City, Utah 84101.

DATED: FEB 28 1994

SIGNED: _____

Richard B. Eismann
Counsel for the protestant

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RICHARD B. EISMANN
DEBRA L. EISMANN

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MAR 0 1 1994
Department of Water Resources

February 28, 1994

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751/Double Diamond, Inc.

Gentlemen:

Enclosed please find the original and one (1) copy of Protestant's Motion to Compel Discovery, the original of which was this date delivered to the hearing officer, Gary Spackman, by facsimile.

Please file the original Motion, conform the copy thereof and return the conformed copy to my office in the enclosed business reply envelope.

Thank you for your assistance.

Very truly yours,

DICTATED BY MR. EISMANN AND
MAILED WITHOUT SIGNATURE IN
HIS ABSENCE TO AVOID DELAY.
Richard B. Eismann
RBE/vn/8
Encs.
CLT: Client
Jack D. Riddlemoser
Donald Rumsey
David P. Hirschi

MAR 29 1995

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

PROTESTANT'S MOTION
TO VACATE AUGMENTATION ORDER AND HEARING
ORAL ARGUMENT REQUESTED - NOTICE OF HEARING

THE PARTIES, THEIR COUNSEL, ETC.: When used herein, the references to the parties and other matters are as follows:

--- "Double Diamond" means Double Diamond Inc.. the applicant for transfer of water rights.

--- "Dovel" means George Dovel, the protestant.

--- "Department" means the Idaho Department of Water Resources.

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--- "subject hearing" means the hearing which was held on March 8 and March 11, 1993.

--- "augmentation hearing" means the hearing scheduled to be held on January 5, 1994.

--- "augmentation order" means the purported order for the augmentation hearing.

THIS MOTION RE TO VACATE AUGMENTATION ORDER AND AUGMENTATION HEARING: This motion is made by Dovel to have the Department enter its order vacating the augmentation order and augmentation hearing.

RULES APPLICABLE: This motion is made under all of the rules of the Department and the Idaho Rules of Civil Procedure applicable to this motion including, but not limited to, the following:

I.D.A.P.A. 260.	Motions - Defined - Form and Contents - Time for Filing.
I.R.C.P. 6(d).	For motions - Affidavits.
I.R.C.P. 6(e)(2).	Setting hearings by court.
I.R.C.P. 7(b)(1).	Motions and other papers.
I.R.C.P. 7(b)(3).	Briefs and arguments on motions.

GROUNDS OF MOTION RE TO VACATE AUGMENTATION ORDER AND AUGMENTATION HEARING: This motion is made on the grounds following:

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1. Double Diamond and the Department have had actual notice of Dovel's position with respect to the forfeiture of the Double Diamond water right by virtue of the petition entitled "Petition to Declare Water Rights Terminated" filed by Dovel with the Department and served upon Double Diamond and others on or about May 13, 1991, a copy of which is attached hereto as **Exhibit A**, and the findings and order entitled "Order on Petition to Declare Water Rights Terminated" by the Department and served on all parties, a copy of which is attached hereto as **Exhibit B**.

2. At the subject hearing, Double Diamond introduced all of its evidence on the issues then pending which included the issues now noticed to be heard in the augmentation hearing, and Dovel introduced the evidence accumulated over several years by Dovel with a result now that Double Diamond, having introduced little or no testimony and evidence on those issues at the subject hearing, is afforded the opportunity to relitigate issues which were litigated at the subject hearing.

3. At the conclusion of the subject hearing, the hearing officer gave each party the opportunity to introduce further evidence, and each party rested. The taking of evidence was then closed and the subject hearing was concluded. The hearing officer specifically referred to the absence of evidence as to "what [the applicants] can farm and what they can do this year [1993]." (Tr. 314) The applicants did not request an opportunity to offer evidence of preparation to farm and irrigate during 1993 and did not request a delay in the proceedings to a time at which evidence could be offered as to actual use in 1993. By the Order For Augmentation of the Record the agency offers the applicant a second chance which was not requested by the applicant.

MAR 29 1995

4. The subject hearing was scheduled for March 8, 11 and 12, 1993, and was not continued to March 12, 1993, because the introduction of evidence did not require continuing the hearing to March 12, 1993. Even after the hearing officer discussed the issues at the conclusion of testimony on March 11, 1993, Double Diamond made no request to offer further evidence on March 12, 1993, or any later date.

5. At the conclusion of the subject hearing Double Diamond made no request to continue the hearing for any purpose and thereby irrevocably waived all rights to the introduction of further or additional evidence.

6. After the conclusion of the hearing, Double Diamond made no request to reopen the hearing. Even after the Recommended Order was issued, Double Diamond filed no petition for reconsideration. Double Diamond thereby irrevocably waived all rights to the introduction of further or additional evidence.

7. Since October 27, 1993, when the augmentation order was entered by the hearing officer, there has been no reasonable way that actual measurements could be taken with respect to the issues to be heard at the augmentation hearing because such period of time is not within the irrigation season nor can normal operating conditions be duplicated during such period. Evidence on such issues now can only be based upon opinions of persons rather than actual measurement under actual operating conditions. Such evidence, if any exists, could have and should have been introduced at the subject hearing.

8. Neither actual measurements taken now of the Double Diamond irrigation system nor opinions given now while the

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Double Diamond irrigation system is not in operation can be used to contradict the actual measurements which were taken and the actual observations which were made during the years 1982 through 1992 by the witnesses who testified at the subject hearing.

9. During the whole time while Double Diamond's application for transfer was pending, the Department or the hearing officer could have, at any time, by exercising the statutory right of inspection, determined the hydraulics of the Double Diamond irrigation system but elected not to utilize such statutory right of inspection and the augmentation hearing should not be used for that purpose.

10. While the hearing officer in his recommended decision limited his decision to the gravel pit area, the evidence produced at the subject hearing relates to all of the lands irrigated by Double Diamond. The taking of further evidence is not necessary. If the director of the Department determines that the Recommended Order is in error the director had an opportunity within the fifty-six (56) day period provided by the statute to correct those errors in the final order to conform to the evidence submitted at the subject hearing.

11. Evidence was introduced at the subject hearing on the issue "1. How long has the number one Porter Creek right not been used on the gravel pit impact area (56 acres)?" Double Diamond offered no evidence refuting the evidence offered by Dovel.

12. The hearing officer raises the issue "2. What are the present hydraulic characteristics of the Porter Creek and Payette River lines?" Evidence on those hydraulic

MAR 29 1995

characteristics in the years 1982 through 1992 was introduced. Whatever those characteristics may be today are irrelevant. Double Diamond offered no evidence refuting the evidence offered by Dovel on those hydraulic characteristics.

13. There is no issue on "3. What was the maximum quantity of water diverted and total acreage irrigated in 1993?" because Dovel's objection to transfer was filed before 1993 and forfeiture occurred at the end of the five year period of nonuse and cannot be reactivated by subsequent use in 1993 or any later calendar year after the protest. Further, the hearing officer gave Double Diamond the opportunity to introduce evidence on this issue at the subject hearing and Double Diamond either had no such evidence or elected not to introduce such evidence.

14. Evidence was introduced at the subject hearing on the issue "4. The Department understands water is diverted out of the Double Diamond ditch by several domestic users. Under what right is water presently diverted?" None of those water users are parties to these proceedings and neither the Department nor the hearing officer can take any action relating to the rights of such users in this proceedings.

15. Evidence was introduced at the subject hearing on the issue "How did the present irrigation system evolve from the early diversion from Porter Creek?" How such system evolved prior to 1982 is not relevant to any issues involved in these proceedings.

16. The hearing officer states "In addition to presenting evidence relative to the above facts, the parties may also orally argue any fact already in the record, or that will be presented at the hearing."

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17. The hearing officer states "In addition, the issues of law set forth in the recommended decision may also be argued."

18. In summary, the proposed augmentation hearing in effect reopens substantially all of the issues which were to be heard and determined in the subject hearing and reopens legal arguments on those same issues.

19. The hearing officer is not empowered to enter the augmentation order or to conduct the augmentation hearing for the following reasons:

(a) The hearing officer issued a "Recommended Order" on July 30, 1993, and it was served on August 2, 1993.

(b) Neither party filed a petition to reconsider the Recommended Order.

(c) Dovel filed exceptions to the Recommended Order on August 23, 1993. Dovel's brief was incorporated into the exceptions.

(d) Double Diamond filed no exceptions and no brief.

(e) Idaho Code Section 67-5244 provides that the "agency head," not the hearing officer, "shall issue a final order in writing within fifty-six (56) days after receipt of the briefs or oral argument" on exceptions or "remand the matter for additional hearings" or "hold additional hearings." The fifty-six (56) day time period expired on October 18, 1993, without the agency head taking any of the alternatives specified by statute. On October 27, 1993, eleven (11) days after the deadline for action by the "agency head," the hearing officer signed an Order

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for Augmentation of the Record. The intent of the legislature in establishing the fifty-six (56) day time limit set forth in Idaho Code Section 67-5244 must be that if the agency head takes none of the specified alternatives within the time limit, the Recommended Order becomes the final order. Otherwise no purpose would be served by enactment of the time limit.

(f) The hearing officer has no authority to issue an order for augmentation and a notice of hearing because once the Recommended Order was filed and time for petitions to reconsider had expired, the hearing officer has no further statutory authority to act. Idaho Code Section 67-5244 authorizes only the agency head to act after the Recommended Order has been filed and the time for reconsideration has expired. The agency head has not acted in this case as required by Idaho Code Section 67-5244.

(g) Any rule of the Department which purports to or is interpreted to make any such rule broader than the statutory authority is of no effect.

20. Idaho Code Section 67-5244 does not authorize issuance of an order to "augment the record" by either the hearing officer or the agency head. The statute authorizes the agency head within the fifty-six (56) day period only to issue a final order, remand to the hearing officer for additional hearings, or hold additional hearings himself.

21. The hearing officer's notice of hearing directs that augmentation evidence will be heard on January 5, 1994, and does not afford Dovel the opportunity to object to augmentation of the record. Prior to accepting any

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augmentation evidence the agency head should afford Dovel the opportunity to be heard as to his objections. Dovel will be deprived of due process of law as guaranteed by the Idaho Constitution and the United States Constitution if the January 5 hearing is held and augmentation evidence is accepted prior to a hearing on Dovel's objections.

22. The hearing officer, by proceeding with the augmentation hearing and all of the proceedings which must necessarily follow such hearing, will greatly increase the financial burden on Dovel.

23. The hearing officer has issued his Recommended Order. In many instances there is no evidence to support the Recommended Order. In other instances the Recommended Order is contrary to the only evidence appearing in the record. The hearing officer, by ordering the augmentation hearing, now seeks to supplement the record by accepting evidence which is not at this time in the record. The only logical explanation for this action is that the hearing officer is attempting to gather evidence which will meet the exceptions filed by Dovel as well as support the results which the hearing officer seeks to impose by the Recommended Order instead of conforming the Recommended Order to the evidence produced at the hearing. Such action is beyond the hearing officer's statutory and regulatory power and authority and constitutes an abuse of discretion and authority which substantially prejudices the property rights and procedural rights of Dovel and which deprives Dovel of procedural and substantive due process of law and equal protection under the law as guaranteed by the Idaho Constitution and the United States Constitution and which deprives Dovel of his rights as guaranteed by Article XV of the Idaho Constitution.

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24. The ends of justice will be served by granting this motion.

BASIS OF MOTION: This motion is made and based upon the testimony and evidence produced at the subject hearing on this matter and all of the records and files in this proceedings.

ORAL ARGUMENT REQUESTED - NOTICE OF HEARING: Oral argument on this motion is hereby requested by the undersigned who will bring this motion on for hearing before the Department at the time of the augmentation hearing on the date of January 5, 1994, at 9:30 o'clock A.M., or as soon thereafter as counsel can be heard.

SERVICE BY DELIVERY: The undersigned hereby certifies that a true copy hereof was this date delivered to the office of: **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, 712 East Fairview, Post Office Box 37, Meridian, Idaho 83608.

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this date mailed to: **DOUBLE DIAMOND INC., C/O DONALD RUMSEY**, 200 Sunrise River, Boise, Idaho 83705; and to **DAVID P. HIRSCHI, HORSESHOE BEND HYDROELECTRIC**, 180 South 300 West, Suite 200, Salt Lake City, Utah 84101.

DATED: DEC 23 1993

SIGNED:

Richard B. Eismann
Counsel for the protestant

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MAY 13 1991
Department of Water Resources

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

GEORGE DOVEL and ELISABETH V. WALLACE,

Petitioners,

-vs-

DOUBLE DIAMOND, INC.; PATRICIA MILLER; and ARLIE L. WOODS and PAULINE WOODS, husband and wife,

Respondents.

PETITION TO DECLARE WATER RIGHTS TERMINATED

COME NOW the petitioners, George Dovel and Elisabeth V. Wallace, and by this petition show:

1. Porter Creek is a tributary to the Payette River and is situated in Boise County, Idaho.

2. On the date of December 20, 1985, or thereabouts, the District Court of the Third Judicial District for the State of

EXHIBIT A

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Idaho, County of Gem, entered a decree (herein called decree) establishing the priority and use of water and water rights from Porter Creek.

3. The cut off date for determining water rights under the decree was October 19, 1977.

4. The priority of the water rights and maximum diversion for such water rights established by the decree for the petitioners are as follows:

Petitioners	Right No.	Priority	Maximum Diversion
George Dovel/ Elisabeth V. Wallace	65-10950	6	1.61 cfs.
George Dovel/ Elisabeth V. Wallace	65-10951	7	.84 cfs.

5. The priority of the water rights and the maximum diversion of waters for such water rights established by the decree for the respondents are as follows:

Respondent	Right No.	Priority	Maximum Diversion
Double Diamond, Inc.	65-3103	1	3.82 cfs.
Patricia Miller	65-3839	3	.54 cfs.
Arlie L. Woods/ Pauline Woods	65-10771	5	.32 cfs.

6. The respondent, **Double Diamond, Inc.**, is no longer entitled to divert all of the water under the water right decreed to such respondent for each of the reasons following:

MAR 29 1995

EXHIBIT A

EISMANN LAW OFFICES
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(a) Such respondent has abandoned one half of the water right established by the decree for such respondent by failing to use more than one half of such water right pursuant to the decree since the cutoff date.

(b) Such respondent has forfeited one half of the water right established by the decree for such respondent by failing to use more than one half of such water right pursuant to the decree since the cutoff date.

7. The respondent, **Patricia Miller**, is no longer entitled to divert water under the water right decreed to such respondent for each of the reasons following:

(a) Such respondent has abandoned the water right established by the decree for such respondent by failing to use such water right pursuant to the decree since the cutoff date.

(b) Such respondent has forfeited the water right established by the decree for such respondent by failing to use such water right pursuant to the decree since the cutoff date.

8. The respondents, **Arlie L. Woods and Pauline Woods, husband and wife**, are no longer entitled to divert water under the water right decreed to such respondents for each of the reasons following:

(a) Such respondents have abandoned the water right established by the decree for such respondents by failing to use such water right pursuant to the decree since the cutoff date.

(b) Such respondents have forfeited the water right established by the decree for such respondents by failing to

MAR 29 1995

EXHIBIT A

use such water right pursuant to the decree since the cutoff date.

WHEREFORE, the petitioners request that an order be entered fixing a hearing on this petition, determining that each respondent has abandoned and has forfeited the water right decreed to each such respondent as set forth above, and granting to the petitioners such other and further relief as may be just.

DATED: MAY 13 1991

SIGNED: George Dovel

George Dovel, petitioner
Route 1, Box 61
Horseshoe Bend, Idaho 83629

SIGNED: Richard B. Eismann

Richard B. Eismann
Counsel for the petitioners

EISMANN LAW OFFICES
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MAY 29 1995

EXHIBIT A

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

GEORGE DOVEL and ELISABETH V. WALLACE, Petitioners, vs. DOUBLE DIAMOND, INC.; PATRICIA MILLER; and ARLIE L. WOODS and PAULINE WOODS, husband and wife. Respondents.	ORDER ON PETITION TO DECLARE WATER RIGHTS TERMINATED

On May 13, 1991, petitioners George Dovel and Elisabeth V. Wallace filed with the Idaho Department of Water Resources (IDWR) a Petition to Declare Water Rights Terminated. The petitioners request that IDWR schedule a hearing to consider the merits of the relief requested in the petition. The petition seeks a declaration of forfeiture or abandonment of certain decreed water rights from Porter Creek determined in the recent court adjudication entitled *In Re Payette River Drainage Adjudication,* No. 3667 (3rd Jud. Dist., Idaho, Gem Co., partial decree filed Jan. 21, 1986). The Payette adjudication determined rights to the use of water in the Payette Basin as of October 18, 1977.

The decreed water rights that the petitioners seek to have declared terminated either partially or totally are as follows:

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1. Right No. 65-03103 in the name of Double Diamond, Inc. with a priority of 1-1-1872 for 3.82 cfs;

2. Right No. 65-03839 in the name of Patricia Miller with a priority of 4-1-1885 for .54 cfs; and

3. Right No. 65-10771 in the name of Arlie L. Woods with a priority of 6-1-1905 for .32 cfs.

The petitioners allege that Double Diamond, Inc. has abandoned or forfeited one-half of right 65-03103 through failure of use after the October 18, 1977 cutoff date for the determination of rights in the *Payette Adjudication.* Petitioners likewise allege that Patricia Miller has abandoned or forfeited all of right 65-03839 and that Arlie L. Woods and Pauline Woods have abandoned or forfeited all of right 65-10771 due to nonuse since October 18, 1977.

Assuming that IDWR has authority to determine the validity of decreed water rights other than as part of a transfer proceeding, it would not be appropriate for IDWR to undertake an administrative determination of the validity of the decreed rights identified by the petitioners because of the ongoing Snake River Basin Adjudication (SRBA). A review of all Porter Creek water rights is currently pending as part of the SRBA, entitled *In re the General Adjudication of Rights to the Use of Water From the Snake River Basin Water Sys.,* No. 39576 (5th Jud. Dist., Twin Falls Co., Idaho, Commencement Order filed Nov. 19, 1987).

The Director's Report on water rights within the Payette River Basin, including Porter Creek, presently is scheduled to be filed with the district court in January 1995. At that time, any water user may file with the court an objection to the manner in which

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a particular water right has been recommended by the director. As among the parties to the Payette adjudication, or their successors in interest, the Payette Decree will be considered to have conclusively determined the validity of the rights decreed as of October 19, 1977, the cutoff date for the determination of rights in the Payette Decree.

The petitioners will have an opportunity as part of the pending SRBA to raise their concerns regarding the continued validity of the three Porter Creek water rights that they seek to have declared terminated through the filing of the present petition.

IT IS THEREFORE ORDERED That the director of the Department of Water Resources declines to exercise any jurisdiction that the department may have to determine the validity of the decreed water rights that the petitioners seek to have declared terminated through abandonment or forfeiture in this administrative proceeding.

DATED this 29TH day of July, 1991.

R. KEITH HIGGINSON
Director

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 1991, I mailed a true and correct copy of the Order on Petition to Declare Water Rights Terminated , postage prepaid, to the following individuals:

Richard B. Eismann
Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651-3100

Double Diamond, Inc.
Route 1, Box 54
Horseshoe Bend, Idaho 83629

Donald J. Rumsey
Brake Diaphragm, Inc.
200 Sunrise Rim road
Boise, Idaho 83705

Patricia L. (Adams) Miller
5627 Freemont
Boise, Idaho 83706

Arlie L. and Pauline Woods
Route 1
Horseshoe Bend, Idaho 83629

Jodi L. Schultz
Jodi Schultz
Legal Secretary

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Jack Riddlemoser's correct address is:

P.O. Box 37
Meridian, Idaho
83680-0037

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 27, 1993

Re: In the matter of Application for Transfer of water rights nos. 65-03103, 65-10746, 65-10747, and 65-02540 in the name of Double Diamond Inc.

Dear Interested Party:

Enclosed is a copy of an Order for Augmentation of the Record issued in connection with the above referenced matter.

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

Sincerely,

Karen L. Gustafson
Senior Secretary

Enclosure

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Department of Water Resources

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Eismann Law Offices
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

EXCEPTIONS BY PROTESTANT, GEORGE DOVEL, TO RECOMMENDED ORDER AND REQUEST FOR ORAL ARGUMENT

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

--- "Double Diamond" means the applicant for transfer, Double Diamond Inc.

--- "DD-1-priority" means Double Diamond's number one Porter Creek water right.

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--- "DD-12-priority" means Double Diamond's number twelve Porter Creek water right.

--- "Dovel" means the protestant, George Dovel.

--- "Department" means the Idaho Department of Water Resources.

--- "Director" means the Director of the Idaho Department of Water Resources.

--- "Donald Rumsey" means one of the partners who owns Double Diamond.

--- "Lester" means the Department agent, Steve Lester.

--- "Nottingham" means the Idaho Department of Transportation geologist, Keith Nottingham.

--- "Shirley" means the witness, Christie Shirley, who was employed by Dovel to irrigate during the years 1988-1992 and who took water measurements in 1991.

EXCEPTIONS: The protestant hereby makes each exception to the Recommended Order following:

(FINDING OF FACT)

11. *During low water years, George Dovel's no. 6 and no. 7 rights are only deliverable during the early part of the irrigation season. The number 12 right, owned by Double Diamond is only deliverable during high flow periods.*

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The protestant excepts to the finding because such finding is incomplete and partially incorrect. Clear and unrefuted testimony and evidence presented by Dovel showed:

(a) That the DD-1-priority Porter Creek water right is also only deliverable during the early part of the irrigation season in low water years.

(b) That until five years ago Double Diamond had historically used a booster pump in the Porter Creek pipeline to deliver sufficient water to operate six wheel lines early in the season.

(c) That during low water years, once the supply of Porter Creek water reaching the Double Diamond pipeline at Jackass Creek was insufficient to operate the six wheel lines: (1) the booster pump shut off, (2) the Payette River pump was turned on supplying only Payette River water (with rights overlapping the Porter Creek rights) to the six wheel lines, and (3) the Porter Creek water was returned to Dovel pursuant to his 6 and 7 rights and one other junior Porter Creek water user.

(d) That Dovel has always been able to use his 6 and 7 rights to irrigate his crops during the middle and latter part of the irrigation season when Double Diamond's irrigation is shut down in order to dry down and harvest their crops.

(FINDING OF FACT)

12. *The Idaho Department of Transportation contracted with Double Diamond to excavate a gravel pit on a parcel*

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of Double Diamond property to which water right no. 65-03103 *is appurtenant for the construction of a portion of Highway* 55 *between Boise and Horseshoe Bend.*

The protestant excepts to the finding because such finding is incomplete. The parcel excavated for the gravel put actually contained a single irrigated field, with water right 65-03103 appurtenant to only a part of that field while number 15 Porter Creek water right 65-10746 was appurtenant to the remainder of the field. The entire parcel could only be irrigated with a single water right by using either of the overlapping Payette River water rights.

(FINDING OF FACT)

13. *The Department of Transportation began excavating the property during the summer of* 1988. *Prior to excavation, the land was irrigated with water diverted from Porter Creek pursuant to the first priority right.*

The protestant excepts to this finding because the finding states facts not found in or supported by the evidence, and disregards the unrefuted testimony and evidence presented by Dovel and his witnesses which are contrary to the finding as follows:

(a) Both Dovel and Nottingham testified that test excavation began in 1987 and that gravel was already stockpiled on the site by the last day of spring, June 20, 1988.

(b) Dovel testified that he had never seen water from the DD-1-priority Porter Creek right used to irrigate any of the gravel pit land, and that he would have noticed any such

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irrigation had it occurred because that land had never been irrigated with Porter Creek water when Dovel's rights were reduced or shut down since it was considered to have only a DD-12-priority Porter Creek water right.

(c) Shirley testified that she had never seen the land irrigated during the preceding five years.

(d) Dovel testified that only Payette River water had been used during the past 12 years to irrigate the gravel pit land, and Double Diamond did not refute the testimony.

(e) Double Diamond offered no testimony or evidence that any of the gravel pit acres have been irrigated with Porter Creek water. Their evidence was simply that the lands had been irrigated. The only testimony as to the source of the irrigation water was Dovel's testimony that Payette River water was used.

(FINDING OF FACT)

15. *During the peak of construction, approximately* 56 *acres could not be farmed because of the gravel pit excavation. Approximately* 52 *acres of the* 56 *acres was land irrigated by water diverted pursuant to the number one priority Porter Creek right.*

The protestant excepts to the finding because the finding states facts not found in or supported by the evidence, and disregards the unrefuted testimony presented by Dovel and his witnesses that none of the gravel pit area was irrigated using the number one priority Porter Creek water right. (See evidence stated in Exception to Finding of Fact No. 13)

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(FINDING OF FACT)

16. *As construction was ending in* 1991 *and* 1992, *the Idaho Department of Transportation reclaimed a portion of the gravel pit area as farm land. Approximately* 22 *acres are still excavated as a gravel pit or not irrigable as a result of the gravel pit construction. Double Diamond does not intend to reclaim any more of the* 22 *acres. Double Diamond intends to irrigate the reclaimed land in* 1993.

The protestant excepts to the finding because the finding states facts not found in or supported by the evidence, and disregards all of the testimony and evidence contrary to the finding as follows:

(a) Nottingham testified that the Idaho Transportation Department did not complete reclamation of any portion of the gravel pit area as farmland because they were stopped from doing so by Double Diamond. This testimony was not refuted by Double Diamond.

(b) Dovel testified and produced dated photographic evidence showing that, in addition to the 22 acres remaining as gravel pit and gravel storage, most of the remainder had not been reclaimed as farm land at the time of the hearing in March 1993. This testimony was not refuted by Double Diamond.

(c) Dovel produced photographs showing that additional access roads and fenced storage areas had been constructed south of the gravel pit by March 1993, and showing that only a small area further to the south had the potential to be irrigated or raise crops. This testimony was not refuted by Double Diamond.

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(d) Dovel also presented testimony that the area between the 22 acre gravel pit and the Payette River had not been farmed and was not prepared for farming. This testimony was not refuted by Double Diamond.

(e) Lester admitted that he had never measured the area that was supposedly reclaimed but instead took a Double Diamond representative's word for the size in order to file the transfer application.

(f) Double Diamond presented no evidence or testimony presented claiming (1) that any of the gravel pit land had been reclaimed, (2) that they intended to irrigate any of the former gravel pit area in 1993, or (3) that if they did irrigate the small area south of the gravel pit, the irrigation would be accomplished with Porter Creek water.

(FINDING OF FACT)

17. *Porter Creek water is delivered to the Double Diamond property through a combination open channel and closed pressurized system. The diversion from Porter Creek delivers water into approximately two miles of open ditch. The water then enters a headbox at the top of the hill. A pipeline inlet is located in the headbox. The pipeline is constructed from the top of the hill to the bottom, and then extends to the Double Diamond property. Pressure develops in the pipeline because of the change in elevation and the gravity pressure is sufficient to operate the Double Diamond sprinklers.*

The protestant excepts to the finding because the portion of the finding that is emphasized by underlining states facts not

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found in or supported by the evidence. In fact, that statement is contrary to the uncontested testimony as follows:

(a) Dovel testified that approximately five years before the hearing, the gravity head in the Porter Creek pipeline was sufficient to run only three wheel lines containing a maximum of 64 sprinklers at low pressure to deliver only 190 gallons per minute (only about 11 percent of the DD-1-priority water right) when the booster pump was not running and bypassed.

(b) Dovel also testified that the booster pump had been discontinued and that the Porter Creek pipeline had subsequently been connected to the inlet of the rebuilt Payette River pump which has been used solely as a booster pump for the Porter Creek water when there is sufficient Porter Creek water available at Jackass Creek to provide the 51 inches to operate all six wheel lines.

(FINDING OF FACT)

21. *A larger pump was installed in the Payette River which allegedly pressurized the line sufficiently that the booster pump was no longer needed. George Dovel testified that when the Payette River pump is pumping, the flow from Porter Creek is more manageable. This statement implies that the Payette River pump increases the flow in the Porter Creek line upstream of the Payette River line - Porter Creek line junction.*

AND

22. *The testimony is inconsistent with hydraulic principles. Increasing the pressure in the Payette River*

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line would also increase the pressure at the junction. Without the booster pump operating, hydraulic head will build in the Porter Creek line to match the head caused by the Payette River pump. More water should spill into the Porter Creek overflow when the Payette River pump is pumping.

The protestant excepts to the finding because (1) there is no evidence to support the alleged inference in Finding of Fact 21 contained in the emphasized portion, and (2) Finding of Fact 22 reflects a misunderstanding of the system changes which were accomplished by Double Diamond in order to permit the Payette River pump to be used separately as a booster pump solely for Porter Creek water, or as a lift pump for Payette River water combined with a booster pump for both Payette River and Porter Creek water, or as a lift pump and booster solely for Payette River water.

Dovel accurately responded to the hearing officer's question by stating that the Porter Creek booster pump was (formerly) located upstream from the junction of the river pump but that a different pipe had been installed so that said booster pump was no longer upstream from the junction. (See Tr. at 310)

The hearing officer apparently failed to apply hydraulic principles to explain why Dovel's massive evidence, including Shirley's notes, watermaster records and diaries and the videotape shown at the hearing, all verified that the waste of water through the Jackass Creek overflow pipe was reduced when water from both sources was being mixed.

The three and one half hour audio/videotape provided by Dovel in April 1992 and contained in the District 65-B file explains

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the recent changes in the Double Diamond pipeline system which permits Double Diamond employees to regulate the quantity of Porter Creek water wasted at Jackass Creek without affecting the gravity head in the Porter Creek inlet pipe by regulating the Payette River water lifted into the same pump. That audio/videotape also documents the wasting of Porter Creek water through the river pump into the Payette River whenever the river pump is turned off. Both videotapes also document Dovel's testimony of the inefficiency (cavitation) which occurs when the river pump is not properly regulated, and these tapes are a part of the record the hearing officer agreed to examine and consider in order to reach a decision.

(FINDING OF FACT)

25. ***Watermaster records show Double Diamond diverted the full amount of reduced entitlement of 2.79 cfs at least once during both the 1990 and 1991 irrigation seasons.***

The protestant excepts to the finding because this finding is incomplete and misleading. Ample documentation by Dovel exists in the Department's District 65-B file to prove that all of the 2.79 cfs turned in briefly in 1990 was wasted at Jackass Creek.

Substantial unrefuted testimony by Dovel at the hearing, corroborated by Shirley's diary, watermaster notes and records and videotape, prove that the 1991 turn-in of 2.79 cfs resulted in a massive around the clock waste of Porter Creek water at Jackass Creek until the water was promptly substantially reduced by the watermaster.

These one-time excessive diversions at the beginning of each

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season of more water than could be applied beneficially are a violation of Idaho Code Section 18-4302 which makes it a criminal offense to wantonly waste irrigation water by diverting it for an unnecessary purpose or by allowing such water to run into a dry channel so that it cannot be used for irrigation, nor reach the original channel of the stream from which it has been diverted.

The fact that these diversions were ordered by Lester does not alter the fact that they were unlawful and were promptly reduced by the watermaster as soon as Dovel pointed that out.

By omitting the fact that much of the diversion was unlawfully wasted, the statement of facts concerning the amount beneficially diverted each season is completely misleading.

(FINDING OF FACT)

26. *In 1992, the authorized rate of diversion was only reduced 0.43 cfs, from 3.82 cfs to 3.39 cfs, because of reclamation of the gravel pit.*

The protestant excepts to the finding because this finding is contrary to the evidence as follows:

(a) At the hearing, Lester made the claim which has been accepted as true by this finding. But, Lester's claim was refuted during cross examination by Dovel when Lester admitted that he had never measured the quantity of land actually reclaimed but had simply taken the information from an agent of Double Diamond as the amount of gravel pit land intended to be reclaimed when the transfer application was filed before the 1992 irrigation season.

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(b) Neither the watermaster records nor the watermaster's field notes reflect the 3.39 cfs as being authorized in 1992. The records list a maximum allowable diversion of 2.79 cfs (as in the two preceding years) despite the fact that even this quantify had resulted in massive water waste at Jackass Creek.

(c) Both the watermaster's records and field notes reflect a maximum 1992 DD-1-priority diversion of only 2.07 cfs which was turned in for only five days early in May and which still resulted in a waste of water at Jackass Creek until it was substantially reduced by the watermaster on May 12, 1992.

(FINDING OF FACT)

28. *In addition to the monitoring by Shirley in* 1991, *Dovel measured the water diverted, measured or observed Jackass Creek overflowing, and also estimated the water applied to the Double Diamond property by measuring pressures in a single rainbird sprinkler with a pitot gauge and by multiplying the discharge of a single sprinkler head at the measured pressure by the number of sprinklers operating.*

The protestant excepts to the finding because this finding, while providing a general explanation of one of the methods of measurement used, does not include the extensive measurements that were actually used by Dovel in order to obtain accurate data.

Dovel testified that he always measured the output from at least two sprinklers in a line which had a constant grade, with the sprinklers on each end always being measured to assure accurate averages, and sometimes measured all of the

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sprinklers in a line to verify the accuracy of his average measurements. Dovel also testified that he calibrated the pitot gauge used and also used an accurate dial caliper to determine whether nozzles had excessive wear or had been rebored. In addition Dovel testified that he also verified the accuracy of pitot pressure measurements by using a stop watch and a measured container during both 1990 and 1991.

(FINDING OF FACT)

29. *The maximum discharge from the sprinklers measured by Dovel in* 1991 *is approximately* 60 *inches, or* 1.2 *cfs. The measurements do not account, however, for delivery losses, particularly in the open ditch. The measurements also do not account for the reduction in the authorized diversion rate because approximately* 52 *acres were not being irrigated. Finally, the measurements of sprinkler discharge are not correlated to water availability. There may not have been any more water available for diversion, minus losses, than Dovel measured.*

The protestant excepts to the finding because the finding states erroneous conclusions, states facts not found in or supported by the evidence, and is contrary to the evidence as follows:

(a) Dovel's testimony clearly stated that the maximum total sprinkler output he had ever measured on Double Diamond in either 1990 or 1991 was between 51 and 52 inches, not 60 inches as claimed. This can easily be verified by multiplying the normal average output per sprinkler when 124 total 9/16 inch nozzles were used (3.14 gpm adjusted to 3.2 gpm for excessive wear) times the total number of sprinklers

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shown either in the Shirley diary (Prot. Ex G) or the 1991 summary of Double Diamond water usage (Prot. Ex. I).

The resulting total of 396.8 gpm or approximately 44.1 inches (3.2 X 124 divided by 9) represents the normal maximum daily output of the Double Diamond system. It will be noted from Protestant's Exhibits G and I that whenever Double Diamond increased the number of sprinklers beyond 125, the pressure was always noticeably reduced even though the river booster pump was running, thus verifying the 51.5 inch maximum with 148 sprinklers operating.

(b) The bold assertion that Dovel's measurements do not take into account the 52 acres not being irrigated ignores the obvious maximum capacity of the Double Diamond Porter Creek pipeline system. Dovel testified and produced manufacturer's charts (Prot. Ex. F) proving that even at 3.2 gpm output with only 125 nozzles, the sprinklers do not have sufficient pressure or coverage to meet the manufacturer's minimum recommendation for irrigation.

The inference that Double Diamond could somehow add even more than 147 nozzles to the system and somehow overcome the additional friction loss to irrigate an additional 52 acres truly ignores hydraulic principles. As Dovel testified, the additional sprinklers would not even turn, much less irrigate properly.

(c) The bold assertion that Dovel's measurements do not account for delivery losses, particularly in the open ditch, is simply not true. Dovel's testimony was that he had added an additional 15 percent to total a maximum output of 60 inches on the Double Diamond lands to include losses in the

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irrigation system.

In addition, Dovel recorded the transportation losses in the open ditch by recording the quantity diverted at the headgate and then subtracting the total amount applied through the pipeline irrigation system and the measured or estimated amount wasted through the overflow waste pipe at Jackass Creek (See Prot. Ex. I).

In fact the Dovel videotape in the District 65-B file thoroughly documents these ditch losses and the measurements at Jackass Creek and even shows the simple steps by which these ditch losses were calculated under a variety of conditions with varying amounts of water diverted through the DD-1-priority headgate.

(d) The bold assertion that the sprinkler measurements are not correlated to water availability totally ignores the massive evidence provided by Dovel at the hearing as well as information contained in the District 65-B file. For seven consecutive irrigation seasons the combined watermaster records and watermaster field notes have shown that Double Diamond has either wasted substantial quantities of water or permitted junior water users, including Dovel, to use about half of the DD-1-priority water right because the Double Diamond irrigation system, including ditch losses, could not apply any more of the water right beneficially.

The speculation in the last sentence of the finding that there may not have been any more water available for diversion in 1991 ignores (1) the 1991 watermaster records (Prot. Ex. D) which clearly shows that water was also being delivered to three other water users with rights junior in priority to

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Double Diamond, and (2) summary of Double Diamond water usage under right 65-3103 in 1991 (Prot. Ex. I) which clearly shows that excessive water was already being diverted and wasted out the Jackass Creek overflow. But, even if such evidence did not exist, the assumption that there may not have been any more water available for diversion during some hypothetical period is not appropriate in determining the issue of forfeiture.

The "use it or lose it" concept of western water law clearly requires that the amount of water that has actually been diverted and applied to beneficial use is the true "duty of water" which must be used at the time of a proposed transfer in determining what portion of a decreed right has been forfeited.

(FINDING OF FACT)

31. *Several individuals divert water from the Double Diamond ditch as "courtesy water." While the quantity of water diverted is only approximately two inches per user, no rights to this water are found in the records of the Department of Water Resources.*

The protestant excepts to that portion of the finding which states that the quantity of water diverted is "only approximately two inches per user," because that statement is contrary to the evidence as follows:

In addition to Dovel's unrefuted testimony that some of these users divert water for irrigation as well as domestic and stock water purposes, there are numerous examples in the District 65-B file showing that substantially more than 2

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inches per user has been diverted but not recorded:

1. In 1990, while acting as the Porter Creek watermaster, Lester diverted 13 inches (.26 cfs) of courtesy water for use by Arlie Woods and entered th diversion in his watermaster field notes for July 17, 1990, as .26 cfs diverted to Arlie Woods as "courtesy water." Yet, Lester entered the diversion in the watermaster records for July 17, 1990, as only .04 cfs and charged it to the DD-1-priority diversion.

2. In 1992, Watermaster Berntsen diverted .528 cfs (26 inches) through the DD-1-priority headgate on July 24th and permitted that quantity to be used by the three unlicensed out-of-priority courtesy users through August and into September.

The significance of these diversions is that they are in excess of Double Diamond's normal ditch losses and should be included in the Findings of Fact as part of the Double Diamond right which has not been used by Double Diamond and has therefore been forfeited.

(CONCLUSION OF LAW)

10. ***Jenkins*** *does not state whether the Department may review the entire water right when an application for transfer is filed which seeks to change only a portion of the right.*

The protestant excepts to the conclusion because it relates a point which has never been argued by either the Double Diamond or by the protestant in any of the four briefs that were submitted.

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The language both in Idaho Code Section 42-222 and in Jenkins v. State, 103 Idaho 384, at 387, 647 P.2d 1256 (1982) is plain and precise:

> The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether the transfer would injure other water rights.
>
> 109 Idaho at 387. (emphasis added)

In this proposed transfer Double Diamond is attempting to transfer not one but two water rights with some portions of each of the two rights being transferred to new locations while other portions will remain at the same locations. The hearing officer's attempts to dissect these rights and claim that only this or that specific parcel of one of the two rights should be examined for forfeiture or expansion of use or injury to other rights, is without precedent.

There is nothing in the statute which permits the Director to examine only one-fourth or some other portion of the right, and the Director has always examined the whole right in the past when only a portion of the right was actually being transferred.

Conclusions of Law 11 and 12 are likewise without merit. The conclusion that the Department need not look beyond the boundaries of the gravel pit denies the existence of that portion of the entire right which has been forfeited by the failure to apply the water beneficially at any time during the past seven irrigation seasons.

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Pretending that such forfeiture does not apply to lands within the 56 acre gravel pit or to lands within the 22 acre hole in the ground stretches the boundaries of reason and common sense.

(CONCLUSION OF LAW)

11. *The Department's review of the validity of the right when considering an application for transfer is limited by an initial determination of whether a narrow focus on the portion sought to be transferred, without looking at the entire right, will result in an enlargement, injury to other users, a conflict with the public interest, or is inconsistent with principles of conservation of water. In this case, the Department must review more than the 22 acres identified as the gravel pit because 56 acres were part of the gravel put during peak construction in 1990 and 1991.*

AND

12. *The department need not look beyond the boundaries of the gravel pit. Double Diamond proposes to change the place of use from the gravel pit lands to new lands. Double Diamond is not seeking to change the remainder of the place of use. The definition of the entire place of use and total authorized flow rate can be addressed in the Snake River Basin Adjudication.*

The protestant excepts to these conclusions for the reasons stated in Exception to Conclusion of Law No. 10.

(CONCLUSION OF LAW)

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14. *Technically, the right to irrigate 43 acres has been forfeited.*

The protestant excepts to the conclusion because it downplays the significance of the forfeiture. Unrefuted testimony and evidence proved that none of the 56 gravel pit acres have been irrigated with Porter Creek water during the consecutive years from 1986 through 1992. The entire gravel pit portion of the right has been forfeited by statute and there is no provision in the statute for a "technical" forfeiture as opposed to an "actual" or "real" or "significant" or "substantial" forfeiture. The evidence shows there was in fact and law a forfeiture.

(CONCLUSION OF LAW)

17. *Other users could not establish a legal claim of right to the water until after forfeiture. If Double Diamond resumes its use during the 1993 irrigation season, the other users will not have established a reliance on the water, and the forfeiture is not effective.*

The protestant excepts to the conclusion because it is contrary to all of the facts in evidence and contrary to law.

After forfeiture, even if it occurred only at the end of the 1992 season, if a third party files a "claim of right" before the original owner or appropriator resumes use, the forfeiture is effective. This is the statement of law contained in the cases cited by the hearing officer himself in Conclusion No. 15. The facts here show forfeiture at the end of the 1992 season and a claim of right by Dovel before any resumption of

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use. The fact that the 1993 irrigation season did not start until after the claim was filed is not relevant. What is relevant is that the forfeiture occurred and Double Diamond did not resume use before a claim of right was filed. The facts in this record show that:

(a) On May 13, 1991, more than five years after one half of the DD-1-priority Porter Creek water right 65-03103, including the gravel pit area, had been forfeited by nonuse, Dovel filed a third party claim as a junior user to move up the ladder of priority involving the quantity of the right that was forfeited.

(b) For five years prior to the filing of that petition to cancel one half of the DD-1-priority Porter Creek right, Dovel began enjoying the benefits of the forfeited right and has therefore established a reliance on the water for the past eight consecutive years.

(c) Despite the petition and claim by Dovel, Double Diamond has made no attempt to reclaim any portion of the forfeited right by applying Porter Creek water beneficially to any of the forfeited acres or by increasing the capacity of its irrigation delivery system.

(d) A close scrutiny of Conclusion of Law No. 18 reveals that resumption of irrigation of the 22 acre area could not have occurred even in 1993, since the area remains a deep hole in the ground partially full of seepage water from the Payette River. If irrigation of that 22 acres has not and cannot be resumed prior to a transfer, the 22 acres of water right appurtenant to that parcel of land has been forfeited even by the Department's liberal standards and cannot, therefore, be

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reclaimed and transferred to other parcels having the DD-12-priority right.

(CONCLUSION OF LAW)

18. Most of the testimony established the area of unrestored gravel pit at approximately 20-22 acres. The measurement and calculations of 22 acres by Donald Rumsey is accepted as the area of the unrestored gravel pit.

The protestant excepts to the conclusion because it is not supported by the findings of fact and is contrary to all of the evidence and testimony as follows:

While it is evident that the area containing the hole in the ground and the gravel piles is approximately 20-22 acres, even Lester testified that the remainder of the area had not been restored at the time of his May 1992 inspection, one month after the alleged approval of restoration had been signed.

Dovel presented substantial evidence, including several 1992 and 1993 photographs, indicating that most of the entire gravel pit area has not been restored as farm land. In fact, Dovel's testimony was the only testimony claiming that any of the area had been restored.

(CONCLUSION OF LAW)

19. The protestant did not establish that the flow rate authorized for diversion should be reduced because of nonuse. Double Diamond diverted the maximum flow to which it was entitled in 1990 and 1991. When the restored gravel pit acres and the new acres (once

MAR 29 1995

irrigated by the number 12 right) are irrigated more water will be needed.

The protestant excepts to the conclusion because the conclusion that Double Diamond diverted the maximum flow for beneficial use is contrary to the facts in evidence as follows:

The evidence shows that the one time turn in of maximum flow in 1990 and 1991 constituted waste in violation of Idaho Code, Section 42-351 and 18-4302.

While it may be difficult to establish who was guilty of the misdemeanor offense since Lester accomplished the brief turn in of excessive water, the hearing officer certainly cannot conclude that this unlawful act constituted a beneficial use for purposes of enlarging or restoring the already forfeited portion of the water right. Waste is not a beneficial use.

(CONCLUSION OF LAW)

25. *Approval of the transfer will not injure other water rights.*

The protestant excepts to the conclusion because it is not supported by findings of fact and is contrary to the evidence as follows:

(a) Failure of the Department to declare half of Porter Creek water right 65-03103 forfeited will result in removal of that water from Dovel and other junior water users who have enjoyed the use of the forfeited water for at least the past eight years.

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(b) The continuing irrigation of the lands historically irrigated with right 65-03103 plus the irrigation of 22 additional acres which have never been irrigated with Porter Creek's number one priority right constitutes an increase in the total number of acres which would be irrigated following approval of the transfer. Increased acreage is evidence of increased use in volume or time or both.

(CONCLUSION OF LAW)

26. *Approval of this transfer will not result in an enlargement. Approval does not confirm the irrigation of the entire place of use, and the issues of forfeiture and abandonment may be raised in the Snake River Basin Adjudication.*

The protestant excepts to the conclusion for the following reasons:

(a) The first statement is untrue as explained in Exception to Conclusion No. 25.

(b) The second statement is meaningless since the irrigation of the two junior parcels just one time within a year will automatically guarantee the validity of both the old and new parcels during the Snake River Basin Adjudication. "Raising the issue" would then be a costly and meaningless process for Dovel.

(CONCLUSION OF LAW)

27. *Approval of this transfer will not conflict with the local public interest.*

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Protestant excepts to this conclusion because it is contrary to overwhelming evidence presented at the hearing and is incorrect because: The use of DD-1-priority Porter Creek water to irrigate those lands which have historically only been irrigated with Payette River water once Porter Creek water becomes scarce will result in those lands being irrigated when the Porter Creek water would normally have been returned to Dovel while the historical senior priority lands are being dried down and harvested.

This in turn will result in the loss to Dovel of thousands of dollars worth of hay crops which cannot be irrigated and harvested as they have been historically. As both Shirley and Dovel testified, this also results in the layoff of several local area employees as well as increased costs to local consumers, all of which represents a substantial loss to the economy of the local area.

The conclusion does not even consider this substantial unrefuted testimony concerning harm to the local economy. The conclusion also ignores the fact that there was no testimony concerning alleged benefits or lack of harm to the local economy, despite the legislative mandate that the Director must consider such testimony and that the applicant must offer proof that the transfer will not adversely affect the citizens in the area.

(CONCLUSION OF LAW)

28. *If Double Diamond, including its tenant, timely informs the watermaster of changes in delivery, the transfer will be consistent with principles of*

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conservation of water within the state of Idaho.

The protestant excepts to the conclusion for the following reasons:

(a) The statement has no basis in fact. Substantial and unrefuted testimony and evidence presented at the hearing proved beyond any reasonable doubt that twice as much Porter Creek water must be diverted, even if the waste at Jackass Creek is halted, to irrigate the Double Diamond lands as has been required to irrigate those same lands with Payette River water.

This use of twice as much water by Double Diamond will not only deprive other Porter Creek water users of water upon which they have come to rely, it will also deprive downstream Payette River water users of water to which they are entitled.

Conclusions of Law 25 through 28 have completely disregarded all of the testimony and exhibits presented at the hearing as well as the considerable material in the District 65-B file. The other so-called Conclusions of Law which are actually admonishments to Double Diamond not to waste water are meaningless.

(PROPOSED ORDER)

The protestant objects to the proposed order for the following reasons:

Overwhelming evidence of the waste of tens of millions of gallons of Porter Creek irrigation water by Double Diamond and the forfeiture of approximately half of the DD-1-priority

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Porter Creek water right exists in the Department's District 65-B file but has not been addressed in the Recommended Order.

The forfeiture of part of Porter Creek water right 65-10747 also has not been addressed in the order.

Paragraph 9 of the Order does not even address the testimony proving the reduced volume and consumptive use of the duty of water diverted under Double Diamond's 65-3103 right. In fact paragraph 9 provides an increased seasonal consumptive use limit which is nearly double the previously established limit.

The protestant excepts to the entire order because it is contrary to the evidence and testimony presented at the protest hearing in violation of Idaho Code Section 42-222.

REQUEST FOR ORAL ARGUMENT: Oral argument on these exceptions is hereby requested by the protestant.

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this day mailed, United States Mail, postage prepaid, to each of the following: **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83608-0037; **DAVID P. HIRSCHI, HORSESHOE BEND HYDROELECTRIC**, 180 South 300 West, Suite 200, Salt Lake City, Utah 84101; and **DOUBLE DIAMOND, INC., C/O DONALD RUMSEY**, 200 Sunrise Rim, Boise, Idaho 83705.

DATED: AUG 2 3 1993

SIGNED: Richard B. Eismann

Richard B. Eismann
Counsel for the protestant

MAR 2 9 1995

SIGNED: George Dovel

George Dovel, the protestant

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MEMORANDUM

RECEIVED
JAN 26 2000
Department of Water Resources

TO: GARY SPACKMAN

FROM: STEVE LESTER

DATE: AUGUST 4, 1993

SUBJECT: RECOMMENDED ORDER, DOUBLE DIAMOND TRANSFER

I reviewed the recommended order for the Double Diamond transfer and had a chance to discuss it with Dave T. I think you did a great job of summarizing the situation from what was certainly a mound of information.

The only suggestion that I have relates to discussion of courtesy water on page 9, item 31 and page 13, item 30. Some clarification from Water District 65-B files might be helpful.

Courtesy water from Porter Creek was allowed as a minor use for four parties, three of them along Double Diamond's #1 ditch (65-03103) and one party diverting from and located directly on Porter Creek. The minor users of the #1 ditch inlcuded Arlie Woods, Susan & Dennis Pomerleau, and Margaret Drake. George Dovel diverted his courtesy water (actually #11 right delivered out of order as a courtesy) via his headgate and pipeline system from the creek.

Based on a written request by Richard Eismann, courtesy water was not allowed to be delivered effective 7/9/92 (see attached copy of DRT's letter). Instead, courtesy water was replaced by deliverable expansion claims of the #1 Porter Creek right under the terms of Water Delivery Memo No. 1 dated 5/26/92 (no apparent injury found in this practice).

The four courtesy uses are now replaced by the following SRBA claims[1] and are delivered by the Watermaster when the #1 right is in use:

* A65-19624	Pomerleau	.02 cfs	
* A65-19625	Drake	.02 cfs	(also shows S. Pomerleau but is for Drake)
* A65-19631	Woods	.02 cfs	
* A65-19641	Dovel	.04 cfs	(same amount as his #11 right, 65-10953)

Since this is the current sanctioned management practice in the water district, I wonder if the situation is better served by deleting or redefining references to courtesy water in the order. Courtesy water per se does not exist but it is obvious that the same thing occurs under another name. I fear that we will create unnecessary confusion and work for the users and the dept. if the language is not changed.

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1. However, I am convinced that the users still think of this and refer to this as courtesy water. The dept. now uses other terminology.

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FEB 03 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

pj 253

DRT's LETTER

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 9, 1992

Mr. Richard B. Eismann
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, ID. 83651-6416

RE: Water District No. 65-B

Dear Mr. Eismann:

While it is difficult to adequately respond to second and third-hand reports of alleged irregularities involving the use of Porter Creek water, this letter attempts to address the points raised in your letter of June 24, 1992. Please bear in mind that the Watermaster is relatively inexperienced and working in a difficult environment. This office provides training and assistance for him, and we welcome timely comments and suggestions from the water users to continually improve the operation of the district. I trust that the following information responds to your enumerated points.

1. Proper Place of Use - The Watermaster has been instructed, verbally and in writing, to deliver water for use in fields according to water right priority. Flag lines are maintained to this end. Instructions have been provided to the Watermaster regarding use of water on improper acres.

2. Measuring Devices and Control of Diversion Works - Measuring devices must meet department standards of accuracy and readability. An inundated measuring device is not acceptable. Headgates and checkdams must be properly installed and maintained to ensure minimal losses. Again, the Watermaster has been informed of these requirements.

3. Wasting of Water - As in previous years, wastage of water must remain within acceptable limits normally found with irrigation systems. Control points have been identified for Watermaster monitoring of alleged wasting sites. Clear instructions have been provided to the Watermaster concerning the monitoring points.

For the Jackass Creek overflow point, I direct your attention to my letter to you dated June 19, 1992 in which your client is invited to participate in the installation of a monitoring weir related to this site. Mr. Dovel called today to inform me that he has an available weir. Arrangements to install the weir are proceeding. Department staff will monitor the weir so that water district funds will not be used in this matter.

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4. Prior Notification - The Watermaster is not required to give notice before closing a headgate in performing his duties. As a courtesy, the department asks that prior notice be given whenever possible and practical. Previous episodes in the district indicate that prior notice is often not feasible.

5. Courtesy Water -

a) Per your written request earlier this season, the Watermaster was instructed by the department to no longer deliver any courtesy water, including that water traditionally delivered to your client for domestic and/or fire protection uses. The only water deliverable under such conditions is water for rights in order of priority. Therefore, a situation can exist in which Mr. Dovel's headgate must be entirely closed due to water scarcity. Otherwise, he would enjoy use of water outside of the order of priority.

b) Right #5 (65-10771) was decreed for .32 cfs or 16 inches and can be delivered by the Watermaster if water is available under the priority system. It is not accurate to state that right no. 5 is entitled to just two inches of water. Under the current situation, this right can receive water as a delivered right but not as courtesy water. Thus, if the diversion receives two or eleven (as alleged) or up to 16 inches based on a priority call, courtesy water is not involved.

c) Previously, courtesy water was provided via rights #1 and/or #2 to the Pomerleaus and Drakes for minor uses from the #1 ditch. As noted above, the Watermaster was recently instructed not to deliver this or any other courtesy water. Now, however, a new situation has evolved as follows.

Effective May 26, 1992 a Watermaster may deliver water to a use recorded as an expansion of a decreed right as explained in the attached copy of Water Delivery No. 1 Administrative Memorandum. An expansion claimed in the current adjudication does not add water to an existing right but redefines uses etc. for the perfected right. Therefore, the total rate of flow for a perfected right and a claimed expansion equals the original rate of flow in the perfected right.

On June 5, 1992 two adjudication claims were filed by the Pomerleaus and Drakes, claim nos. A65-19624 and A65-19625. The claims involve expansions of the #1 right, 65-03103, and define water previously delivered as courtesy water. One inch of water (.02 cfs) for one-half acre is provided by each claim. The claims have the same priority date as the #1 right. Therefore, it follows that the Watermaster will deliver this water to the Pomerleaus and Drakes via the #1 ditch. The delivery will be recorded as part of the water delivered to the #1 right. For example, if 100 inches (2.00 cfs) are delivered to the #1 right, two of the 100 inches may be used by the claimants to irrigate one acre between both homesites.

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d) The issue of courtesy water is now clarified by your previous request to eliminate courtesy use and by the expansions claimed by two parties. The Watermaster is instructed by this letter as follows:

The use of Porter Creek water for courtesy use by any party cannot be allowed. The Watermaster will not deliver any courtesy water, which is defined as any use outside of a deliverable water right. The Watermaster will only deliver water to water rights identified by department records, and all deliveries must be on the basis of date of priority.

The traditional users of courtesy water are hereby identified: Arlie Woods, Susan and Dennis Pomerleau, Margaret Drake, and George Dovel. None of these people are entitled to any courtesy water.

The uses of water formerly known as courtesy water can occur only under the following water rights controlled by the Watermaster during times of water scarcity: A. Woods per right no. 65-10771 with a 1905 priority for use on the Woods property north of Porter Creek; S. and D. Pomerleau per right no. A65-19624 with a 1872 priority for use at their homesite; M. Drake per right no. A65-19625 with a 1872 priority for use at her homesite; and G. Dovel per right no. 65-10953 with a 1946 priority for use at his homesite and for fire protection as needed.

Mr. A. Woods is prohibited from using Porter Creek water at his home south of Porter Creek unless he files an adjudication claim based on an expansion of a senior right.

This office will discuss water delivery information with the Watermaster and conduct field visits with him as needed to monitor the delivery and use of Porter Creek water this season. Thank you for your timely letter, and please contact me if you have other concerns about the water district.

Sincerely,

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

DRT/sl
Enclosures: W.D. Memo #1
SRBA Claims
CC: Watermaster
A. Woods
S. and D. Pomerleau
M. Drake

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

August 2, 1993

Dear Interested Party:

The accompanying order is a "recommended order" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer 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 twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a

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recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, 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 recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

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 agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

L. Glen Saxton

L. Glen Saxton
Chief, Water Allocation Bureau

Enclosures

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Department of Water Resources

ORIGINAL

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 65-03103 AND 65-10746 IN THE NAME OF DOUBLE DIAMOND, INC.

PROTESTANT'S RESPONSIVE BRIEF

THE BRIEF attached hereto is submitted to the Director of the Idaho Department of Water Resources by the protestant, George Dovel, in response to the brief filed herein by the applicant, Double Diamond Inc.

MAR 29 1995

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this day mailed to the office of: **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83680-0037.

DATED: JUN 14 1993

SIGNED:

Richard B. Eismann
Counsel for protestant

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I. DOUBLE DIAMOND INCORRECTLY ATTEMPTS TO SHIFT THE BURDEN OF PROOF TO DOVEL.

Double Diamond contends that Dovel has somehow assumed the burden of proving a negative, i.e., that the transfer should not be granted. The meritless contention is contrary to Idaho law. As pointed out, the Idaho Supreme Court in Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985), directed that the burden of proof rests with an applicant in cases involving determination of the public interest. See Protestant's Br. at 20-22. The court specifically stated that "It is not [the] protestant's burden of proof to establish that the project is not in the local public interest." Rather the burden is "upon the applicant to show that the project is . . . in the local public interest." 109 Idaho at 339. Double Diamond fails to refer the hearing officer to any evidence in the record which would sustain the burden of proof that this requested transfer is "in the local public interest."

Idaho Code Section 42-222(1) sets forth the elements which must each be proven by an applicant before a transfer may be granted. Two of those elements are proof by the applicant that no other water rights are injured by the transfer and proof by the applicant that the transfer is in the local public interest. Double Diamond fails to refer the hearing officer to any evidence in the record which would sustain the burden of proof as to either element. Double Diamond simply asserts conclusions which are not supported by evidence, and fails to refer the hearing officer to any facts upon which the hearing officer could base the asserted conclusions.

On the other hand, Dovel has set forth ample evidence which shows that other water rights would be injured by the transfer. See Protestant's Br. at 23-37. Dovel has also set

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forth ample evidence which shows that the transfer would not be in the local public interest. Id. at 37-40.

Double Diamond attempts to shift the hearing officer's focus from its own burden of proof by contending that there is insufficient evidence to show failure of beneficial use. This contention is also without merit. In protesting the application, Dovel presented abundant, unrefuted evidence of Double Diamond's failure to put water to beneficial use. Dovel's testimony supported by his records and video tape, Department records maintained by the Department's own watermaster and staff, the records and analysis maintained by Shirley, the testimony of Watts corroborating the validity of the analysis and records offered by Dovel, as well as the testimony of Donald Rumsey himself, show a failure to put the water to beneficial use. Not only did Double Diamond fail to carry its burden of proof regarding the transfer, it also failed to contradict the critical evidence of lack of beneficial use offered by Dovel and through the Department's own records.

While attempting to shift the burden of proof as to beneficial use, Double Diamond does not refer the hearing officer to any evidence in the record showing beneficial use. Rather Double Diamond criticizes Dovel's 1991 records because they represent only "a short part of the year." However, a careful review of Dovel's testimony regarding the maintenance of his diary and records, and a review of Exhibits G and I themselves show that the study covered the full irrigation season which included the critical point of the year regarding beneficial use. So, the "short part of the year" referred to by Double Diamond was the full irrigation season.

Again attempting to shift to Dovel the burden of proof as to

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injury to other water users, Double Diamond states the bald conclusion that Dovel failed to show injury. Ironically Double Diamond attempts to transfer the blame for faulty irrigation practices and an inadequate pipeline system to the Department itself. Double Diamond contends that the water was under the control of the watermaster and that all Dovel had to do was to complain to the watermaster. Double Diamond does not refer the hearing officer to any basis in fact or law which supports the asserted conclusion. Indeed there is no such basis for the conclusion.

There is abundant evidence in the record and in the Department's files to show that the transfer would injure Dovel, that Dovel has already been injured by Double Diamond's failure to make beneficial use, and that Dovel exhaustively complained to the watermaster and other staff of the Department. Double Diamond's claim that Dovel has not shown that he has been injured in any way is simply not true as is clearly shown by examining the entire record in this matter. Evidence showing injury is specifically set forth by Dovel. See Protestant's Br. at 23-37.

The record contains overwhelming evidence that Dovel was injured and repeatedly complained about the injury to the watermaster and to the Department. In 1985 the Department's senior water resource agent, Luthy, conducted an examination of misuse and waste of Porter Creek water by Double Diamond which resulted in injury to Dovel. Luthy recommended that the Porter Creek water district be formed as a direct result of that examination. See Department's 65-B organization file.

The Department's Porter Creek water district files for the years 1986-1992 contain eighteen specific letters, numerous Department field inspection reports and memos and a three and

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one half hour videotape, all showing damage to Dovel resulting from Double Diamond's waste and misuse of Porter Creek water being diverted to them while it was removed from Dovel.

Contrary to Double Diamond's claim in its brief that "all it took was a call to the watermaster . . . or to the Department of Water Resources" to remedy the waste of Porter Creek water by Double Diamond (Applicants' Response Br. at 2), the evidence in the Department's files is overwhelming that the waste reported by Dovel has never been halted by either the watermaster or the Department in time to prevent damage to Dovel's crops.

The ongoing waste of water at Jackass Creek at the expense of Dovel's irrigated crops has become such a bone of contention after six years of control by the watermaster that the Department's western region manager finally agreed to measure that waste with a weir and recording device. See Lt. from Tuthill to Eismann 6/19/92 at 2 in Department's files.

However, once a functioning measuring device was finally installed at the weir pond on Jackass Creek in July of 1992, Double Diamond permitted all of the Porter Creek water it was requesting from the watermaster to be wasted or used illegally before it ever reached the Jackass Creek overflow and weir. During the months of July and August 1992, Dovel and his employee, Shirley, contacted the watermaster on five different occasions requesting that the watermaster provide Dovel with that water in order to irrigate Dovel's alfalfa crop. Except for a reported series of warnings to Double Diamond to "use it or lose it," the watermaster took no other action and permitted all of the water in Porter Creek to be diverted and wasted by Double Diamond under its DD-1-priority from mid July until September 1992.

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Dovel even provided the watermaster with dated color photographs of the illegal dam and diversion from the Double Diamond ditch in August 1992 before the water reached Jackass Creek during that period. Yet, neither the watermaster nor the Department took any action to remedy the waste during 1992. See Lt. from Lester to Double Diamond 3/24/93; see also watermaster records and notes 7-8/92.

Removal of Dovel's irrigation water on May 22, 1992, as a result of Double Diamond's request for more water was also a part of the unrefuted testimony at the hearing as was testimony concerning the three persons with no water rights who use the water Double Diamond requests while it is removed from Dovel. See Tr. at 297, L. 18--L. 24 at 299; at 303, LL. 14-15.

The Department's files contain letters written to Dovel by the Director, Tuthill and Lester, all advising Dovel that the watermaster has no responsibility beyond delivery of water in the amount decreed in order of priority at the headgate until a transfer application is filed or a court action taken to requantify the decreed right to historical beneficial use. So, there is abundant evidence that Dovel was injured and that he repeatedly reported the injury to the watermaster and the Department.

Again attempting to misdirect the hearing officer from focusing on the evidence presented during the hearing and included in the Department's files, Double Diamond claims that the massive testimony and evidence presented by Dovel proving the historical limited capacity of the Double Diamond pipeline system is somehow "inconclusive." Applicants' Response Br. at 2. Double Diamond requests that the hearing officer make a personal inspection of the system and contends that "in a very

[illegible] 29 1995

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few minutes" the hearing officer could determine the adequacy of the system. Double Diamond's suggestion that a single measurement by the hearing officer in "a very few minutes" of a pipeline delivery system would refute the undisputed evidence painstakingly obtained over a period of eleven years is, to use Double Diamond's own terminology, "ludicrous."

Double Diamond's counsel had ample opportunity to examine and attempt to refute the evidence presented by Dovel and contained in the Department's files during the four-day period in which the hearing was conducted, but failed to do so. Double Diamond's counsel did not ask for a continuance prior to the close of the hearing on the evening of March 11, 1993, so that the hearing officer could personally inspect the system. Neither did he make a motion for such inspection. Rather, at the conclusion of the March 11 proceedings, in response to Double Diamond's counsel's comment, "I think we are finished," the hearing officer announced for the record, "The parties have rested." Tr. at 311. Double Diamond's counsel requested only the opportunity to submit a responsive brief concerning the burden of proof on certain issues.

The suggestion of a personal inspection at this juncture is totally inappropriate. The evidentiary portion of this hearing has concluded. A personal viewing is evidentiary in nature and must be made in the presence of the parties and counsel. The viewing would have to be extensive enough to assure that the hearing officer observed the condition of the complete pipeline system at various periods of time during the irrigation cycle. The system would have to be tested and the hearing officer would have to personally view the testing.

It is evident from Dovel's testimony and records that

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literally days were spent taking measurements of the Double Diamond system. For Double Diamond to suggest that "in a very few minutes" the hearing officer could determine whether the system was adequate indicates a complete misunderstanding or misstatement of the evidence in this record which shows the long term historical inadequacy of the Double Diamond pipeline system.

Even if the hearing officer were to spend the several days necessary to observe operation of the system, there is no evidence that the condition of the system today is the same as it was at the time the measurements were secured which showed that the system was inadequate to put the water to beneficial use. The time spent by the hearing officer in making the abbreviated inspection suggested by Double Diamond would be infinitesimal when compared to the testing done by Dovel and his witnesses under the many varying conditions throughout an irrigation season and throughout the year. Double Diamond's attempt on May 28, 1993, to reopen the hearing and introduce new evidence is improper even if the proposed evidence were credible, which it is not.

Double Diamond also attempts to misdirect the hearing officer by suggesting that the inadequate pipeline presents the main issue of the case. Double Diamond's statement that, "Dovel's [whole] contention comes down to" the limited capacity of Double Diamond's pipeline system is clearly erroneous. Applicants' Response Br. at 2-3. Dovel's position rests on many factors, not limited to the inadequacy of Double Diamond's pipeline system.

The maximum quantity of Porter Creek water historically diverted by Double Diamond when all the DD-1-priority acres were being irrigated under the most ideal conditions provides

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an absolute maximum limit for requantification of Double Diamond's Porter Creek water right. I. C. § 65-3103.

Since the maximum quantity of 2.1 cfs. was supported by the overwhelming testimony and evidence including watermaster records, and since any quantity in excess of 1.8 cfs. always produced a waste of water through the Jackass Creek overflow pipe, 1.8 cfs. is established as the maximum quantity historically diverted.

The evidence as to the inadequacy of the pipeline system capacity provides additional proof that no more than 52 inches [1.04 cfs.] could have been used beneficially. It also provides the Department with accurate information to establish a reasonable ditch loss since the undecreed and out-of-priority diversions before the water reached Jackass Creek cannot be considered as part of the historical diversion regardless of ditch losses.

The corrected acreage measurements introduced throughout the course of the hearing provide an accurate basis for computing the duty of water being applied to Double Diamond's crops as well as providing additional proof that the water right as decreed was excessive.

If the gravel pit area had previously been irrigated with the DD-1-priority as Double Diamond infers, the historical duty of water would have been substantially reduced on a per acre basis.

II. DOUBLE DIAMOND STATES ONLY CONCLUSIONS, FAILING TO REFER THE HEARING OFFICER TO ANY FACTS IN THE RECORD WHICH WOULD SUPPORT A DECISION TO GRANT THE APPLICATION FOR TRANSFER.

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Double Diamond urges upon the hearing officer a series of conclusions unsupported by facts. See Applicants' Response Br. at 3-6. Double Diamond's reference to the status of the water users as being upstream or downstream is completely erroneous and irrelevant. The focus of the law regarding water rights and transfer of those rights is upon the priority of the water right, not the position of the user as being upstream or downstream. The same is true as to Double Diamond's emphasis on the factor of loss of return flow. Such loss of return flow is not an issue in this case and never has been from the outset.

The evidence shows that much of the loss of water occurs in a different watershed, namely the Jackass Creek watershed. There is no way that there would be return flow from the point of waste to the Porter Creek watershed. Dovel's headgate is upstream from Double Diamond. So, there could never be return flow to Dovel from the point of waste.

Double Diamond's characterization of the requested transfer as a simple switching of number one water to number four land and number four water to number one land, both having priority over a number six water right, is totally incorrect and has no bearing on the facts in this case. Applicants' Response Br. at 4. The original application executed by Double Diamond in March, 1991, involved a transfer of number 4 water and land, but no hearing was held on that application. Instead, Double Diamond executed and filed an amended application on April 2, 1992. The amended application, which was the subject of this hearing, did not even involve number 4 water or land. So, Double Diamond has mischaracterized the transfer request now awaiting the hearing officer's decision. The request before the hearing officer is to transfer DD-1-priority to DD-12-priority land, and

APR 29 1995

DD-12-priority to DD-1-priority land. The evidence shows that the transfer of the DD-1-priority and DD-12-priority would allow Double Diamond to reclaim a forfeited right to the injury of the number six priority of Dovel. Dovel has further analyzed Double Diamond's attempt to oversimplify the true impact of the requested transfer. See Protestant's Br. at 23-28.

It is highly significant that nowhere in its brief does Double Diamond refer the hearing officer to facts in the record which would support the hearing officer in reaching the conclusions asserted by Double Diamond. On the other hand, Dovel has repeatedly referred the hearing officer to facts in the record which would support the hearing officer in denying the application for transfer. For the hearing officer's convenience, the facts supporting denial of the application are set forth in Dovel's initial brief as follows:

Issue	Page(s) of Dovel's Initial Brief
Double Diamond has failed to irrigate the full acreage provided for in the decree.	8-10
Double Diamond converted farm land to gravel pit use and did not make beneficial use to that converted land for more than five (5) years.	11-14
Failure of Double Diamond to put water to beneficial use.	14-19
Loss of beneficial use due to inadequacy	

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of Double Diamond's system. 14-15

Loss of beneficial use due to undecreed out-of-priority diversions 15-16

Loss of beneficial use due to excessive ditch loss. 16-17

Loss of beneficial use due to waste through the Jackass Creek overflow. 17-19

Double Diamond has failed to divert the full DD-1-priority. 19

Failure of Double Diamond to prove that there will be no injury to other water rights. 23-37

Failure of Double Diamond to prove that the transfer is consistent with the local public interest. 37-40

In one final attempt to misdirect the hearing officer, Double Diamond contends that Dovel has shown no grounds for contending that the transfer is not in the public interest. Double Diamond attempts to escape its burden of proving that the transfer will serve the public interest by shifting the burden to Dovel. The bottom line is that Double Diamond cannot refer the hearing officer to any evidence that the transfer is in the local public interest!

On the other hand, Dovel clearly identifies the adverse financial impact that this transfer would have on the local economy through loss of employment and loss of crops to Dovel

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and other junior appropriators, both in the local area and further downstream on the Payette River. See Protestant's Br. at 39-40.

In Shokal v. Dunn, supra, the impact on the local economy is clearly a major factor to be considered when determining whether the proposed use is in the public interest.

Dovel also clearly shows that the use of Porter Creek water instead of Payette River water which costs no more to apply, requires the use of at least 54 percent more water due to transmission losses in Double Diamond's Porter Creek ditch. See Protestant's Br. at 39. This failure to conserve water by permitting the wasteful transfer would obviously adversely affect all junior water users in times of scarcity, and would not serve the public interest.

This failure to conserve water also provides the director with information proving that the adverse effect upon fish and wild life habitat, recreation and aesthetic values identified in Shokal, supra, would be increased by approving the transfer.

III. THE POSITIVE, UNCONTRADICTED TESTIMONY PRESENTED IN THIS CASE AS TO NONBENEFICIAL USE, REDUCTION OF USE, AND FORFEITURE CANNOT BE DISREGARDED.

The evidence regarding nonbeneficial use of the full water right, the reduction in acreage upon which the water has been used, and waste of water is uncontradicted. In Dinneen v. Finch, 100 Idaho 620, 603 P.2d 575 (1979), the Idaho Supreme Court held that an administrative agency must accept as true the positive uncontradicted testimony of credible witnesses unless the testimony is inherently improbable.

The evidence presented by Dovel is internally consistent and credible. See Protestant's Br. at 40-41. Each witness presented by Dovel is corroborated by other witnesses, documentary evidence and even the failure of Double Diamond to refute the testimony. The uncontradicted evidence cannot be disregarded.

CONCLUSION

For the reasons stated in Dovel's initial brief and in this responsive brief, Dovel respectfully requests:

1. That the Director declare a forfeiture of that part of DD-1-priority in excess of 92 inches [1.84 cfs] in volume and 108 acres;

2. That the Director declare a forfeiture of that part of DD-12-priority in excess of 10 inches [.20 cfs] in volume and 12 acres;

3. That the Director impose a consumptive use limitation of 2.5 acre feet per acre per year on all water rights utilized; and

4. That the Director deny Double Diamond's request to transfer any portion of DD-1-priority.

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 9, 1993

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

Re: Application for transfer of water right no. 65-03103, 65-02540, 65-10746, 65-10747 in the name of Double Diamond Inc.

Dear Mr. Eismann:

I have no objection to your filing a response brief related to the issue of forfeiture or any other issue which was newly raised by Mr. Riddlemoser's brief. I will expect it to be filed by June 14, 1993.

Sincerely,

Gary Spackman

Gary Spackman
Hearing Officer

c: Jack Riddlemoser, PO Box 373, Meridian, ID 83642

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RICHARD B. EISMANN
DEBRA L. EISMANN

FAX COVER SHEET

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TIME: 3:35 p.m.

ATTENTION: GARY SPACKMAN, HEARING OFFICER

ADDRESSEE'S FAX NO.: 327-7866

ADDRESSEE: IDAHO DEPARTMENT OF WATER RESOURCES

ADDRESSEE'S TELEPHONE NO.: 327-7900

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RICHARD B. EISMANN
DEBRA L. EISMANN

June 2, 1993

DELIVERED BY FACSIMILE

GARY SPACKMAN, HEARING OFFICER
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751/Double Diamond, Inc.

Dear Mr. Spackman:

I have now received Mr. Riddlemoser's response brief in the above matter.

I note that he sets forth substantial argument relating to Mr. Dovel's burden of proof and raises a new issue with respect to an on-site examination of the irrigation facilities.

I would like your permission to file a responding brief on those issues on the areas where my client has the burden of proof. My client should have the right to conclude the briefing process on the basis that new material raised in the reply brief needs to be responded to to adequately present the issues for consideration by the hearing officer.

Please give this your consideration and send me your response by facsimile. I would need about ten (10) days to complete a responsive brief.

Thank you for your consideration.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

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Dept. of Water Resources

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Attorney at Law
712 E. Fairview Ave.
P.O. Box 37
Meridian, ID 83642
Telephone: (208) 888-1491

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103 AND 65-10746 IN THE NAME OF DOUBLE DIAMOND INC.	APPLICANT'S RESPONSE BRIEF

This brief is in response to the Respondent's Brief filed herein.

In Respondent's Brief, he has argued at great length about the requirement that the water must be beneficially applied. Applicant acknowledges the fact that the water must be beneficially applied as that is a statutory provision. However, there is the question as to the proof presented to show this lack of beneficial use of the water.

Dovel's contentions are based upon the diary kept during that portion of the year 1991, (Exhibit "G") and his compilations therefrom evidenced by Exhibit "I". Applicant, Double Diamond, contends this inadequate proof to show this lack of beneficial use for the required period.

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A close review of this Exhibit "I" shows that occurred only during a short part of the year and the flows were adjusted regularly. There is no showing by Dovel during this period that he was not getting all of the water to which he was entitled to. The overflow into Jackass Creek varies almost daily depending upon the irrigation demands and practices employed by Double Diamond.

Dovel has not shown that he has been injured in any way as a result of the irrigation practices of Double Diamond. It must be kept in mind that the water at all times was under the control of the watermaster which was hired and paid for by the users in this district. In the event Dovel thought this water loss into Jackass Creek was excessive, all it took was a call to the watermaster to regulate the water or a call to the Department of Water Resources complaining of this fact, and the matter would have been remedied. This water is not under the control of Double Diamond. To imply from his evidence that Dovel, who has owned his place almost eleven (11) years, was watching his place burn up year after year while contending that Double Diamond was in effect wasting water, is ludicrous.

Dovel's contention comes down to the fact that the irrigation system of Double Diamond is not adequate to handle and beneficially apply all of the water provided in the decree to Double Diamond and tries to support it in this inconclusive way. Applicant submits that there is a much better

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way to test the system, and that is to make a personal inspection since we are now in the middle of the irrigating season. It would be a very simple matter to turn the water in, turn on the sprinklers, and make the inspection and Applicant submits this should be done before any final determination is made in this case. In this way, you could prove conclusively in a very few minutes whether the irrigation system of Double Diamond was adequate to use the water decreed to it. This is the only way to resolve any and all doubt in this matter, and should be done without question before any decision is rendered in this matter on this issue.

APPLICANT'S BURDEN OF PROOF

In his brief, Dovel contends that Applicant has not met his burden of proof in showing that this transfer will not effect other water users or constitute an enlargement of the use of Applicant's water right. In this regard it must be remembered that the point of diversion remains the same, which is downstream from Dovel, the amount of water remains the same and is as stated in the brief, transferred on an acre for acre basis. Dovel would have the same priority, the same amount of water after the transfer as before. The fact that there is a Payette River right to the Number Twelve (12) fields in question and that on occasion the river right has been used to irrigate the Number Twelve (12) fields it does not present a bar to this transfer application. To hold otherwise, would

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say, that the only time water could be transferred as in this case would be to a subordinate right that was still prior to the right of the Protestant. In other words, to transfer Number One water to Number Four land and Number Four water to Number One land, both of which have priority over the Number Six water right of Dovel. No authority has been found restricting water transfers in this regard. Under this proposed transfer, there is no altering of the stream conditions, duty of water, or volume of return water to the detriment of junior appropriators as set forth in Protestant's brief Page 24. The fact that there is also Payette River Rights to the land served by the Number Twelve (12) right does not support Dovel's contention that his water right is injured by the transfer.

Idaho has long held that an important part of owning a water right is the ability to change its place of use. First Security Bank of Blackfoot v. State, 49 Idaho 740, 291 P. 1064 (1930); Harris v. Chapman, 51 Idaho 283, 5 P.2d 733 (1931). In First Security this Court in speaking about water rights stated:

> One of the valuable incidents of this property right of which the owner cannot be deprived is the right to use it where he will and to change its place of use, providing always that by such use or such change in the place of use the rights of others are not adversely affected.

49 Idaho at 744.

The right to change the place of use of a water right has been said to depend on the facts of each particular case.

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Crockett v. Jones, 47 Idaho 497, 504, 277 P. 550 (1929). The settled law in Idaho has been that in order to defeat the right to make a change in the place of use of a water right, the injury caused thereby must be to a water right, and the injury must be actual and substantial. See Colthorp v. Mountain Home Irr. Dist., 66 Idaho 173, 180-181, 157 P.2d 1005 (1945); Beecher v. Cassia Creek Irr. Co., 66 Idaho 1, 7-8, 154 P.2d 507 (1944). In 1981, the Legislature modified the law by the addition of the local public interest criterion to I.C. § 42-222(1). Act of March 27, 1981, ch. 147, § 3, 1981 Idaho Sess. L. 253. The amendment authorizes the director of IDWR to deny a proposed transfer if he determines that it is not in the local public interest. The amendment does not affect the requirement under Idaho law, however, that any claimed injury to a water right must be actual and substantial.

The case law discussing injury generally concerns water users holding junior rights located downstream from the right proposed to be transferred. The claimed injury is normally the elimination or reduction of return flow upon which the downstream users have come to rely. See Clark, 5 Waters and Water Rights § 412.2 (1972); Hutchins, W.A., 1 Water Rights Laws in the Nineteen Western States 633-636. (1971). The loss of the return flow may be held to violate the downstream juniors to the continuation of the conditions which existed on the stream at the time the junior appropriation was made. Hall v. Blackman, 22 Idaho 556, 558, 126 P. 1047 (1912); Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 Fed. 9, 28 (9th Cir. 1917).

The issue as to whether or not the transfer is contrary to the public interest was previously covered in Applicant's original brief. The examples shown in the Respondent's brief do not show any grounds for contending that the transfer is not in the public interest.

In rendering his decision in this matter, the director is entitled to take into consideration all of the files and records of the Department of Water Resources. A review of this whole matter will show that the proposed transfer should be approved.

CONCLUSION

The basic facts of this matter will remain unchanged if the transfer is allowed. Porter Creek is not changed. The points of diversion on Porter Creek are not changed. The point of diversion would be the same after as before. The point of diversion is downstream from Dovel's point of diversion. The transfer would not enlarge the existing water right or cause any injury to existing water rights. The place of use as a result of the transfer is in the same general area as the present place of use.

The provisions of the decree as to Water Right No. 65-03103 clearly shows the lands included in said decree acres involved.

The transfer should be allowed as requested by Applicant.

Respectfully Submitted,

JACK C. RIDDLEMOSER
Attorney for Double Diamond

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of May, 1993, a true and correct copy of the above and foregoing Applicant's Response Brief was mailed, postage prepaid, to the following:

RICHARD B. EISMANN
Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651

JACK C. RIDDLEMOSER

9 1995

WR0749NP
No. T65-02540

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT
(REGIONAL)

DATE: 06/15/93
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	DOUBLE DIAMOND INC C/O DONALD RUMSEY 200 SUNRISE RIM BOISE ID 83705 (208) 336-4801	04/26/1951	IRRIGATION RECREATION RECREATION STORAGE DIVERSION TO STORAGE	04-01 04-01 04-01 04-01	11-01 11-01 11-01 11-01	2.85 CFS 0.35 CFS 0.35 CFS	823.5 AFA 99.0 AFA 99.0 AFA
				TOTAL DIVERSION:		3.20 CFS	922.5 AFA

Water Source: PAYETTE RIVER Tributary to: SNAKE RIVER Stage: DECREED

Point(s) of Diversion Capacity: 3.20 CFS

Point(s) of Diversion: T07N R02E S23 Lot 04(NW SE)

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	Lt Ac	Lt Ac	SUM
07N	02E	23												05-08		04-02	05-31	01	42.0
07N	02E	26	13	35	32	03	01-19			02-16	03-09					14			141.0
																TOTAL ACRES			183.0

Place of use Legal Description for: RECREATION

			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	Lt Ac	Lt Ac	
07N	02E	26		R	R		R			R									

Pou County: BOISE

Other Water Rights with Same Point(s) of Diversion and Source:
65-02540 65-07931 65-07937

Other Water Rights Listing Overlapping Place(s) of use:
65-02532 65-02540 65-03103 65-10746 65-10747 65-10749 65-11393 T65-03103 T65-10747

Remarks: Conditions per attached Memorandum Decision and Order.

Dates: App. Received: Priority Date: 04/26/1951
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 65B Field Exam Fee:

Cer G. Spackman CS

Comments: Date: 06/15/1993 User-ID: SKAGGS Subject: TRANSFER #4159
Transfer #4159 was filed to change the place of use and the nature of use under rights 65-02540/03103/10746/10747.

Audit: 06/15/93 SKAGGS

TRANSFER REVIEW SHEET

Transfer # 4159 **Date Reviewed** 5-26-93 CS

Right(s) 65-02540 65-10747 _____ _____ _____

65-03103 _____ _____ _____ _____

65-10746 _____ _____ _____ _____

_____ **Change P/D** _____ **Add P/Ds** ✓ **Change P/U** ✓ **Change Use**

Proof of Ownership Tax Notices ('91) with original application for Transfer

Transfer ✓ **All of Right** _____ **Portion of Right (Part B_____)**

Resulting Split(s) NONE

Check Transfer Against Right

(1) ✓ **Priority** (2) ✓ **Use** (3) ✓ **Season** (4) ✓ **Rate** (5) ✓ **Volume**

(6) ✓ **Source** (7) ✓ **P/D** (8) ✓ **P/U** (9) ✓ **Proof/Owner** (10) ✓ **Map**

(11) 65B **Water District** (12) NONE **Pertinent Conditions** (13) NO **Expansion**

(2) Change 65-10746 to REC/STOR - 22 Acres removed from IRR
(3) Season per rights < Standard Season
(5) STOR VOL limited to consumptive VOL of 22 Acres x 3.5 = 77 af
(8) Per Transfer recommendations on Attachment B1 - Land Base 195 Acres
(7) 2 points diversion both P/Ds.

*: FOLLOW ... Rights as presented on Transfer per (2) ...

Transfer Remarks Conditions (3), (8), (9), (10) per PMDO / ADD P/D remark Individual Rt. Remarks showing # Acres each Rt in Land Base

Conditions (1) R04 (4) R01 + R02 (6) T07 (7) ~~T09~~ per PMDO Add T08, R32

Database/Processing Notes Create "T" files / STACK info in 65-02540 to create Transfer form (edit) / clear to individual right when approved.

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Department of Water Resources

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RICHARD B. EISMANN
DEBRA L. EISMANN

May 6, 1993

GARY SPACKMAN, HEARING OFFICER
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751/Double Diamond, Inc.

Dear Mr. Spackman:

Viewing the briefing procedures from the basis of who must carry the burden of proof, I would suggest that it is appropriate on the issues which the applicant, Double Diamond, must prove that it open with a brief, which Double Diamond has done; that the protestant, George Dovel, respond with a brief which he has done; and that Double Diamond respond to our brief, which it is scheduled to do.

With respect to the issues on which Dovel has the burden of proof, I would suggest that it would be appropriate that after Double Diamond has responded by reply brief to those issues, that Dovel have the opportunity to file a reply brief to Double Diamond's brief on those issues. This would essentially deal with forfeiture on all the grounds set forth in Dovel's brief which was delivered to you this date.

I am sending a copy of this letter to Mr. Riddlemoser for his information and so that he may have his input on this matter to you before you decide how this should be resolved.

Thank you for your consideration.

Very truly yours,

See manila envelope for Protestants brief.

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

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GARY SPACKMAN, HEARING OFFICER
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751/Double Diamond, Inc.

Dear Mr. Spackman:

Enclosed for your review and consideration are the original and one (1) copy of Protestant's Brief in the above-entitled matter.

Thank you.

Very truly yours,

Richard B. Eismann
RBE/vn/8
Enc.
CLT: George Dovel
Jack C. Riddlemoser

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 65-03103 AND 65-10746 IN THE NAME OF DOUBLE DIAMOND, INC.

PROTESTANT'S BRIEF

THE BRIEF attached hereto is submitted to the Director of the Idaho Department of Water Resources in support of the protest filed herein by the protestant, George Dovel, against the application for transfer.

9 1995

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this day mailed to the office of: **JACK C. RIDDLEMOSER, ATTORNEY AT LAW**, Post Office Box 37, Meridian, Idaho 83680-0037.

DATED: MAY - 6 1993

SIGNED: _____

Richard B. Eismann
Counsel for protestant

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DEFINITIONS

When used in this brief, the terms following shall have the meanings following:

--- "Double Diamond" means the applicant for transfer, Double Diamond Inc.

--- "DD-1-priority" means Double Diamond's number one Porter Creek water right.

--- "DD-12-priority" means Double Diamond's number twelve Porter Creek water right.

--- "Dovel" means the protestant, George Dovel.

--- "Department" means the Idaho Department of Water Resources.

--- "Director" means the Director of the Idaho Department of Water Resources.

--- "ASCS" means the Agricultural Stabilization and Conservation Service.

--- "Dale Rumsey" means one of the partners who owns Double Diamond.

--- "Donald Rumsey" means one of the partners who owns Double Diamond.

--- "Lester" means the Department agent, Steve Lester.

--- "Nottingham" means the Idaho Department of Transportation

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geologist, Keith Nottingham.

--- "Watts" means the engineer, Don Watts.

--- "Cockrum" means the witness, Cleo Cockrum, a farmer who farms the Double Diamond property.

--- "Shirley" means the witness, Christie Shirley, who was employed by Dovel to irrigate during the years 1988-1992 and who took water measurements in 1991.

INTRODUCTION

Double Diamond holds a number one priority water right on Porter Creek. This DD-1-priority relates to the water decreed for use in irrigating the Double Diamond acres seen on Dovel's Exhibit A, lying east of the Payette River, west of the county road, south of the parcel designated 2, and north of the parcel designated 3A. A copy of the photograph, Dovel's Exhibit A, is attached hereto as Exhibit A.

On October 30, 1986, Double Diamond entered into a lease-option with the Idaho Transportation Department which allowed the department to begin digging test holes for location of gravel. On October 26, 1987, Double Diamond leased to the transportation department approximately 70 acres of this property for use as a gravel pit. Evidence demonstrates that this gravel pit property was not irrigated after execution of the lease.

Double Diamond holds a number twelve priority water right on Porter Creek. The DD-12-priority relates to water decreed for use in irrigating the three parcels designated on Dovel's Exhibit A as 1, which is east of the county road, 2 and 3A.

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On March 19, 1991, Double Diamond filed an application for transfer seeking to "Exchange senior [DD-1-priority] and junior [DD-12-priority] Porter Creek rights to maximize efficient use of limited water supply." Application for Transfer at 1. The application further stated that, "Currently, 56 acres covered by 65-03103 [DD-1-priority] and 65-10746 [DD-12-priority] are not irrigated due to gravel pit excavation related to Highway 55 construction on Horseshoe Bend highway." Id. The purpose of the transfer was said to be the following: change the point of diversion, add diversion points and change the place of use.

Before any hearing was conducted on this application, an amended application for transfer was executed by Double Diamond on April 2, 1992, which stated an entirely different purpose for the requested transfer. The amended application stated that the transfer was to accomplish the following: change the nature of use and change the place of use. The reason stated for the transfer was as follows:

> A 148.7 a.f. pond bill be established on a 22-acre site in S.26. The pond will be for recreation purposes. It will be filled with Payette River water and by exchanging #1 Porter Creek water with #12 Porter Creek water (#12 to go to pond). This amended application serves as the mngt. or reclamation plan.
>
> Amended Application for Transfer at 1.

A hearing was conducted by the hearing officer on March 8 and March 11, 1993.

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STATEMENT OF FACTS

A. DECREE AS TO DOUBLE DIAMOND'S PORTER CREEK WATER RIGHTS.

1. DD-1-priority and DD-12-priority

On January 21, 1986, Porter Creek water right number 65-03103 was decreed for 191 inches [3.82 cfs] of water to irrigate 193 acres of Double Diamond's land with a priority date of January 1, 1872. This is the DD-1-priority on Porter Creek (See Dovel's Ex. Q at 304).

Also, on January 21, 1986, Porter Creek water right number 65-10746 was decreed for 22 inches [.44 cfs] of water to irrigate 22 acres of Double Diamond land with a priority date of April 1, 1960. This is the DD-12-priority on Porter Creek. (See Dovel's Ex. Q at 305)

This decree identifies the date of October 18, 1977, as the official cutoff for claims taking and was based on claims dated March 9, 1977, and signed by Donald Rumsey for Double Diamond. (See Idaho Department of Water Resource Payette River Adjudication file)

Thus, the DD-1-priority on Porter Creek was decreed for 193 acres. The DD-12-priority on Porter Creek was decreed for 22 acres.

B. ACTUAL USE SHOWS THAT DOUBLE DIAMOND NEVER IRRIGATED THE FULL ACREAGE PROVIDED FOR IN THE DECREE AND THEREFORE FORFEITED THE WATER RIGHT AS TO THE ACRES NOT IRRIGATED.

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1. ASCS survey

A survey of the fields irrigated with Porter Creek water on Double Diamond's ranch was conducted by the Agricultural Stabilization and Conservation Service office (ASCS herein) in Emmett, Idaho.

All of the Porter Creek fields were numbered 1 through 8 and the acreage for each field was plotted. The total of all fields, using both senior and junior Porter Creek water for irrigation, was 179.5 acres with the DD-1-priority used to irrigate 156.5 acres and the DD-12-priority used to irrigate 21 acres. (See Dovel's Exs. B and C)

The survey thus demonstrated that Double Diamond has historically irrigated 36.5 less acres with the DD-1-priority on Porter Creek than the total acres established by decree. The survey also demonstrated that Double Diamond has historically irrigated 1 less acre with the DD-12-priority on Porter Creek than the total acres established by decree.

The testimony concerning this historical reduction in acreage and the two exhibits offered by Dovel were not refuted by Double Diamond. (Tr. Vol. 2 at 268-269)

2. Engineer Watts' calculations

Engineer Watts testified that his findings differed slightly from the results shown in the ASCS survey. He found that Double Diamond irrigated 164.47 acres with the DD-1-priority (the ASCS survey showed 156.5 acres so irrigated), and irrigated 17.73 acres with the DD-12-priority (the ASCS survey showed 21 acres so irrigated).

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The measurements by Watts from ASCS aerial photographs and aerial photograph quadrants using a digitizer and computer were used to determine which portion of each irrigated Double Diamond field was in each quarter quarter.

Watts testified that an accuracy of plus or minus 5 percent was a maximum potential error in that method of calculating acreages in each quarter quarter. He also testified that his calculations were less than 2 percent higher than the ASCS field survey calculations.

Watts calculated that a total of 182.2 acres of Double Diamond's land were irrigated with Porter Creek water or 2.7 acres (1.5 percent) more than the ASCS survey. The calculated difference resulted partly from a difference in the size of the field designated as "3A" on Dovel's Exhibit A. That lot, located at the south end of the gravel pit, totaled only 6.16 acres rather than the 9 acres attributed to it in the decree.

According to Watts' calculations, the actual acres historically irrigated with DD-1-priority were 28.53 acres less than the total acres decreed (193 acres minus 164.47 acres). The actual acres historically irrigated with DD-12-priority were 4.27 acres less than the total acres decreed (22 acres minus 17.73 acres).

Double Diamond did not refute either the calculations or the testimony from both Watts and Dovel concerning Dovel's Exhibits V and V1.

3. Lester's correction inaccurate

The correction prepared by Lester as part of the transfer application includes 11.5 nonexistent acres in lot 5 of

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section 23.

Dovel testified that the proposed correction by Lester to the irrigated land in lot 5 (SESW and SWSE) of section 23 included substantially more irrigated land than was actually contained in the two quarter quarters. This testimony was obviously corroborated by Lester's memo dated June 28, 1990, with the attached ortho photoquad and was also verified by testimony from Watts and by his calculations in Dovel's Exhibits V and V1. (See also Double Diamond's Ex. 2)

The total irrigated acres in parcels 2, 3, 4 and 5 (all of the irrigated land in lot 5) is 27.58 instead of the 39 acres claimed by Lester in his memo which is part of the protested transfer application.

Even though the decree establishing DD-1-priority defined a use for 193 acres, Double Diamond has historically irrigated no more than 164.47 acres, or 28.53 acres less than defined by decree. Even though the decree establishing DD-12-priority defined a use for 22 acres, Double Diamond has historically irrigated no more than 17.73 acres, or 4.27 acres less than defined by decree.

Donald Rumsey's unrefuted testimony is that this irrigation pattern has existed for twenty-five (25) years. So, the nonuse of water as to the 28.53 acres under DD-1-priority and the 4.27 acres under DD-12-priority constitutes a forfeiture of that portion of each water right pursuant to Idaho Code Section 42-222(2). The decrees establishing DD-1-priority and DD-12-priority were entered on January 21, 1986. Even using the decree date as a starting point, the nonuse of 28.53 acres of DD-1-priority and 4.27 acres of DD-12-priority has continued through a five-year continuous period. Thus,

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forfeiture has occurred.

C. THE CONVERSION OF FARM LAND TO GRAVEL PIT HAS RESULTED IN WATER RIGHT FORFEITURE BY DOUBLE DIAMOND.

On October 30, 1986, Dale Rumsey and Donald Rumsey, partners in Double Diamond, executed a lease-option with the Idaho Transportation Department pursuant to which the transportation department paid the Rumseys $8,000.00 in consideration and began digging gravel test holes. On October 26, 1987, the parties executed a lease which allowed the transportation department to convert to gravel excavation and stockpiling use approximately 70 acres of the land served by DD-1-priority. (See Dovel's Exs. U and P)

Nottingham's testimony concerning Dovel's Exhibits U and W established that screened gravel was already stockpiled there in the spring of 1988.

Dovel testified that 43 gravel pit acres were not farmed in 1988, 50 acres were not farmed in 1989, 55 acres were not farmed in 1990, and 60 acres were not farmed in 1991 and 1992.

Dovel also testified that when Porter Creek water was being used to irrigate Double Diamond land, he had never seen the number seven wheel line or any other sprinkler lines operating in the entire gravel pit area in 1988, 1989, 1990, 1991, 1992 and to the present (March of 1993), a period of more than five years. Dovel further testified that he would have observed the number seven wheel line running if it had been running during that period because it supplied the DD-12-priority which was junior to Dovel's priority.

Shirley testified that she had never seen the number seven

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wheel line sprinkling during the years she worked for Dovel -- 1988, 1989, 1990, 1991 and 1992.

Cockrum testified that the size of the gravel pit increased from year to year, but he did not claim that any of the leased area was ever irrigated with Porter Creek water during the five and one half year period.

Although Cockrum initially said that he had used the number seven wheel line on the south end of the gravel pit during the 1991 irrigation season, Dovel's video tape (Dovel's Ex. N) proved the statement to be incorrect. The video footage taken by Dovel on May 15, 1991, clearly shows, as Dovel testified, that all of the area from the northernmost boundary to the southernmost boundary of the leased area was already excavated. (Note: This included the 6.16 acres served by the DD-12-priority.)

Dovel's Exhibit V shows that parcels 11, 12, 16, 17, 20 and 21 total 60.59 acres of gravel pit ground identified as previously having been irrigated with DD-1-priority. Dovel testified that approximately 5 of those acres, identified as the small green field on the northeast corner of the gravel pit area and parcel 12, had been irrigated. Thus, 55.59 acres had been forfeited for nonuse (60.59 acres minus 5 acres). Lester estimated this area of nonuse as about 52 acres in his testimony.

In addition, Watts testified that the road leading to the gravel pit consumed approximately nine-tenths of an acre of fields that were formerly irrigated. Thus, the evidence showed that a total of 56.49 additional acres (55.59 plus .9) served by DD-1-priority have been forfeited because of failure to apply the water beneficially during the five consecutive

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years.

The evidence also showed that parcels 23 and 24 totaling 6.16 acres served by DD-12-priority have been forfeited. Double Diamond did not claim they were irrigated with Porter Creek water, and Dovel's witnesses, Shirley and Dovel, testified they had not been irrigated with Porter Creek water during the five-year period. Even if this small portion at the south end of the gravel pit area had been irrigated with Payette River water prior to 1991, it would not have affected the forfeiture of that portion of the overlapping Porter Creek water right allocated to those acres.

Lester testified that he and the Porter Creek watermaster met south of the gravel pit on the field identified as "3A" in May of 1992 to see if that area was being reclaimed and said that it was not being reclaimed into irrigated land at that time.

Testimony by Nottingham as well as extensive evidence and testimony by Dovel, including videotape and photographs taken of the entire gravel pit areas from May to November in 1992 and on March 9, 1993, reveal that none of the entire gravel leased area had been plowed or otherwise prepared for irrigation at the time of the March 8 and 11, 1993, hearings. (See Dovel's Exhibits M, X, Y & Z)

Although the number seven wheel line had been relocated in the southern tip of the leased area, most of the 23.6 acre field designated by ASCS as Double Diamond field 8 was still in gravel piles and roadway or fenced off as a cattle feed lot. The remaining few acres included the DD-12-priority field and had not been plowed or prepared for reseeding.

Thus, the evidence showed that Double Diamond has forfeited an

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additional 56.49 acres served by DD-1-priority and an additional 6.16 acres served by DD-12-priority by its failure to apply Porter Creek Water beneficially for a period of five consecutive years following conversion of the farm land to a gravel pit.

D. DOUBLE DIAMOND HAS HISTORICALLY FAILED TO APPLY SUBSTANTIALLY MORE THAN ONE HALF OF ITS PORTER CREEK WATER BENEFICIALLY AND HAS FORFEITED THAT QUANTITY NOT SO APPLIED.

In addition to the acres lost through forfeiture resulting from nonuse, Double Diamond has forfeited one half of the volume of Porter Creek DD-1-priority because of its historical failure to apply the water beneficially.

1. Double Diamond's Porter Creek pipeline distribution and irrigation system is incapable of applying more than 60 inches [1.2 cfs] of water through the sprinklers.

Dovel testified that the maximum output he had ever measured over several years of monitoring the entire Double Diamond irrigation system with Porter Creek water in sections 23 and 26 was between 51 and 52 inches [1.02--1.04 cfs]. This maximum was obtained only when the Payette River pump was redesigned as a booster pump for the Porter Creek water and was impossible to obtain when the regular Porter Creek booster pump was used even with the maximum number of sprinkler heads.

By factoring in an additional 15-18 percent for water passing through oversized nozzles and for pipeline and pump leaks, Dovel calculated a maximum estimated system capacity of 60 inches [1.2 cfs]. There is no evidence that the system ever in fact applied more than 52 inches [1.04 cfs]. The 60 inch

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maximum capacity estimate was based upon a system potential which was recognized to exist if oversized nozzles were in fact used. There is no evidence as to the use by Double Diamond of oversized nozzles sufficient to raise the system capacity to 60 inches [1.2 cfs].

Shirley verified the accuracy of the extensive measurements taken during the 1991 irrigation season as recorded in Dovel's Exhibits G, I, J, K & L, and Watts verified the methods of calculation used by Dovel and the procedures and devices used. (See Dovel's Exs. F, R, S and T) These measurements and calculations resulted in the evidence that the maximum system output ever witnessed was between 51 and 52 inches [1.02--1.04 cfs].

The evidence is clear and is not contested that Double Diamond's system has not had the capacity to apply more than 60 inches [1.2 cfs] of Porter Creek water beneficially during the years 1986 through 1992 even though 191 inches [3.82 cfs] were decreed. The system's capacity is so limited that even when half of the DD-1-priority is turned into the ditch, some of the water is always wasted at Jackass Creek in addition to waste from excessive ditch losses and three illegal diversions along the ditch, constituting forfeiture.

2. Undecreed out-of-priority diversions are part of the forfeiture.

Dovel also testified that in addition to the ditch losses and waste at Jackass Creek, there were three other people who remove water at undecreed points of diversion from Double Diamond's irrigation ditch before it reaches Double Diamond's pipeline at Jackass Creek.

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The Department's district 65-B file includes letters and a videotape which document the two undecreed diversions from the ditch. The file also documents a decreed diversion, water right number 65-10771, with a priority that is junior to both of Dovel's Porter Creek irrigation water rights but which has been removed from Double Diamond's ditch and treated as part of DD-1-priority. Watermaster notes for 1990 in the Department's district 65-B file document the out-of-priority delivery of that right while Dovel's senior rights were shut down.

Removal of these undecreed and out-of-priority diversions is another part of the 105 inches [2.1 cfs] of water historically diverted by Double Diamond that is not applied to beneficial use since it never reaches Double Diamond's pipeline. Therefore, these diversions cannot be included in redetermining the quantity of historical use of water once the transfer application was filed since they have also been forfeited.

3. Excessive ditch losses constitute part of the forfeiture.

Dovel's testimony, corroborated by the videotape (Protestant's Ex. M), that parts of Double Diamond's ditch had never been maintained during the past eleven years and resembled a jungle was not refuted by Double Diamond.

The extent of Double Diamond's ditch losses resulting from lack of maintenance is also a matter of record in the water district 65-B file, including a videotape which documents the percentage of loss under varying conditions.

Acting watermaster, Lester's, 1990 notes in that file verify

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that on July 19, 1990, it was necessary to deliver 13 inches [.26 cfs] of water into Double Diamond's ditch at the headgate in order to receive 2 inches [.04 cfs] of "courtesy" water at Arlie Woods' house, one of the undecreed diversions a short distance down the ditch.

4. The nonbeneficial use of water wasted through the Jackass Creek overflow pipe has been forfeited.

The summary of Double Diamond's water usage under DD-1-priority in 1991 (Dovel's Ex. I) establishes that whenever more than 70 inches [1.4 cfs] of water was diverted through the headgate, some of it was always wasted at the Jackass Creek overflow regardless of the number of sprinklers being used to apply water beneficially. The nonbeneficial use evidenced by this waste resulted from the limited capacity of Double Diamond's pipeline system.

The 1991 videotape (Dovel's Ex. M) vividly depicted the waste at the Jackass Creek overflow every time more than 70 inches [1.4 cfs] was diverted at the headgate and also showed the correlation between the quantity of water diverted and the degree of waste at the Jackass Creek overflow.

The introduction of all available Porter Creek watermaster records since 1986 and the summary of those records show that whenever a volume of more than 100 inches [2.0 cfs] was turned into the Double Diamond ditch system the watermaster would quickly reduce the volume diverted. Dovel's testimony established that historically this occurred because he requested the reduction in order to reduce the waste of water that could not enter Double Diamond's pipeline at Jackass Creek. He also testified that the watermaster had never historically turned in more than 105 inches [2.1 cfs] and even

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that amount resulted in an around-the-clock waste of water through the Jackass Creek overflow pipe.

The amount of that ongoing waste out of the overflow pipe was quantified by Dovel's Exhibit I as "L" (low) - 10 to 100 gpm, "M" (medium) - 100 to 300 gpm, and "H" (high) in excess of 300 gpm and was not disputed by Double Diamond at the hearing.

The September 23, 1991, meeting of water district 65-B was tape recorded under the direction of the secretary of the district, Donald Rumsey. That tape recording was transcribed, and the transcript is in the Department's district 65-B file. The transcript is thus part of the "available information" [I. C. § 42-222(1)] which is to be examined by the Director.

Donald Rumsey stated at the meeting that the ditch loss was 15 percent which was an average for the season. Rumsey, one of the owners of the property for many years, adopted this opinion from statements made to him by employees of the Department. Donald Rumsey's claim of a 15 percent ditch loss has never been refuted or corrected by Double Diamond. While Rumsey's claim of 15 percent ditch loss is not binding on Dovel or any other junior appropriator, Donald Rumsey, never having withdrawn or corrected the claim, should be held bound to the claim that the ditch loss between his headgate and Jackass Creek was 15 percent average over the season.

That ditch loss in fact creates a greater forfeiture as a result of ongoing nonuse through waste at the Jackass Creek overflow. E.g., unrefuted testimony proved that 105 inches [2.1 cfs] of Porter Creek water has been diverted historically by Double Diamond and that only a maximum of 60 inches [1.2 cfs] could ever be applied beneficially. When the maximum potential capacity of 60 inches [1.2 cfs] is subtracted from

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the historical diversion of 105 inches [2.1 cfs], the remainder is 45 inches [.9 cfs]. When that remainder is further reduced by the 15 percent ditch loss or 15.75 inches [.315 cfs], the remainder of 29.25 inches [.585 cfs] equals the minimum ongoing nonuse of water through the Jackass Creek overflow pipe which has been forfeited. While the maximum potential capacity of 60 inches [1.2 cfs] has been used for purposes of this calculation, it should be remembered that there is no evidence that the Double Diamond system ever applied more than 52 inches [1.04 cfs].

5. Double Diamond has never diverted the full DD-1-priority.

Dovel's testimony established that with absolutely no exception in eleven years, Double Diamond never diverted its entire DD-1-priority and that the Double Diamond ditch will not hold that quantity of water.

Only once during the eleven-year period did Double Diamond ever divert a volume of water anywhere near its DD-1-priority. On May 20, 1991, following Dovel's filing of the petition to declare one half of the DD-1-priority forfeited, Double Diamond diverted 171 inches [3.42 cfs]. Dovel's Exhibits G and I clearly show that diversion did not equal the 191 inches [3.82 cfs] decreed to that right. Dovel's Exhibit I describes the overflow from that large diversion as exceeding 300 gpm, and the Dovel videotape (Dovel's Ex. M) and the accompanying testimony clearly proves that a massive waste through the overflow pipe at Jackass Creek resulted from that large one-time diversion.

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ARGUMENT

I. DOUBLE DIAMOND HAS THE BURDEN OF PROVING TO THE DIRECTOR THAT THE APPLICATION SHOULD BE GRANTED.

In Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985), the Idaho Supreme Court approved the district court's decision that the burden of proof rests with an applicant in cases involving determination of the public interest. The court stated:

> However, the burden of proof in all cases as to where the public interest lies, as Judge Schroeder also correctly noted, rests with the applicant:
>
> > It is not [the] protestant's burden of proof to establish that the project is not in the local public interest. The burden of proof is upon the applicant to show that the project is either in the local public interest or that there are factors that overweigh the local public interest in favor of the project.
>
> 109 Idaho at 339.

Even though Shokal did not involve an application for a transfer, it did involve an application for a permit to appropriate water. Since both an application for a permit to appropriate and an application for a transfer require a showing by the applicant that the local public interest will be served, it seems clear that the Shokal rule as to burden of proof is equally applicable in a case involving an application for transfer. See I. C. § 42-203(A) which sets forth the local public interest as an element to be considered by the Director regarding an application for a permit to appropriate and I. C. § 42-222 which sets forth the public interest as an element which must be considered by the Director regarding an application for transfer.

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The rule recognized in Shokal is consistent with the general rule followed in administrative proceedings which places the burden of proof on the applicant who seeks affirmative relief. Bernstein v. Real Estate Com. of Maryland, 221 Md. 221, 156 A.2d 657 (1959), appeal dismissed, 363 U.S. 419, 80 S. Ct. 1257, 4 L. Ed. 2d 1515 (1960); Dickinson v. United States, 346 U.S. 389, 74 S. Ct. 152, 98 L. Ed. 132 (1953).

The Shokal rule is also consistent with the general rule followed in civil proceedings which also places the burden of proof on the party seeking affirmative relief. That general rule has been urged as the base for placement of the burden of proof upon the applicant for a transfer. See Lynne Krogh-Hampe, Injury and Enlargement in Idaho Water Right Transfers, 27 Idaho L. Rev. 249 (1991) where the author states:

> The general rule in civil proceedings is that the burden of proof is on the party seeking affirmative relief. Once the party seeking affirmative relief has made a prima facie case, the adverse party has a burden of going forward with evidence to refute the case. Nonetheless, the ultimate burden remains on the party seeking affirmative relief to establish his or her case by a preponderance of the evidence.
>
> Applying these general rules of Idaho law to changes in use of water rights, the burden of proof should be on the appropriator making the change in use to show non-injury, since it is the person who is making the change who is seeking administrative or judicial relief in the form of recognition of the change. However, once the claimant of the change has made a prima facie case of no-injury, then the burden shifts to the party claiming injury to go forward with evidence of the specific injury alleged. The ultimate burden of proving non-injury would remain, however, with the appropriator making the change.
>
> 27 Idaho L. Rev. at 253.

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In Colorado and New Mexico this civil burden of proof rule has been applied to requests for change in water rights in Wagner v. Allen, 688 P.2d 1102, 1108 (Colo. 1984); Ensenada Land and Water Ass'n. v. Sleeper, 107 N.M. 494, 499, 760 P.2d 787, 792 (Ct. App. 1988), cert. quashed, 107 N.M. 413, 759 P.2d 200 (1988).

II. DOUBLE DIAMOND HAS FAILED TO MEET ITS BURDEN OF PROOF AS TO ALL ELEMENTS NECESSARY FOR GRANTING AN APPLICATION FOR TRANSFER.

Idaho Code Section 42-222(1) provides that when an application for transfer is filed, the director must "examine all the evidence and available information" and may grant the application only if:

1. No other water rights are injured by the transfer;

2. The transfer does not enlarge the use defined in the original right;

3. The transfer is consistent with the conservation of water resources; and

4. The transfer is in the local public interest.

In this case Double Diamond has the burden of proving that all four of the identified elements have been established. That burden of proof has not been carried. This brief will be directed particularly to the failure to prove no injury to other water rights and the failure to establish that the transfer is in the local public interest, even though the facts and law also show failure to prove elements two as to enlargement of use and three as to conservation of water.

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A. INJURY TO OTHER WATER RIGHTS AND ENLARGEMENT OF USE.

Double Diamond failed to prove that no other water rights would be injured by the transfer and that the transfer would not enlarge the use. On the contrary, the evidence establishes that other water rights would be injured by the transfer because it would enlarge the use.

Double Diamond's brief states "the reason for the proposed transfer was to exchange senior and junior Porter Creek rights to maximize efficient use of limited water supply." In other words, Double Diamond wants to increase its consumptive use of Porter Creek water diverted under DD-1-priority in order to irrigate three fields which have historically been irrigated with Porter Creek water only when there is a surplus of water available sufficient to satisfy all rights senior to and including DD-12-priority and then only when some of Double Diamond's wheel lines are shut down since its Porter Creek pipeline system will not accommodate the extra sprinklers.

Double Diamond apparently claims that the transfer does not affect other water rights because the alleged transfer is requested on an acre-for-acre basis, transferring 22 acres in the gravel pit to the DD-12-priority. This ignores unrefuted testimony by Dovel that historically the gravel pit wheel line number seven has never been used to apply DD-1-priority Porter Creek water. Historically, it has always been necessary for Double Diamond to either mix Porter Creek and Payette River water or use all Payette River water to increase the capacity of Double Diamond's pipeline system sufficiently to permit operation of the seventh wheel line.

The result of the proposed transfer would be that the junior

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priority fields served by DD-12-priority would be irrigated with senior priority water from DD-1-priority during times when crops are being removed from the senior fields. That is precisely the time when the supply of water in Porter Creek becomes scarce.

Historically, as Dovel testified, this senior water from DD-1-priority, not used when crops are being removed from the fields served by DD-1-priority, has been returned to Dovel and other junior appropriators, and the Payette River water was then used to irrigate all of Double Diamond's junior and senior Porter Creek acres.

Dovel and the other appropriators who are senior to DD-12-priority have attained a vested right to continuation of the historical stream conditions and use of return water. They will be injured by any change of place of use which will alter the stream conditions, increase the burden on the stream, and decrease the amount of return water which has been available to them. Double Diamond's proposed transfer of the acres served by DD-12-priority for a like number of acres served by DD-1-priority will so injure Dovel and the other appropriators who are senior to DD-12-priority.

When a water right is decreed, it refers to a specific place of use, i.e., specific land upon which water is to be used. Decrees are so styled in order to assure that water will not be shifted at will, thus altering the stream conditions, duty of water, and volume of return water to the detriment of junior appropriators.

As pointed out in Enlarged Southside Irr. Ditch Co. v. John's Flood D. Co., 210 P.2d 982 (Colo. 1949):

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> Appropriations of water for irrigation are made by and for use on specific land. The rate or volume which may rightfully be diverted under a decreed priority is measured by the decree. The time during which water may be diverted thereunder is measured by the reasonable needs of the land, and when the water is not so needed, it may no longer rightfully be diverted from the stream, but must be left therein for use of subsequent appropriators.
>
> 210 P.2d at 984-985.

The fundamental premise underlying the requirement that the applicant for a transfer must demonstrate that no injury will occur is that a junior appropriator has a vested right to maintenance of stream conditions existing at and after the time of the junior's appropriation. In Crockett v. Jones, 47 Idaho 497, 504, 277 P. 550, 552 (1929). The court held that a change by a senior appropriator is not permissible when resulting changes to the stream conditions would injure the junior appropriator. The Idaho Supreme Court stated:

> [W]e now declare and determine the rule, generally applicable, to be that junior appropriators have a vested right to a continuance of the conditions existing on the stream at and subsequent to the time they made their appropriations, and that no proposed change in place of use or diversion will be permitted when it will injuriously affect such established rights. This is in accord with the holding in Washington State Sugar Co. v. Goodrich, supra, [27 Idaho 26, 147 P. 1073 (1915)].
>
> 47 Idaho at 504 (emphasis added).

In this case the unrefuted proof offered by Dovel establishes that because of the historical actual use of Porter Creek water by Double Diamond, senior water provided under DD-1-priority has been returned to Dovel and other junior appropriators rather than used on the fields subject to DD-12-priority. That return to Dovel and the other junior appropriators will end if the application for transfer is

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granted.

The result of granting the application for transfer will subject Dovel and other junior appropriators to a priority to which they were not previously subject. In other words, by allowing the fields currently subject to DD-12-priority to be irrigated from DD-1-priority will provide the number 12 right priority over Dovel and others who currently hold ahead of it. It has been noted that: "Injury will result where a change makes a junior appropriator subject to a priority to which the junior was not previously subject or where a change increases the burden on the stream or reduces the volume of water flowing in the stream." Krogh-Hampe, supra, 27 Idaho L. Rev. at 260. See also Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 388, 647 P.2d 1256, 1260 (1982); Beecher v. Cassia Creek Irr. Co., 66 Idaho 1, 8, 154 P.2d 507, 509 (1954) where the court stated that injury may be shown by evidence that the amount of water previously delivered to junior appropriators will be decreased by the transfer.

The Colorado Supreme Court held in Farmers Highline Canal and R. Co. v. City of Golden, 129 Colo. 575, 272 P.2d 629 (1954) that junior appropriators have vested rights in continuation of stream conditions and may successfully resist any proposed change in "use of water" which "injures or adversely affects their rights." 272 P.2d at 632.

The rule protecting junior appropriators from loss of return flows is premised upon several concepts, one of which is that protection of return flows is necessary to encourage the full development of available water supplies. See Tarlock, Law of Water Rights § 5.17[3][a] at 5-80 (July 1992 Supp.).

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The application for transfer in this case calls for transfer of the full usage as established in the decree even though the evidence shows that Double Diamond has historically put to beneficial use only a portion of the right as originally decreed. Here again, Double Diamond has produced no evidence to prove that it has historically used the full right which it now attempts to transfer. To the contrary, Dovel has offered unrefuted evidence that the full right as decreed has historically not been put to beneficial use by Double Diamond. The ASCS survey entered into evidence, as well as the testimony of Watts, without refutation, establishes quite clearly that the actual acres historically irrigated with Porter Creek water by Double Diamond are less than the actual acres which could have been irrigated under the decree. This nonuse has existed for more than the five continuous years required for statutory forfeiture.

Moreover, the evidence is also undisputed that conversion of farm land to a gravel pit has resulted in further nonuse of the full right as decreed to Double Diamond. Furthermore, evidence in the form of testimony from Dovel, measurements made by Shirley, a videotape, and watermaster records have made it clear that Double Diamond has never beneficially used its full right as decreed because its irrigation system is insufficient to provide for full beneficial use, and there has been waste at Jackass Creek. Because of Double Diamond's failure to fully utilize its right as decreed, the junior appropriators have had access to return flow water. To now permit Double Diamond to return to full usage would deprive the junior appropriators of the same volume of water in the stream to which they have had access and would increase the burden on the stream. The Idaho Supreme Court has held in Beecher, supra, that: "The rule would seem to be established that a change in point of use will not be

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permitted without limitations if the enlarged use in time or amount increases the burden on the stream, or decreases the volume of water in the stream to the injury of appropriators on the stream." 66 Idaho at 8.

Throughout the western states, historical beneficial use is the criteria used in determining the quantity of water available under a water right once a transfer application is filed.

As the Wyoming Supreme Court state in Basin Elec. Power Coop. v. State Bd. of Cont., 578 P.2d 557 (Wyo. 1978):

> While this court has for many years recognized that one of the fundamental principles applicable to any transfer of water rights for change in use is the avoidance of injury (Johnston v. Little Horse Creek Irrigation Co., supra), equally fundamental is the principle which holds that an appropriator obtains a transferable water right only to the extent that he has put his appropriation to a beneficial use.
>
> We have previously said that the water right of an appropriator is limited to beneficial use, even though a larger amount has been adjudicated. Quinn v. John Whitaker Ranch Co., 54 Wyo. 367, 92 P.2d 568, 570-571, and Budd v. Bishop, Wyo., 543 P.2d 368, 373. The decreed amount of water may be prima facie evidence of an appropriator's entitlement (Quinn, supra), but such evidence may be rebutted by showing actual historic beneficial use. Beneficial use is not a concept which is considered only at the time an appropriation is obtained. The concept represents a continuing obligation which must be satisfied in order for the appropriation to remain viable.
>
> 578 P.2d at 563 (emphasis added).

In Double Diamond's case the maximum amount of Porter Creek water that has been applied beneficially has been limited to the capacity of its pipeline distribution system since any water in excess of that system's capacity is always wasted.

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In Whitcomb v. Helena Water Works Company, 151 Mont. 443, 444 P.2d 301 (1968), the Montana Supreme Court stated:

> The so-called "ownership" of water differs from that of personal property capable of corporeal possession. Neither the appropriator of water nor one to whom a right is decreed owns the corpus of any part of the flow of the stream. He is entitled only to the beneficial use of the amount of water called for by his appropriation or decree when he has need therefor, and providing his distributing system has a sufficient capacity to carry such an amount of water. Creek v. Bozeman Water Works Co., 15 Mont. 121, 38 P. 459. When his ditches are incapable of carrying the amount of water decreed to him, his right is measured by the capacity of his system of distribution, regardless of his needs. Section 7094, Rev. Codes 1921; Norman v. Corbley, 32 Mont. 195, 79 P. 1059; Mettler v. Ames Realty Co., 61 Mont. 152, 201 P. 702; Jacobs v. City of Harlowton, 66 Mont. 312, 213 P. 244. So long as a party has all the water his necessity requires or that his ditches will carry, it is immaterial that he has a right, under decree or otherwise, to a greater flow from the creek. It is his duty to permit the excess to remain in the creek or, having diverted it, to return it to the creek in such a manner that it will be available to subsequent appropriators on decreed rights. Section 7097, above; Zosel v. Kohrs, 72 Mont. 564, 234 P. 1089; Huffine v. Miller, 74 Mont. 50, 237 P. 1103. [quoting Tucker v. Missoula Light & Railway Co. et al, 77 Mont. 91, 250 P. 11, 15 (1926)]

444 P.2d at 303-304 (emphasis added).

Dovel presented substantial and unrefuted evidence that whenever the 105 inches [2.1 cfs] of water had been diverted in previous years, some of the water was always wasted out the Jackass Creek overflow pipe. The videotape and Shirley's records and analysis from 1991 showed that the quantity of water waste there was in direct proportion to the quantity above 90 inches [1.8 cfs] that was diverted. (See Dovel's

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Exs. G, I and M)

Just because 105 inches [2.1 cfs] was the maximum amount of water that was historically diverted, that quantity cannot be considered as the historical volume for beneficial use since part of it was always wasted at the overflow pipe and could not be considered either beneficial use or reasonable transmission losses from the ditch.

The beneficial use of water is discussed by the Idaho Supreme Court in Mountain Home Irrigation District v. Duffy, 79 Idaho 435, 319 P.2d 965 (1957), where the court stated:

> It must be remembered that the policy of the law of this state is to secure the maximum use and benefit of its water resources. Reynolds Irrigation District v. Sproat, 69 Idaho 315, 206 P.2d 774; Constitution, Art. 15; Sections 42-104, 42-222 I.C. To effectuate this policy, the legislature has made it a misdemeanor to waste water from a stream, the waters of which are used for irrigation. Section 18-4302 I.C.
>
> 319 P.2d at 968.

In Weibert v. Rothe Bros., Inc., 200 Colo. 310, 618 P.2d 1367 (1980), the Colorado Supreme Court declared:

> We have always recognized limitations on the right of the owner of a water right to divert at the full decreed rate at all times. The owner of a water right has no right as against a junior appropriator to waste water, i.e., to divert more than can be used beneficially. Pulaski Irrigating Ditch Co. v. City of Trinidad, 70 Colo. 565, 203 P. 681 (1922); Baca Ditch Co. v. Coulson, 70 Colo. 192, 198 P. 272 (1921); Fort Lyon Canal Co., v. Chew, 33 Colo. 392, 81 P. 37 (1905).
>
> 618 P.2d at 1371.

In Knutson v. Huggins, 62 Idaho 662, 115 P.2d 421 (1941),

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the Idaho Supreme Court declared that wasted water reverts to the state:

> We held in Hutchinson v. Watson Slough Ditch Company, 16 Idaho 484, 485, 101 P. 1059, that:
>
> > At such times as an appropriator is not using the water under his appropriation, and is not applying the water to a beneficial use, such water must be considered and treated as unappropriated public water of the state, and for such period of time is subject to appropriation and use by others.
> >
> > When an appropriator is not using water under his appropriation and during the season not covered by his appropriation, he must allow the water to flow down the bed of the natural channel.
>
> Later, in State v. Twin Falls Canal Company, 21 Idaho 410, 411, 429, 121 P. 1039, we adhered to the rule announced in the Hutchinson case, supra, holding: "It is the policy of the law of this state to prevent the wasting of water." And in Glavin v. Salmon River Canal Company, Ltd., 44 Idaho 583, 589, 258 P. 532, we again held: "It is against the public policy of this state, as well as against express enactments [then Sec. 5640 C.S., now Sec. 41-816 I. C. A.], for a water user to take more of the water to which he is entitled than is necessary for the beneficial use to which he has appropriated it," pointing out that "public policy demands that whatever be the extent of a proprietor's right to use water until his needs are supplied, his right is dependent upon his necessities, and ceases with them," citing and adhering to State v. Twin Falls Canal Company, supra, and Hutchinson v. Watson Slough Ditch Company, supra.
>
> 62 Idaho at 669 (emphasis added).

Dovel also testified that in addition to the ditch losses and waste at Jackass Creek, there were three other people who remove water at undecreed points of diversion from Double Diamond's irrigation ditch before it reaches Double Diamond's pipeline at Jackass Creek.

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The Department's district 65-B file includes letters and a videotape which document the two undecreed diversions from the ditch. The file also documents a decreed diversion, water right number 65-10771, with a priority that is junior to both of Dovel's Porter Creek irrigation water rights but which has been removed from Double Diamond's ditch and treated as part of DD-1-priority.

Watermaster notes for 1990 in the Department's district 65-B file document the out-of-priority delivery of that right while Dovel's senior rights were shut down.

Removal of these undecreed and out-of-priority diversions is another part of the 105 inches [2.1 cfs] of water historically diverted by Double Diamond but not applied to beneficial use since it never reaches Double Diamond's pipeline. Therefore, these diversions cannot be included in redetermining the quantity of historical use of water once the transfer application was filed.

In Pueblo West Metro. v. S.E. Colo. Water Cons. D., 717 P.2d 955 (Colo. 1986), the Colorado Supreme Court addressed this issue stating:

> Although "[t]he right to change a point of diversion is limited in quantity by historical use," Rich, 625 P.2d at 980, we do not agree with the assumption underlying Pueblo West's argument that measurement of that historical use must include out-of-priority diversions at undecreed points of diversion. On an over-appropriated system such as the Arkansas River, many water rights are foreclosed from being used to the full extent of their decreed quantities. Until affirmative action is taken to change the water right, the decreed amount continues to quantify the water right despite the likelihood that the water user may never actually divert that amount. However, once an appropriator exercises his or her privilege to change a water right, see § 37-92-302,

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> the appropriator runs a real risk of a requantification of the water right based on actual historical consumptive use. In such a change proceeding, a junior water right on the Arkansas River which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historical use of the right.
>
> In this case, Pueblo West in effect arguably seeks credit for a greater quantity of actual historical use than would have occurred had its use been administered at the headgate or elsewhere. However, as we have indicated, Pueblo West's water right was unadministered not because of any negligence on the part of officials charged with overseeing appropriations on the Arkansas River but because Pueblo West's predecessor in interest diverted water from undecreed points of diversion without detection. Water commissioners cannot be expected to search the area of decreed points of diversion to ascertain whether diversions are in fact occurring elsewhere. The out-of-priority diversions here represented water which belonged to senior appropriators and which Pueblo West's predecessor in essence usurped; thus, the diversion necessarily injured other water users. Because such injury occurred in the past is no reason to perpetuate such injury in the form of a decree for a change of water rights. Under these circumstances, Pueblo West cannot benefit from the unwarranted and unsupervised use of its water right.
>
> 717 P.2d at 959-960 (emphasis added).

Dovel's testimony corroborated by the videotape (Dovel's Ex. M) that parts of Double Diamond's ditch had never been maintained during the past eleven years and resembled a jungle were not refuted by Double Diamond.

The extent of Double Diamond's ditch losses resulting from lack of maintenance is also a matter of record in the water district 65-B file, including a videotape which documents the percentage of loss under varying conditions.

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Acting watermaster, Lester's, 1990 notes in that file verify that on July 19, 1990, it was necessary to deliver 13 inches [.26 cfs] of water into Double Diamond's ditch at the headgate in order to receive 2 inches [.04 cfs] of "courtesy" water at Arlie Woods' house, one of the undecreed diversions a short distance down the ditch.

Similar ditch losses have been declared excessive by the Idaho Supreme Court several times and resulted in forfeiture of part of the water right each time.

In Basinger v. Taylor, 36 Idaho 591, 211 P. 1085 (1922), the Idaho Supreme Court stated:

> A water user is entitled to allowance for only a reasonable loss in conducting his water from the point of diversion to the place of use. Clark v. Hansen, 35 Idaho, 449, 206 Pac. 808; Bennett v. Nourse, 22 Idaho, 249, 125 Pac. 1038. The loss of 50 per cent. in the Farmers' ditch between the old point of diversion of the individual appellants and the place where they applied the water on their land was not a reasonable loss. The farmers could not reasonably have been expected to build a cement lined ditch at the cost of $100,000 as suggested by one of the witnesses. But they could have been reasonably expected to prevent the water spreading out at several places as shown by the evidence. We are satisfied that the loss was unreasonable, excessive, and against public policy.
>
> 36 Idaho at 1086.

In Bennett, et al v. Nourse, 22 Idaho 249, 125 P. 1038 (1912), the Idaho Supreme Court upheld the district court's award of only 160 inches instead of the 240 inches Bennett had been diverting as a senior priority because of a ditch loss of about one-half in a four mile ditch. This action reflected a reduction in allowable ditch loss of from 50 percent to about 25 percent for the four mile ditch. The court stated:

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> We are not disposed to change the finding of the court upon this point for it stands every water user in hand to construct his ditch so that there will be the least possible waste of water; and, no doubt, by either piping or cementing portions of the ditch where the greatest waste occurs Bennett can save much of his water.
>
> 22 Idaho at 1040.

In Glenn Dale Ranches Inc. v. Shaub, 94 Idaho 585, 494 P.2d 1029 (1972), the Idaho Supreme Court upheld the district court's forfeiture of 40 inches of the 110 inches of water used to irrigate 54 acres of land, thereby changing the ditch loss from approximately 50 percent to less than 25 percent stating:

> This Court has declared that "it is against the public policy of the state * * * for a water user to take from an irrigation canal more water, of that to which he is entitled, than is necessary for the irrigation of his land * * *." That policy logically applies also to a stream supplying several farms, and prohibits appellant from diverting more water than necessary for the beneficial purpose regardless of alleged seniority in right through priority in time . . . the public policy against wasting water prohibits additional diversion to compensate for unreasonable loss. This Court has held that the appropriator must construct flumes, pipes, or other lining if necessary to prevent such unreasonable loss. Accordingly, waters appropriated will be measured for their sufficiency from the point of diversion, not at the place of use.
>
> 94 Idaho at 1032 (emphasis added).

In each case the court forfeited all of the water right in excess of the amount applied to beneficial use plus a ditch loss not exceeding 25 percent of the total amount diverted, even where a ditch was four miles in length. Since 35 percent is accepted as the reasonable criteria for maximum ditch loss in the area and Double Diamond's historical beneficial use has never exceeded 60 inches, the maximum diversion allowed for

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DD-1-priority should now be 92 inches [1.84 cfs]. A 35 percent ditch loss would equal 32.2 inches or 417,312 gallons per day.

See also Tarlock, supra, § 5.17[5] which states as follows:

> A water holder can only transfer the amount that he has historically put to beneficial use. Beneficial use is the measure and limit of the transferable right whether the right is a permit or non-permit-based right. For example, a permit holder has nothing to transfer if water has not been put to beneficial use for over sixty years. This limitation is sensible but it has been dubiously applied to prevent an appropriator from transferring more than the amount that he has historically used even though only 20 percent was returned to the stream from which it was taken. A water holder may only transfer the amount of water consumed. The increment diverted but not consumed must be left in the stream to protect junior appropriators.
>
> Id. at 5-84.

In Dovel's measurements and calculations for the historical duty of water used under DD-1-priority, the amount beneficially applied never exceeded 52 inches [1.04 cfs]. Dovel increased that duty to 60 inches [1.2 cfs] to compensate for sprinkler and system wastage and added another 32 inches [.64 cfs] to represent an additional ditch loss of 35 percent. That 92 inches or 1.84 cfs was used to irrigate 108 acres. So, the duty of water for that water right is .85 inch per acre [.017 cfs per acre] (92 inches [1.84 cfs] divided by 108).

In this case, the undisputed evidence shows that the nonuse and nonbeneficial use has extended beyond a five-year continuous period. As a result, the nonuse and nonbeneficial use constitutes a statutory forfeiture pursuant to Idaho Code Section 42-222. To allow Double Diamond to reclaim through

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this application for transfer that portion of the right lost through the five-year nonuse forfeiture would cause injury to the junior appropriators.

As stated by the Idaho Supreme Court in Jenkins, supra:

> If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost, Sears v. Berryman, supra, and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder. See Id. Const.Art. 15, § 3; Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966). See also Farmers Irrigation Co. v. Game & Fish Comm'n., 149 Colo 318, 369 P.2d 557 (1962); Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist., 605 P.2d 1060, 1069 (Mont.1979).
>
> 103 Idaho at 388.

B. CONSERVATION OF WATER RESOURCES AND LOCAL PUBLIC INTEREST.

Double Diamond also failed to meet its burden of proof with regard to proving that the requested transfer is consistent with conservation of water resources and is in the local public interest. In fact, Double Diamond presented no evidence or testimony proving that the transfer would conserve water resources and no evidence or testimony that the requested transfer was in the local public interest.

Double Diamond's brief states: "With respect to the local public interest, the proposed project has the potential benefit of reducing operating costs by requiring less power than if the water were to be pumped from the alternate source,

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the Payette River." Double Diamond's Br. at 3. Double Diamond offered no evidence to support this statement. To the contrary, unrefuted evidence presented by Dovel during the hearing disproved this self-serving statement contained in Double Diamond's brief.

Dovel testified that Double Diamond can only run three wheel lines with Porter Creek water unless the Payette River pump is turned on and used as a booster pump for Porter Creek water or in combination with Payette River water to run more sprinklers.

Double Diamond offered no testimony or evidence to prove that less power is required to pump Porter Creek water than to pump Payette River water with the same pump. In fact, without contradiction, Dovel testified to just the opposite and stated that pumping Porter Creek water through the Payette River pump was not as efficient and that he could hear the pump "exploding" when it was done. Further proof of this was available in a portion of the videotape (Dovel's Ex. M) where the sound of the cavitation could be heard while the pump was running. However, the audio portion of the videotape was not played during the hearing.

Transferring DD-1-priority water to irrigate land served by DD-12-priority would always deprive other Porter Creek water users of water since there is never enough water to supply the junior rights in Porter Creek once the flow reduces. However, continuing to use Double Diamond's existing Payette River water right to irrigate DD-12-priority lands would not affect the other Porter Creek water users. The burden on the downstream Payette River water users would actually be reduced since there are no ditch losses involved in pumping Payette River water onto these junior lands as there are when applying Porter Creek water to the same lands.

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In other words, if we assume a ditch loss of only 35 percent, then 100 gallons of Porter Creek water must be diverted at the headgate to apply 65 gallons to a beneficial use. Thus, 35 gallons must be diverted and wasted in order to transmit the 65 gallons to the place of beneficial use. This means that the duty of water is increased by 35 gallons, which is 54 percent more than 65 gallons applied to beneficial use whenever Porter Creek water is used instead of Payette River water. Certainly, conservation of water resources will not be served by a transfer which would yield such results.

Since the Payette River pump must be used for this irrigation at no saving of energy according to testimony, there is no benefit to be derived from the transfer and considerable harm to Dovel, the other Porter Creek water users and to downstream Payette River water users with priorities junior to Double Diamond's January 1, 1872, priority.

The only time Double Diamond would realize a saving of energy cost would be if all of the DD-1-priority lines were shut off to harvest crops, thereby permitting a maximum of three lines to operate with less pressure from the gravity head alone. This, of course, would represent an increase in time in the duty of water which would deprive Dovel and other water users of their vested rights which they have enjoyed historically.

Without contradiction, Dovel and Shirley testified to substantial harm to the local economy when Double Diamond diverted more water or for a longer period of time than had been done historically. This caused Dovel's water right to be shut down when it normally would have been used to irrigate a second and third cutting of hay while Double Diamond's senior priority fields were drying down and being harvested. This in turn caused Shirley to be laid off along with her five

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subcontract irrigators and caused Dovel to lose thousands of dollars worth of alfalfa hay. Dovel testified that this also forced the local cattle rancher who buys his dairy quality hay to locate hay elsewhere and pay a premium for dairy quality hay plus an additional $15.00 per ton to have it hauled to the local area.

III. THE DIRECTOR MUST ACCEPT THE POSITIVE, UNCONTRADICTED TESTIMONY PRESENTED IN THIS CASE AS TO NONBENEFICIAL USE, REDUCTION OF USE, AND FORFEITURE.

It is clear that the nonuse of the water right extended for a period of five years, thus invoking the forfeiture language of Idaho Code Section 42-222. The evidence regarding nonbeneficial use of the full water right, the reduction in acreage upon which the water has been used, and waste of water is uncontradicted. In Dinneen v. Finch, 100 Idaho 620, 603 P.2d 575 (1979), the Idaho Supreme Court stated the general rule that administrative boards, courts and juries must accept as true the positive uncontradicted testimony of credible witnesses unless the testimony is inherently improbable. Specifically the court stated:

> However, the evidence here was not conflicting, and another well established rule governs this situation:
>
> > The rule applicable to all witnesses, whether parties or interested in the event of an action, is, that either a board, court, or jury must accept as true the positive, uncontradicted testimony of a credible witness, unless his testimony is inherently improbable, or rendered so by facts and circumstances disclosed at the hearing or trial. Manley v. Harvey Lumber Co., 175 Minn. 489, 221 N.W. 913, 914. In Jeffrey v. Trouse, 100 Mont. 538, 50 Pac.2d 872, 874, it is held that neither the trial court nor a jury may arbitrarily or capriciously disregard the testimony of a witness unimpeached by any of

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> the modes known to the law, if such testimony does not exceed probability. And, in Arundel v. Turk, 16 Cal. App.2d 293, 60 Pac.2d 486, 487, 488, the rule is stated thus: 'Testimony which is inherently improbable may be disregarded, * * * but to warrant such action there must exist either a physical impossibility of the evidence being true, or its falsity must be apparent, without any resort to inferences or deductions.'
>
> Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 447-48, 74 P.2d 171, 175 (1937). See also: First Trust & Savings Bank v. Randall, 59 Idaho 705, 89 P.2d 741 (1939); Idaho Times Publishing Co. v. Industrial Accident Board, 63 Idaho 720, 126 P.2d 573 (1942); In re Odberg's Estate, 67 Idaho 447, 182 P.2d 945 (1947); National Ro-Tile Corp. v. Loomis, 82 Idaho 65, 350 P.2d 217 (1960); Olsen v. Hawkins, 90 Idaho 28, 408 P.2d 462 (1965); Hook v. Horner, 95 Idaho 657, 517 P.2d 554 (1973); In re Estate of Stibor, 96 Idaho 162, 525 P.2d 357 (1974); Russ v. Brown, 96 Idaho 369, 529 P.2d 765 (1974); Krasselt v. Koester, 99 Idaho 124, 578 P.2d 240 (1978).
>
> 100 Idaho at 626-627.

See also Smith v. Idaho State University Federal Credit Union, 114 Idaho 680, 760 P.2d 19 (1988); Airstream Inc. v. CIT Financial Services, Inc., 111 Idaho 307, 723 P.2d 851 (1986).

The evidence presented by Dovel is internally consistent and credible. Each witness presented by Dovel is corroborated by other witnesses, documentary evidence and even the failure of Double Diamond to refute the testimony. The uncontradicted evidence cannot be disregarded.

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IV. THE DIRECTOR HAS JURISDICTION AND A DUTY TO DETERMINE THE QUESTION OF FORFEITURE IN A HEARING REGARDING AN APPLICATION FOR TRANSFER OF WATER RIGHTS.

Idaho Code Section 42-222 governs decisions on applications for transfer of water rights. Subsection (2) of section 42-222 provides for forfeiture of water rights if the evidence shows "a failure for the term of five (5) years to apply it [use of water] to the beneficial use for which it was appropriated."

The Idaho Supreme Court has now clearly and without qualification decided that the director has the jurisdiction and the duty to determine questions of forfeiture when considering an application for transfer of water rights. In Jenkins, supra, the supreme court put the issue to rest, stating:

> Based on the foregoing decisions and statute, we conclude that the director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other water rights. While ordinarily abandonment and forfeiture are to be determined in a separate proceeding, it is clear that when a water right is sought to be transferred and protestors allege that it has been abandoned or forfeited, and that to allow resumption of that right would cause some injury, a determination of abandonment or forfeiture is necessary for the performance of his powers of determining injury. The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights. If a water right has indeed been lost through abandonment or forfeiture, the

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> right to use that water reverts to the state and is subject to further appropriation. I.C. § 42-222(2); Graham v. Leek, 65 Idaho 279, 144 P.2d 475 (1943). Other parties may then perfect a water right in those waters. Sears v. Berryman, 101 Idaho 843, 623 P.2d 455 (1981); Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976). Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost, Sears v. Berryman, supra, and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder. See Id. Const.Art. 15, § 3; Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966). See also Farmers Irrigation Co. v. Game & Fish Comm'n., 149 Colo. 318, 369 P.2d 557 (1962); Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist., 605 P.2d 1060, 1069 (Mont. 1979).
>
> 103 Idaho at 387-388.

Based upon Idaho Code Section 42-222 and the decision of the Idaho Supreme Court in Jenkins, supra, it is clear that the director in this case does have jurisdiction and the duty to determine the question of forfeiture in considering the application for transfer of water rights.

V. THE MERE FILING OF THE APPLICATION FOR TRANSFER DOES NOT TOLL AND EXTEND THE FIVE-YEAR PERIOD WHICH MUST BE REVIEWED FOR PURPOSES OF FORFEITURE.

Double Diamond did not refute evidence of five-year nonuse produced at the hearing. Double Diamond's brief does not assert any refutation of the evidence of five-year nonuse.

In its brief, Double Diamond does contend, however, that the

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filing of an application for transfer somehow tolls the five-year period of nonuse which constitutes forfeiture. Such is not the case.

In Jenkins, supra, the Idaho Supreme Court stated: "Statutory forfeiture is based upon the legislative declaration in I.C. § 42-222(2) that water rights may be lost if they are not applied to a beneficial use for a period of five continuous years. Gilbert v. Smith, 97 Idaho 735, 738, 552 P.2d 1220, 1223 (1976)." 103 Idaho at 389. The court further pointed out that extension of the five-year forfeiture period "may be made upon a showing of good cause, providing the application for extension is made within the first five-year period." 103 Idaho at 389 (emphasis added). Double Diamond made no such "application for extension."

Idaho Code Section 42-222(2) provides for the forfeiture of a water right when the water has not been applied to a beneficial use for a "term of five (5) years." On its face, therefore, the statute provides that at the end of a five-year period of nonuse, forfeiture of a water right occurs. In Smith v. Hawkins, 110 Cal. 122, 42 P. 453 (1895), a case decided even before forfeiture was provided for by statute, the California Supreme Court held that forfeiture occurs at the end of five years of nonuse. See Weil, Water Right in the Western States § 575 at 615-618 (3d ed. 1911). As pointed out in in Smith v. Hawkins, supra, the court held that a failure to make a useful or beneficial use of water "for a period of five years next before the commencement of the action" would constitute a forfeiture. 42 P. at 455. In McAtee v. Faulkner Land & Livestock, Inc., 113 Idaho 393, 744 P.2d 121 (1987):

> Statutory forfeiture focuses instead upon time and conduct. Idaho Code § 42-222(2) provides that all

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rights to water are lost where the appropriator fails to make "beneficial use" of the water for a continuous five-year period regardless of intent. See, e.g., Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976).

113 Idaho at 396.

In the instant case, the facts showed that Double Diamond entered into a lease-option with the Idaho Transportation Department in October 1986 and accepted $8,000.00 consideration to allow the Idaho Transportation Department to begin drilling test holes. On October 26, 1987, Double Diamond signed the lease with the Idaho Transportation Department which permitted the transportation department to begin a gravel excavation and stock-piling operation on land serviced by DD-1-priority. The evidence is clear and unrefuted that there was no beneficial use of water regarding the acreage allocated for the gravel operation through the irrigation season of 1992. Therefore, the uncontroverted evidence shows nonuse for a continuous period of five years. Even starting to count from October 1987, the continuous five-year period of nonuse is established. Even if there was use during the year between October 1986 and October 1987, there still is evidence of nonuse through a continuous five- year period: October 1987--October 1988; October 1988--October 1989; October 1989--October 1990; October 1990--October 1991; October 1991--October 1992. At the end of that five years' continuous nonuse, Double Diamond forfeited that part of its water right not used. The same is true as to the unrefuted evidence establishing the waste at Jackass Creek, the incapacity of the Double Diamond transmission system, the ditch waste and undecreed diversions. Without contradiction, the nonbeneficial use in each area extended for at least the statutory five-year period.

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There is no merit to Double Diamond's contention that filing the application tolls the five-year period of forfeiture. The court in Jenkins, supra, made it clear that in order to seek extension of the five-year forfeiture period an "application for extension" must be "made within the first five-year period." 103 Idaho at 389. No application for extension was filed in this case. The application for transfer is not an application for extension. Idaho Code Section 42-222 does permit the director to extend the time for forfeiture but only upon the satisfaction of specific provisions detailing how an application for extension of time must be filed and processed. The procedure for applying for extension is set forth as follows:

> (2) . . . Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights appurtenant to land contracted in a federal cropland set-aside program are exempt from this requirement. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other

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> rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section[,] he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.
>
> I.C. § 42-222(2) (1990).

Double Diamond did not initiate this procedure by filing an application for extension. No one was afforded the opportunity to protest an extension since no extension application was filed and advertised. In fact, the term "extension" was not mentioned by Double Diamond until its brief was filed on April 2, 1993, substantially more than five continuous years after the test drilling began in October 1986 and conversion of the ground to a gravel pit occurred in October 1987 and substantially more than five continuous years after commencement of nonbeneficial use evidenced by the waste at Jackass Creek, the incapacity of Double Diamond's transmission system, ditch waste and undecreed diversions.

Potential protestants to such an application for extension of

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the time for forfeiture would include literally hundreds of downstream junior water right holders whose water rights would be adversely affected by a resumption of use of the forfeited water during critical years of water shortage.

Local water users who did not perceive that a transfer application would affect them adversely were not made aware that water use which had been lost though forfeiture, either historically or during the five years, might be reinstated simply by filing the transfer application.

When the legislature so clearly spelled out the only means by which the five-year period may be extended through application, it is clear that an application for transfer does not toll or extend the five-year period.

VI. THE EVIDENCE IN THIS CASE PROVIDES CLEAR AND CONVINCING PROOF THAT A FORFEITURE BY NONUSE FOR FIVE YEARS HAS OCCURRED.

As pointed out, Double Diamond continues to bear the overall burden of proof in proving that a transfer will not produce injury to other users and is in the local public interest. To allow an applicant for transfer to reinstate through the transfer proceedings a water right forfeited by five continuous years of nonuse would cause great injury to other water users. For that reason, the burden should be upon the applicant for transfer to prove some beneficial use during the five-year period established by the forfeiture statute.

However, even if the hearing officer determines that the burden to establish a forfeiture is upon Dovel, it is clear that the burden has been met in this case. In Jenkins, supra, and Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944), the Idaho Supreme Court appears to determine that

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clear and convincing proof is required in order to support a decision that forfeiture has occurred. Here, the evidence is uncontradicted that the water right has not been used for at least a five-year continuous period. The director must accept the positive, uncontradicted testimony presented in this case. There is nothing inherently incredible or improbable in the testimony and evidence offered by Dovel which establishes the necessary statutory period of nonuse. Neither at the hearing nor in its post hearing brief has Double Diamond refuted testimony regarding the more than five years of continuous nonuse.

The Idaho Supreme Court has applied the rule even in forfeiture cases that upon review when there is "substantial but conflicting evidence" to support a finding of forfeiture, the finding will not be disturbed. Jenkins, supra, 103 Idaho at 389.

Here, there is no conflicting evidence. There is substantial uncontradicted evidence that the water right has not been used for the continuous period of five years. Therefore in this case, the evidence provides clear and convincing proof that a forfeiture has occurred.

CONCLUSION

For the reasons stated herein, Dovel respectfully requests:

1. That the Director declare a forfeiture of that part of DD-1-priority in excess of 92 inches [1.84 cfs] in volume and 108 acres;

2. That the Director declare a forfeiture of that part of DD-12-priority in excess of 10 inches [.20 cfs] in volume and

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12 acres;

3. That the Director impose a consumptive use limitation of 2.5 acre feet per acre per year on all water rights utilized; and

4. That the Director deny Double Diamond's request to transfer any portion of DD-1-priority.

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Form 222
1-87

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4159

APPLICATION FOR TRANSFER OF WATER RIGHT AMENDED

PART 1

Name of applicant Double Diamond Inc. Phone 336-4801

Post Office address c/o Donald Rumsey, General Partner, 200 Sunrise Rim, Boise Id. 83705

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 A 148.7 A.f. pond will be established on a 22-acre site in S.26. The pond will be used for recreation purposes. It will be filled with Payette River water and by exchanging #1 Porter Creek water with #12 Porter Creek water (#12 to go to pond). This amended application serves as the mgt. or reclamation plan.

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
Porter Ck.	65-03103	1/1/1872	3.82 cfs	Irrigation	4/1 to 10/1
Porter Ck.	65-10746	4/1/1960	.44 cfs	Diversion to storage ~~and recreation~~	4/1 to 11/1
			77 A.f.	Recreation storage	4/1 to 11/1
	continued in Attachment		A1		to

2 Total amount of water being transferred 8.36 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Porter Creek / Payette River tributary to Payette River / ~~Snake River~~.

4. Point(s) of Diversion: NO CHANGE IN EXISTING POINTS OF DIVERSION

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

5. Lands irrigated or place of use: SEE ATTACHMENT B1

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	

RECEIVED
MAR 28 1995

Total acres _____

Transfer No _____

PART 1

6 General Information

a Description of diversion system Porter Creek: dam, headgate, earth ditch to pipeline. Payette River - pump & pipeline. Both sources feed a common pipeline to deliver water to the land.

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 See original application

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

#1 Porter Creek water will be used on #12 land. #12 Porter Creek water will be used in pond. Payette River water at pond site will be changed to new uses. Since all of the land in question is covered by Payette River water (as indicated plus 65-10749), irrigation plan will not be switched for Payette River water on #12 Porter Creek acres.

d Remarks: Total volume in 65-10746 will not exceed 77 A.F.A for all uses. Total non-irrigation volume in 65-02540 plus 65-10747 will not exceed 77 A.F.A. for all uses.

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 ____.

Approved

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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 65-10746 Decreed to Double Diamond Inc.

in case of State of Idaho vs. A & C Corp, ET AL.

dated 1/21/1986 in 3rd Judicial Dist. county of Gem

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. SEE ORIGINAL TRANSFER APPLICATION

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Porter Creek tributary to Payette River

4. Date or priority 4/1/1960

5. Water is used for the following purpose

amount .44 cfs (cfs/ac-ft) for Irrigation purposes from 4/1 to 11/1

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

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

6. Total amount of water under right .44 cubic feet per second and/or _____ acre-feet per annum.

7 Point(s) of Diversion.

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	12	7N	2E	Boise	#1 Payette & d.ft

8. Lands irrigated or place of use:

Right lot, wavy acq to be corrected in transfer

Twp.	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	2E	23													c.4 2				2
		26	11								c.3 9								20

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Total acres 22

9 Describe any other water rights used for the same purpose as described above 65-02540, 65-10747, 65-10749, all Payette River (65-02532 & 65-11393 are other acres in NESW S. 26)

PART 2

Transfer No. _____

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

2 Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

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

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion

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

3. Lands irrigated or place of use:

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

MAR 28 1995

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a Decree No. 65-03103 Decreed to Double Diamond Inc.
in case of State of Idaho vs. A & C Corp., ET AL.
dated 1/21/1986 in 3rd Judicial Dist. county of Gem

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. SEE original transfer application

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Porter Creek tributary to Payette River

4. Date or priority 1/1/1872

5. Water is used for the following purpose:

amount 3.82 cfs for Irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.82 cubic feet per second and/or _____ acre-feet per annum

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	12	7N	2E	Boise	#1 Headgate & ditch

8. Lands irrigated or place of use:

Right lot, incomplete QQ" to be corrected in transfer

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	2E	23															L.5 39		39
		26	13	40	39	3	L.1 23			L.2 22						14			154

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Total acres 193

9. Describe any other water rights used for the same purpose as described above 65-02540, 65-10746,
both are Payette River. { 65-10746 / 65-10749 } irrigate 11 other acres in NENE S.26

PART 2

Transfer No. _____

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

2. Point(s) of Diversion:

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

3 Lands irrigated or place of use:

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

Total acres _____

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

1 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

MAR 28 1995

 Transfer No. _____

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 65-02540 Decreed to Double Diamond Inc.

in case of State of Idaho vs A & C Corp., ET AL.

dated 1/21/1986 in 3rd Jud Dist. county of Gem

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. SEE original transfer application

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3 Source of water Payette River tributary to Snake River

4 Date or priority 4/26/1951

5. Water is used for the following purpose:

amount 3.20 cfs for Irrigation purposes from 4/1 to 11/1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6 Total amount of water under right 3.20 cubic feet per second and/or _____ acre-feet per annum

7 Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
4		—	—	23	7N	2E	Boise	(Note: is in NWSE)

8 Lands irrigated or place of use: SAME COMMENTS AS ON PG 3 & 5

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	2E	23													L.4 2		L.5 39	1	42
		26	13	40	39	3	L.1 23			L.2 22	L.3 9					14			163

Total acres 205

9. Describe any other water rights used for the same purpose as described above 65-10747, 65-03103, 65-10746

PART 2

Transfer No _____

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

2 Point(s) of Diversion.

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

3 Lands irrigated or place of use

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

Total acres _____

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

1 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion

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

3 Lands irrigated or place of use

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

MAR 28 1995

Total acres _____

 Transfer No. _____

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 65-10747 Decreed to Double Diamond INC
      in case of State of Idaho vs. A & C Corp, ET AL.
      dated 1/21/1986 in 3rd Jud Dist. county of Gem
   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 See original transfer application
3. Source of water Payette River tributary to Snake River
4. Date or priority 4/1/1960
5. Water is used for the following purpose:
   amount .90 cfs (cfs/ac-ft) for Irrigation purposes from 4/1 to 11/1
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
6. Total amount of water under right .90 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
4		—		23	7N	2E	Boise	(Note: is in NWSE, same pld
								as 65-02540)

8. Lands irrigated or place of use:

Same comments as on #5 ↓ 3 & 5

Twp	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	2E	23													L.4 2		L.5 39	1	42
		26	13	40	39	3	L.1 23			L.2 22	L.3 9					14			163

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Total acres 205

9. Describe any other water rights used for the same purpose as described above 65-02540, 65-03103, 65-10746

PART 2

Transfer No. _____

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

2. Point(s) of Diversion

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

3. Lands irrigated or place of use:

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

Total acres _____

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

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

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Total acres _____

Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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



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

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Transfer No. _____

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
Porter Ck.	Div. to Storage ; Recreation	.44 cfs	As long as water is available & needed	4/1 to 11/1
	Recreation Storage Continued in Attachment C1	77 A.F.	all of season	4/1 to 11/1

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

None anticipated at this time.

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

No increases in rate of flow, diversion volume, consumptive use, or Number of irrigated acres are proposed. Total unique acres prior to transfer are 216. Total unique irrigated acres after transfer will be reduced to 194 acres. In NENE S. 26, 13 ac. are west of road & 11 acres are East of road.

— ALSO SEE REMARKS —

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.

Donald Ramsey
(Signature of Applicant)

Subscribed and sworn to before me this 2 day of April, 19 92.

Lori Harris
(Notary Public)

My commission expires 12-8-94

FOR DEPARTMENT USE ONLY

Transfer contains 12 pages and 6 attachments

Received by SR Date 4/2/92 Protest filed by _____

Prelim. check by _____ Fee $20 (Amended) # WO-4409 _____

Receipted by SR Date 3-31-92 _____

Published in Idaho World Copies of protest forwarded by _____

Pub dates 4/15 & 4/22/92 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

Received

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DESCRIPTION of RIGHT(S) after the requested change

continued from pg. 1

Right No.	Priority	Amount	Nature of Use	Period of Use
65-02540	4/26/1951	2.85 cfs	Irrigation	4/1 to 11/1
		.35 cfs	Diversion to Storage and Recreation	4/1 to 11/1
↑ Payette River ↓		77 af	Recreation Storage	4/1 to 11/1
65-10747	4/1/1960	.80 cfs	Irrigation	4/1 to 11/1
		.10 cfs	Diversion to Storage and Recreation	4/1 to 11/1
		42.6 af [1]	Recreation Storage	4/1 to 11/1

NOTE Diversion to Storage and Recreation = two uses, each at same rate of flow where total is not additive —

e.g. .35 Div. to Storage
.35 Recreation
.35 total

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[1] (.10)(215)(1.9835) = 42.6
max volume at this rate for season

Attachment A1

For 15 1, Item B5'

LAND LIST ATTACHMENT

Description and location of place of use

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
65-03103														L5 8		L4 2	L5 31		41
7N	2E	23																	
		26	24	35	32	3	L1 19			L2 16	L3 9					14			152
																			193 acres
65-10746							L1 R			L2 R									—
7N	2E	26		R	R														
(NON-IRRIGATED AREAS TO BE COVERED BY POND →				S	7		4			6									
				= 17 acres without (from production)															
65-02540														L5 8		L4 2	L5 31	1	42
7N	2E	23																	
		26	13	35	32	3	L1 19			L2 16	L3 9					14			141
				R	R		R			R									183
65-10747														L5 8		L4 2	L5 31	1	42
7N	2E	23																	
		26	13	35	32	3	L1 19			L2 16	L3 9					14			141
				R	R		R			R									183

Received
MAR 8 1995

Total number of acres irrigated 194

unique

R = Recreational & recreation storage

Attachment B1

Changes in Nature of use
continued from Pg. 12

NEW N/A	Amount	HRS/DAYS/YEAR	PERIOD
Payette River			
65-02540 Div. to storage; Recreation	.35 cfs	as long as water is available & needed	4/1 to 11/1
Recreation storage	77 af	all of season	4/1 to 11/1
65-10747 Same as above	.10 cfs	Same as above	4/1 to 11/1
	42.6 af		

NOTE: 65-10746 proposed as:

Div. to storage	.44 cfs	volume N/A
Recreation	.44 cfs	≤ 77 a.f. div. volume
Recreation storage	cfs N/A	77 a.f.
total	.44 cfs	77 a.f. (22 acre equivalent at 3.5 afa/acre)

65-02540 proposed as:

Irrigation	2.85 cfs	640.5 div. vol. (183 x 3.5 afa/acre)
Div to storage	.35 cfs	volume N/A
Recreation	.35 cfs	≤ 77 a.f. div. volume
Recreation storage	cfs N/A	77 a.f.
total	3.20 cfs	717.5 (205 acre equivalent at 3.5 afa/acre)

PROTESTED 8/1995

continued next pg

Attachment C1

· Attachment C1 continued

65-10747 proposed as:

Irrigation	.80 cfs	341.2 a.f. div. volume	1/
Div. to storage	.10 cfs	volume n/a	
Recreation	.10 cfs	≤ 42.6 a.f. div. volume	1/
Recreation storage	cfs n/a	42.6 a.f.	
total	.90 cfs	383.8	(205 acre equivalent where limited by diversion rate)

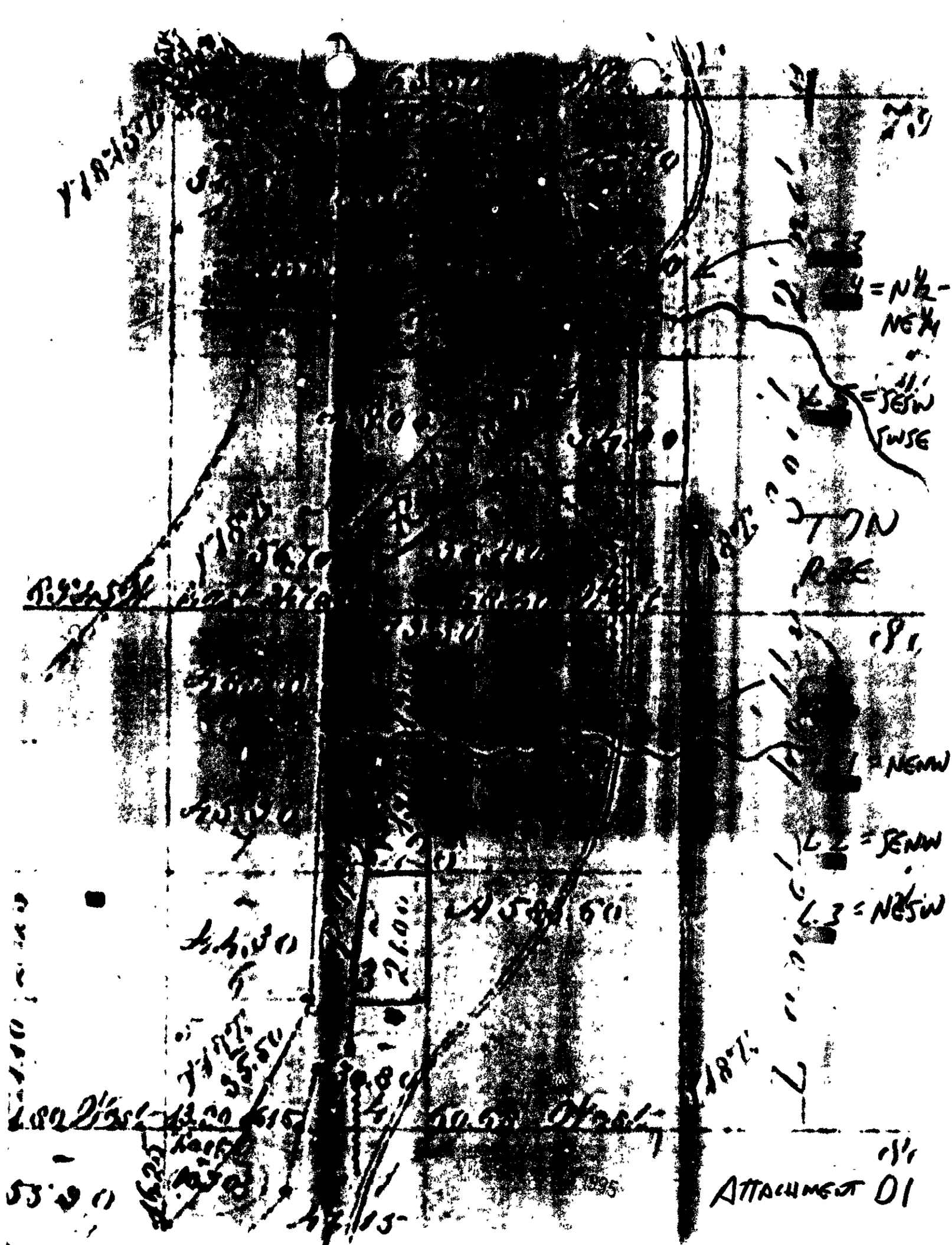
1/ where - 205 ac. x 3.5 afa/ac = 717.5 afa

but - (.9)(215)(1.9835) = 383.8 afa limited by rate of flow

and - (.8)(215)(1.985) = 341.2 afa for [redacted] acres

plus - (.1)(215)(1.9835) = 42.6 afa limit for recreation div. volume

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ATTACHMENT 01

INDICATES TOTAL SOURCE: PORTER CREEK TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-3103	DOUBLE DIAMOND INC. C/O DON RUNSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2540 & 65-10747 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	1/ 1/1872	IRRIGATION	4/ 1	11/ 1	--- AFA 3.82 CFS	NWSE S12 T 7N R 2E	NENE(13) NWNE(40) SWNE(39) SENE(3) NWSE(14) LOT 1(23) LOT 2(22) S26 T 7N R 2E LOT 5(39) S23 T 7N R 2E *193*	DECREE
65-3104	WOLFGRAM, ALFRED C. & WOLFGRAM, MARGARET I. BOX 100, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-2858, 65-3803 & 65-10963 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	1/ 1/1883	IRRIGATION	4/ 1	11/ 1	--- AFA 1.60 CFS	NWSE S12 T 7N R 2E	NENE(15) NWNE(16) SWNE(19) SENE(28) SENW(1) LOT 1(11) S11 T 7N R 2E NWSW(6) S12 T 7N R 2E. *56*	DECREE
65-3839	CRANDALL, PATRICIA L. ADAMS 1800 TAGGART, BOISE, IDAHO 83705	4/ 1/1885	IRRIGATION	4/ 1	11/ 1	--- AFA .54 CFS	SWNE S 7 T 7N R 3E	SWNW(10) SENW(14) NESW(16) NWSW(12) S 7 T 7N R 3E *52*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	1.40 AFA .03 CFS *---*AFA *.54*CFS		SAME AS OTHER USE	
65-10773	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629	6/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA .90 CFS	SWNW S 7 T 7N R 3E	SWNE(33) NWSE(12) S12 T 7N R 2E *45*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.70 AFA .02 CFS *---*AFA *.92*CFS		SAME AS OTHER USE	
65-2000	ALLEN, EVERETT K. CASCADE, IDAHO 83611 REMARKS: RECOMMENDED AS RIGHT 65-3104.	3/25/1903	IRRIGATION	4/ 1	11/ 1	--- AFA .12 CFS	NWSE S12 T 7N R 2E LOT 1 S22 T 7N R 1W	NWSW(6) S12 T 7N R 2E *6*	LICENSE
65-10771	WOODS, ARLIE L. HORSESHOE BEND, IDAHO 83629 REMARKS: POINT OF DIVERSION HAS TWO POINTS IN NWSE.	6/ 1/1905	IRRIGATION	4/ 1	11/ 1	--- AFA .32 CFS	NWSE S12 T 7N R 2E	SESE(8) S11 T 7N R 2E *8*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.70 AFA .02 CFS *---*AFA *.32*CFS		SAME AS OTHER USE	

ATTACHMENT 61

8 1995

INDICATES TOTAL

SOURCE: PORTER CREEK TRIBUTARY TO: PAYETTE RIVER

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

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INDICATES TOTAL SOURCE: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2544	PIONEER CEMETERY ASSOCIATION C/O VIRGINIA HANSON, HORSESHOE BEND, IDAHO 83629	6/28/1950	IRRIGATION	4/ 1 11/ 1	--- AFA .05 CFS	LOT 2 S35 T 7N R 2E	LOT 2(3) S35 T 7N R 2E *3*	LICENSE
65-2532	DOUBLE DIAMOND RANCH C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-1317 & 65-11393 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	9/14/1950	IRRIGATION	4/ 1 11/ 1	--- AFA 1.80 CFS	LOT 2 S26 T 7N R 2E	NWSE(19) SWSE(15) LOT 3(10) LOT 4(25) S26 T 7N R 2E LOT 1(14) S35 T 7N R 2E *83*	LICENSE
65-2541	MAC GREGOR LAND & LIVESTOCK COMPANY BOX 4128, BOISE, IDAHO 83705	10/24/1950	IRRIGATION	4/ 1 11/ 1	--- AFA 1.40 CFS	LOT 5 S19 T 7N R 1E	SWSE(2) LOT 5(8) LOT 4(17) S19 T 7N R 1E NWNE(5) NENW(35) LOT 1(5) S30 T 7N R 1E *72*	LICENSE
65-2546	MACGREGOR LAND & LIVESTOCK CO. 200 SUNRISE RIM, BOISE, IDAHO 83706	1/ 8/1951	IRRIGATION	3/15 11/15	--- AFA 1.30 CFS	SWNE S25 T 7N R 1W	SWNE(13) SENE(13) NESE(25) NWSE(19) S25 T 7N R 1W *67*	LICENSE
65-0034A	BILBREY DITCH COMPANY, LTD. C/O MARILYN MAGNUSON 5211 HIGHWAY 52 EMMETT, IDAHO 83617 REMARKS: PLACE OF USE WITHIN LANDS OF BILBREY DITCH COMPANY. SEE 65-0034X.	4/ 1/1951	IRRIGATION	3/15 11/15	--- AFA .51 CFS	LOT 5 S11 T 6N R 2W	*22*	LICENSE
65-2540	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-10746, 65-10747 & 65-3103 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/26/1951	IRRIGATION	4/ 1 11/ 1	--- AFA 3.20 CFS	LOT 4 S23 T 7N R 2E	SESE(1) LOT 4(2) LOT 5(39) S23 T 7N R 2E NENE(13) NWNE(40) SWNE(39) SENE(3) NWSE(14) LOT 1(23) LOT 2(22) LOT 3(9) S26 T 7N R 2E *205*	LICENSE
65-10543	ADAMS, FRED L. & ADAMS, EDITH ROUTE 1, HORSESHOE BEND, IDAHO 83629	6/ 1/1951	DOMESTIC	1/ 1 12/31	1.20 AFA .02 CFS	LOT10 S 2 T 7N R 2E	LOT10 S 2 T 7N R 2E	BENEFICIAL USE

Overlapping

NWNE
SWNE
(1 NENW
(2 SENW

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INDICATES TOTAL SOURCE: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2662	DRAKE, CALVIN C. ROUTE 1, HORSESHOE BEND, IDAHO 83629	10/15/1959	IRRIGATION	4/ 1 11/ 1	--- AFA .15 CFS	NWNE S23 T 7N R 2E	SWSW(5) S13 T 7N R 2E *5*	LICENSE
65-2663	DRAKE, ALLEN R. HORSESHOE BEND, IDAHO 83629	10/21/1959	IRRIGATION	4/ 1 11/ 1	--- AFA .20 CFS	LOT 6 S26 T 7N R 2E	LOT 7(4) LOT 6(6) S26 T 7N R 2E *10*	LICENSE
65-10747	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-3103, 65-10746 & 65-2540 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1960	IRRIGATION	4/ 1 11/ 1	--- AFA .90 CFS	LOT 4 S23 T 7N R 2E	SESE(1) LOT 4(2) LOT 5(39) S23 T 7N R 2E NENE(13) NWNE(40) SWNE(39) SENE(3) NWSE(14) LOT 1(23) LOT 2(22) LOT 3(9) S26 T 7N R 2E *209*	BENEFICIAL USE
65-10749	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10746 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1960	IRRIGATION	4/ 1 11/ 1	--- AFA .22 CFS	LOT 4 S23 T 7N R 2E	NENE(11) S26 T 7N R 2E *11*	BENEFICIAL USE
65-10453	MAC GREGOR LAND & LIVESTOCK COMPANY BOX 5128, BOISE, IDAHO 83705	6/ 1/1960	IRRIGATION	4/ 1 11/ 1	--- AFA .62 CFS	SWSW S19 T 7N R 1E	NWNW(12) SWNW(1) SENW(16) SWNE(2) S30 T 7N R 1E *31*	BENEFICIAL USE
65-2674	REAY, DAVID B. & REAY, LINDA SUE P.O. BOX 131, HORSESHOE BEND, IDAHO 83629	8/22/1960	IRRIGATION	4/ 1 11/ 1	--- AFA .02 CFS	LOT 9 S23 T 7N R 2E	LOT 9(1) S23 T 7N R 2E *1*	LICENSE
65-8532	PEARL KENNEDY ESTATE & KENNEDY, HUGH C/O IDAHO FIRST NAT'L BANK, TRUST DEPT., BOX 7928, BOISE, IDAHO 83707 REMARKS: TWO POINTS OF DIVERSION IN LOT 3, SEC. 28, T.7N, R.2E.	2/ 1/1961	IRRIGATION	4/ 1 11/ 1	--- AFA .46 CFS	LOT 5 S26 T 7N R 2E LOT 5 S27 T 7N R 2E LOT 1 S28 T 7N R 2E LOT 2 S28 T 7N R 2E LOT 3 S28 T 7N R 2E LOT 4 S28 T 7N R 2E	LOT 2(4) S33 T 7N R 2E LOT 1(4) LOT 3(4) LOT 4(4) LOT 5(2) LOT 2(3) S28 T 7N R 2E LOT 5(2) S27 T 7N R 2E *23*	BENEFICIAL USE

overlapping

same acres

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TWP RNG SECT	TRACT 1\4 1\4	LOT	ACRES	WATER-USE-CODE	WATER RIGHT NO.	LAST NAME	O C	STG	PRIORITY DATE	WATER SOURCE
07N 02E 23	SW NW		7.0	01	65-07057	HASBROUCK HASBROUCK	C	D	10/28/1968	PAYETTE RIVER
	SE NW		11.0	01,43	65-02448	ROBERTS ROBERTS ROBERTS	C	D	04/27/1944	PAYETTE RIVER
	SE NW		11.0	01	65-02604	WATSON ROBERTS ROBERTS	C	D	C5/07/1955	PAYETTE RIVER
	SE NW		10.0	01	65-07057	HASBROUCK HASBROUCK	C	D	10/28/1968	PAYETTE RIVER
	SE NW		2.0	01	65-07508	REAT REAT	C	L	09/19/1974	PAYETTE RIVER
	SE NW			43	65-10829	HOPKINS HOPKINS	C	D	06/01/1957	GROUNDWATER
	NE SW			43	65-07850	HANSEN HANSEN	C	L	03/18/1977	GROUNDWATER
	NE SW		7.0	01	65-07851	HANSEN HANSEN	C	L	03/17/1977	GROUNDWATER
	NE SW		1.0	43,01	65-12171	STEPHENSON MAKI	C	L	09/15/1978	GROUNDWATER
	NW SW		27.0	01	65-02728	JOHN A. FRY & SONS	C	D	03/20/1963	PAYETTE RIVER
	NW SW			43,04	65-11009	JOHN A. FRY & SONS	C	D	06/01/1964	GROUNDWATER SPRING
	SW SW		38.0	01	65-02728	JOHN A. FRY & SONS	C	D	03/20/1963	PAYETTE RIVER
	NE SE	4	2.0	[redacted]	[redacted]	[redacted]	C	D	[redacted]	PAYETTE RIVER
	NE SE	4	2.0	[redacted]	[redacted]	[redacted]	C	D	[redacted]	[redacted] CREEK
	NE SE	4	2.0	[redacted]	[redacted]	[redacted]	C	D	[redacted]	PAYETTE RIVER
	NW SE			43	65-10647	SELF	C	D	06/01/1970	GROUNDWATER
	NW SE			28	65-12708	DOUBLE DIAMOND INC	C	P	02/27/1984	PORTER CREEK
	NW SE	7	2.0	01	65-07931	SELF	C	L	11/22/1977	PAYETTE RIVER
	NW SE	7		43	65-07937	DANZER	C	L	08/22/1977	PAYETTE RIVER
	NW SE	7		43	65-10609	OLSON OLSON	C	D	06/01/1973	GROUNDWATER
	SW SE	3	[redacted]	01	[redacted]	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
	SW SE	3	[redacted]	[redacted]	[redacted]	[redacted]	C	D	[redacted]	[redacted] CREEK
	SW SE	3	39.0	[redacted]	[redacted]	[redacted]	C	D	[redacted]	PAYETTE RIVER
	SE SE		1.0	01	65-02540	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
	SE SE		1.0	01	65-10747	DOUBLE DIAMOND INC	C	D	04/01/1960	PAYETTE RIVER
	SE SE	4		04	65-10618	HAWKINS HAWKINS	C	D	11/01/1966	SPRING
24	SW NE		13.0	01	65-10852	BRANCH BRANCH	C	D	07/01/1893	JACKASS CREEK
	SE NW		6.0	01	65-10852	BRANCH BRANCH	C	D	07/01/1893	JACKASS CREEK
	NE SE		12.0	01	65-10852	BRANCH BRANCH	C	D	07/01/1893	JACKASS CREEK
	NW SE		7.0	01	65-10852	BRANCH BRANCH	C	D	07/01,1893	JACKASS CREEK
	SE SE		1.0	01	65-10852	BRANCH BRANCH	C	D	07/01/1893	JACKASS CREEK
25	NW NW		5.0	43,04,01	65-10616	HAWKINS HAWKINS	C	D	07/01/1911	SPRING

actually NWSE Lot 4

65-02540
65-10747
65-10749

TWP RNG SECT	TRACT 1\4 1\4	ACRES
7N 14E 28	NW SE	
29	NW SW	
	SW SW	
	SE SW	
	SW SE	
	SE SE	
31	NE NE	
	SE NE	
32	NW NW	
	SW NW	
	NW SW	
	SW SW	
33	NE SW	
	NW SW	
	SW SW	
	SE SW	
34	NE NE	20.0
	NW NE	25.0
	SW NE	15.0
	SE NE	15.0
	NE NW	15.0
	NW NW	5.0
	SE NW	10.0
	NE SW	
	NW SW	
	SW SW	
	NE SE	
	NW SE	

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IDAHO DEPARTMENT OF WATER RESOURCES
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TWP RNG SECT	TRACT 1\4 1\4	LOT	ACRES	WATER-USE-CODE	WATER RIGHT NO.	LAST NAME	O C	STG	PRIORITY DATE	WATER SOURCE
07N 02E 25	NW NW			04	65-10619	HAWKINS HAWKINS	C	D	07/01/1942	SPRINGS
	SW NW			04	65-10617	HAWKINS HAWKINS	C	D	08/01/1966	SPRING
	SE NW			04	65-10876	TWILEGAR TWILEGAR	C	D	06/01/1952	SPRING
	SW SW			43	65-10875	TWILEGA4 TWILEGAR	C	D	06/01/1940	SPRING
26		7		43	65-10958	.ONES	C	D	06/01/1974	GROUNDWATER
		7		43	65-11097	KOLAR	C	D	01/01/1940	SPRING
[redacted]										
	SE NE			43	65-10481	CHRISTENSEN	C	D	07/01/1964	GROUNDWATER
[redacted]										
	NW NW	8	27.0	01	65-02728	JOHN A. FRY & SONS	C	D	03/20/1963	PAYETTE RIVER
	SW NW		1.0	01,43	65-07644	BOWERS BOWERS	C	L	08/02/1976	SPRING
	SW NW		1.0	43,01	65-09527	BOWERS BOWERS	C	D	09/01/1952	GROUNDWATER
	SW NW			43	65-10813	HAWKINS HAWKINS	C	D	06/06/1961	GROUNDWATER
	SW NW			43	65-10814	HAWKINS HAWKINS	C	D	09/01/1950	GROUNDWATER
	SW NW	7	4.0	01	65-02643	DRAKE	C	D	10/21/1959	PAYETTE RIVER
	SE NW	2	22.0	01	[redacted]	DOUBLE DIAMOND INC	C	D	04/26/1951	PAYETTE RIVER
[redacted]										
	NE SW	3	10.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
[redacted]										
	NE SW	3	10.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
	NW SW	6	6.0	01	65-02663	DRAKE	C	D	10/21,1959	PAYETTE RIVER
	NW SW	6		43	65-11226	BOUNDS BOUNDS	C	D	06/01/1947	GROUNDWATER
	SE SW	4	25.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
	SE SW	4	25.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
	NE SE			43,04	65-11094	CRESS CRESS	C	D	06/01/1902	SPRING

-02532 & -11393 are different acres than the 9 in NESW

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TWP RNG SECT	TRACT 1\4 1\4	LOT	ACRES
07N 04E 35	NW NE		
	SW NE		
	NE NW		
	NW NW		15.0
	NW NW		
	SW NW		
	SE NW		
	NE SW		
	NW SW		
	SW SW		
	SE SW		
	NW SE		
	SW SE		
05E 2	NE SW		
	SW SW		
	SW SW		14.0
	SE SW		
	NW SE		
	SW SE		
3	NW NE	1	
	SW NE		

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TWP RNG SECT	TRACT 1\4 1\4	LOT	ACRES	WATER-USE-CODE	WATER RIGHT NO.	LAST NAME	O C	STG	PRIORITY DATE	WATER SOURCE
07N 02E 26	NW SE		19.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
[redacted]										
	NW SE		17.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
	SW SE		15.0	01	65-02532	DOUBLE DIAMOND INC	C	D	09/14/1950	PAYETTE RIVER
	SW SE		10.0	01	65-11393	DOUBLE DIAMOND INC	C	D	06/01/1912	SHAFER CREEK
27		2		43	65-11006	GREEN GREEN	C	D	06/01/1953	GROUNDWATER
		3		43	65-10710	FOSS FOSS	C	D	06/01/1910	SPRING
		4		04	65-08530	KENNEDY KENNEDY	C	D	04/01/1941	SPRING
		7		43,04	65-11010	FRY	C	D	06/01/1935	GROUNDWATER SPRING
	NE NE			43	65-10608	STONE STONE	C	D	06/01/1965	GROUNDWATER

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TWP RNG SECT	TRACT 1\4 1\4	LOT	ACR
07N 05E 3	NE NW	3	
	NW NW	4	
	SW NW		
	SE NW		
	NE SW		
	NW SW		

CONSUMPTIVE REQUIREMENTS and IRRIGATION SEASONS in the AYETTE RIVER DRAINAGE BASIN

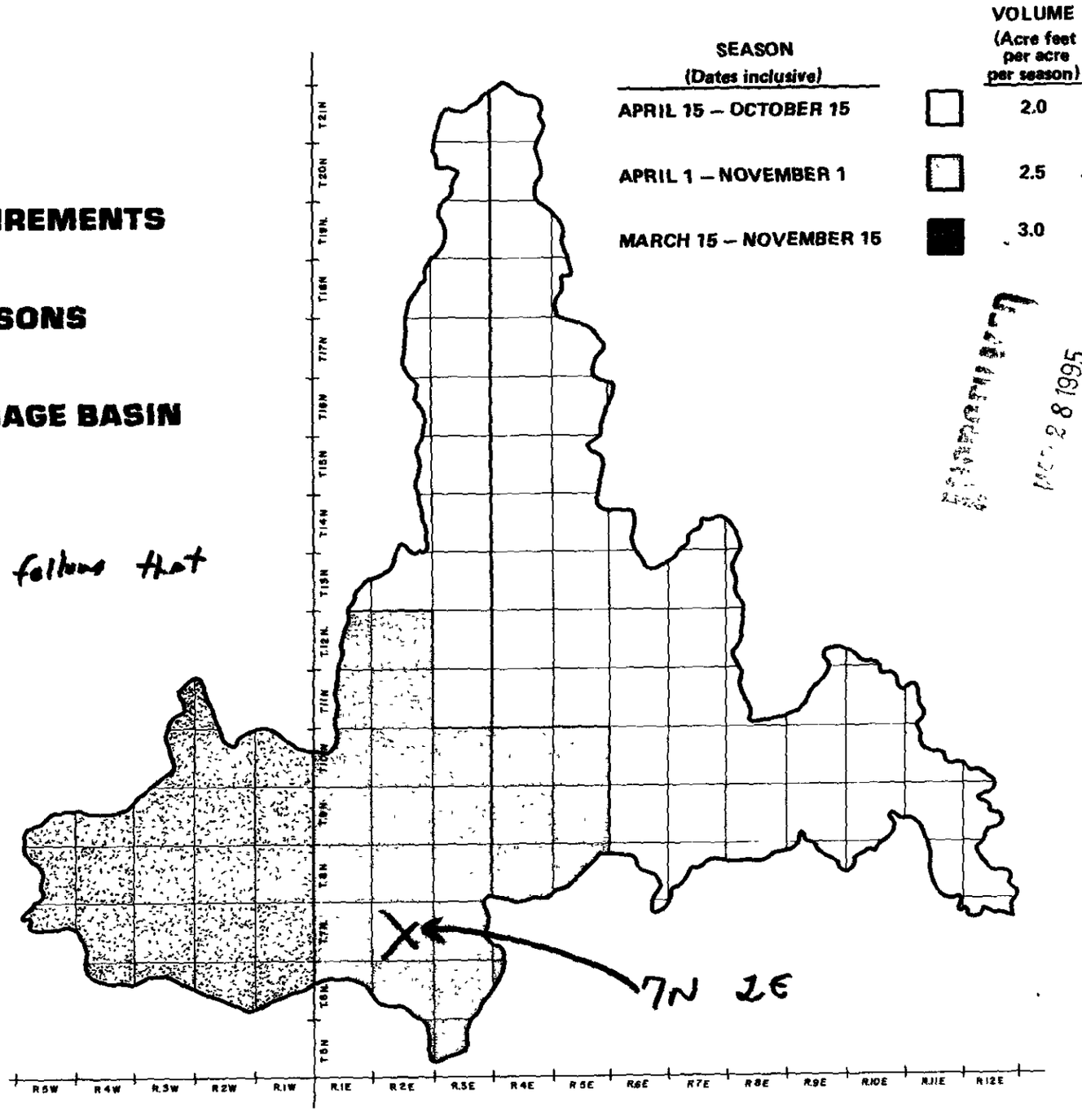


Figure 2.

if c.u. = 2.5, it follows that

div. vol. = 3.5

(3.5)(.7) ≈ 2.5

ATTACHMENT "F"

INDICATES TOTAL SOURCE: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2544	PIONEER CEMETERY ASSOCIATION C/O VIRGINIA HANSON, HORSESHOE BEND, IDAHO 83629	6/28/1950	IRRIGATION	4/ 1	11/ 1	--- AFA .05 CFS	LOT 2 S35 T 7N R 2E	LOT 2(3) S35 T 7N R 2E *3*	LICENSE
65-2532	DOUBLE DIAMOND RANCH C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-1317 & 65-11393 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	9/14/1950	IRRIGATION	4/ 1	11/ 1	--- AFA 1.80 CFS	LOT 2 S26 T 7N R 2E	NWSE(19) SWSE(15) LOT 3(10) LOT 4(25) S26 T 7N R 2E LOT 1(14) S35 T 7N R 2E *83*	LICENSE
65-2541	MAC GREGOR LAND & LIVESTOCK COMPANY BOX 4128, BOISE, IDAHO 83705	10/24/1950	IRRIGATION	4/ 1	11/ 1	--- AFA 1.40 CFS	LOT 5 S19 T 7N R 1E	SWSE(2) LOT 5(8) LOT 4(17) S19 T 7N R 1E NWNE(5) NENW(35) LOT 1(5) S30 T 7N R 1E *72*	LICENSE
65-2546	MACGREGOR LAND & LIVESTOCK CO. 200 SUNRISE RIM, BOISE, IDAHO 83706	1/ 8/1951	IRRIGATION	3/15	11/15	--- AFA 1.30 CFS	SWNE S25 T 7N R 1W	SWNE(10) SENE(13) NESE(25) NWSE(19) S25 T 7N R 1W *67*	LICENSE
65-0034A	BILBREY DITCH COMPANY, LTD. C/O MARILYN MAGNUSON 5211 HIGHWAY 52 EMMETT, IDAHO 83617 REMARKS: PLACE OF USE WITHIN LANDS OF BILBREY DITCH COMPANY. SEE 65-0034X.	4/ 1/1951	IRRIGATION	3/15	11/15	--- AFA .51 CFS	LOT 5 S11 T 6N R 2W	*22*	LICENSE
65-2540	DOUBLE DIAMOND INC. C/O DON RUMSEY, HORSESHOE BEND, IDAHO 83629 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHTS 65-10746, 65-10747 & 65-3103 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/26/1951	IRRIGATION	4/ 1	11/ 1	--- AFA 3.20 CFS	LOT 4 S23 T 7N R 2E	SESE(1) LOT 4(2) LOT 5(39) S23 T 7N R 2E NENE(13) NWNE(40) SWNE(39) SENE(3) NWSE(14) LOT 1(23) LOT 2(22) LOT 3(9) S26 T 7N R 2E *205*	LICENSE
65-10543	ADAMS, FRED L. & ADAMS, EDITH ROUTE 1, HORSESHOE BEND, IDAHO 83629	6/ 1/1951	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	LOT10 S 2 T 7N R 2E	LOT10 S 2 T 7N R 2E	BENEFICIAL USE

PLACE ALL FUTURE PAPERS IN FILE #2.

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EISMANN LAW OFFICES

Telephone (208) 467-3100
Facsimile (208) 466-4498

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

April 22, 1993

GARY SPACKMAN, HEARING OFFICER
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751 in the name of Double Diamond, Inc.

Dear Mr. Spackman:

This confirms my telephone conversation with you on April 22, 1993, in which I advised you that Mr. Dovel's brief in the above matter, which is due on April 22, 1993, will be filed on or before April 29, 1993.

It is my understanding that you had no objection to this extension.

I am sending a copy of this letter to Mr. Riddlemoser for his information and file.

Thank you for your consideration.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103 AND 65-10746 IN THE NAME OF DOUBLE DIAMOND INC.	APPLICANT'S BRIEF

On March 19, 1991, Double Diamond, Inc. filed with the Department of Water Resources an application for transfer of water rights in the State of Idaho. The application was protested by George Dovel, and a conference was held by the Department of Water Resources on September 19, 1991. The application was amended on April 2, 1992, and a follow-up conference was held on October 5, 1992. The matter was set for hearing on March 8, 1993, concluding on March 11, 1993. At the conclusion of the hearing, briefs were requested.

STATEMENT OF FACTS

The above-referenced water rights are decreed water rights on Porter Creek, a tributary of the Payette River in Boise County and is primarily a snow melt-fed stream. Water Right No. 65-03103 is a Number One Right in priority and Water Right No. 65-10746 is a Number Twelve Right. The reason for the proposed transfer was to exchange senior and

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junior Porter Creek Rights to maximize efficient use of limited water supply. The applicant was engaged in a gravel pit operation relating to the construction of Highway 55, the Horseshoe Bend Highway. The effect of the application is to exchange the Number One Right on twenty-two acres in the gravel pit area with twenty-two acres of Number Twelve Right on property adjacent. The effect of this would be to increase the effectiveness of the farming operation.

The point of diversion for all lands contained in the application for transfer, being the Number One Lands and the Number Twelve Lands is from the same diversion point located in Section 12, Township 7 North, Range 2 East, Boise-Meridian, and the water applied by an handline sprinkler irrigation system. The application for transfer does not affect the point of diversion, but only the place of use of the water.

The water in Porter Creek is under the exclusive control of a watermaster. This watermaster has exclusive control. The headgates for the individual users are adjusted and padlocked.

BASIS OF CASE

Idaho Code Secion 42-222 which governs the transfer of water rights, provides, in part, as follows:

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

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As far as other water rights being affected thereby, this proposed transfer does not affect other water rights since the point of diversion remains the same and the transfer is an acre for acre basis. All of the lands affected by the transfer are all irrigated with the same system.

The change does not constitute an enlargement in use of the original right for the same reasons. The same number of acres would be irrigated after the transfer as prior thereto.

Idaho Code Section 42-203A as regards the consideration of the local public interest, states as follows:

> The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such . . . . (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a smaller quantity of water than applied for, or may grant a permit upon conditions.

With respect to local public interest, the proposed project has the potential benefit of reducing operating costs by requiring less power than if the water were to be pumped from the alternate source, the Payette River. The record of the Department of Water Resources clearly show that the Applicant has pumping rights in the Payette River covering the affected property. As was stated previously, the distribution of the water is under the exclusive control of the

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watermaster. The watermaster has a legal duty to deliver water rights on Porter Creek in accordance with the relative priorities of those rights. Idaho Code Section 42-607, provides, in part:

> It shall be the duty of said watermaster to distribute the waters of the public stream, streams or water supply, comprising his water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches heading from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply. . . .
>
> Holders of water rights are entitled to presume that a watermaster, who is authorized to distribute water only in compliance with applicable decrees, is delivering water to them in compliance with the priorities expressed in the governing decree, and unless holder of water right was aware that he was not receiving water from the watermaster in accordance with his decreed right, that right could not be lost through estoppel, the element of knowing acquiescence being lacking.
>
> Almo Water Co. v. Darrington, 95 Idaho 16, 501 P.2d 700 (1972).

It is very clear from the above that if a holder of a right on the ditch does not believe that the watermaster is distributing the water properly, he has his remedy at that time.

At the conclusion of the hearing, the Hearing Officer had some concern regarding possible forfeiture of water rights. However, this is not borne out by the evidence or the record as a whole. The original petition to transfer these water

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rights was filed on March 19, 1991, well within the five (5) year period. This clearly tolls the running of the five (5) year period of forfeiture. The amended application was filed on April 2, 1992, covering a portion of the ground contained in the original application. This also was filed within the five (5) year period existing.

It must be remembered that the procedure for the transfer of water rights is exclusively within the Department of Water Resources. The Applicant has no other forum or remedy.

Applicant's position on this issue is further supported by subsequent provision of Section 42-222(2) which provides in part as follows:

> Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; . . . Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under Section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

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There's no question from the above provision that the filing of an application for extension polls the running of the forfeiture period. There is no provision in the statute setting any time limit on the decision, but only that the application for extension be filed before the five (5) year period has expired. Once the applications are filed, the matter is within the exclusive jurisdiction of the Department of Water Resources and within the time frame set by the Department of Water Resources. This is the only reasonable interpretation of the statute. Any other interpretation would be contrary to express provisions of the statute.

Forfeitures are not favored, and clear and convincing proof is required to support a forfeiture. Gilbert v. Smith, 97 Idaho 735, 522 P.2d 1220; Jenkins v. State, Department of Water Resources, 103 Idaho 384, 647 P.2d 1256.

Forfeiture of water rights is not favored and all intendments are indulged in against a forfeiture. Gilbert V. Smith, 97 Idaho 735, 522 P.2d 1220.

This is analogous to the Statute of Limitations affecting regular civil actions. Once the complaint is filed, the Statute ceases to run and the decision may be rendered a substantial time thereafter.

There has clearly been no showing of any forfeiture.

Respectfully Submitted,

JACK C. RIDDLEMOSER
Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of April, 1993, a true and correct copy of the above and foregoing Applicant's Brief was hand delivered, to the following:

RICHARD B. EISMANN
Eismann Law Offices
3016 Caldwell Boulevard
Nampa, Idaho 83651

JACK C. RIDDLEMOSER

ORIGINAL

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03101, 65-10746, 65-10747, AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.

SUBPOENA DUCES TECUM FOR HEARING

THE STATE OF IDAHO SENDS GREETINGS TO: KEITH NOTTINGHAM

YOU ARE HEREBY COMMANDED to appear before Gary Spackman, the duly appointed hearing officer at the Division of Environmental Quality, 1410 North Hilton, Conference Room B, Boise, Idaho, on the 11th day of March, 1993, at 1:00 o'clock P.M., then and there to testify in the above-entitled matter now pending before the Department of Water Resources.

YOU ARE FURTHER COMMANDED to bring with you the items and documents described in Exhibit A which is attached hereto and by this reference made a part hereof.

FOR FAILURE to attend and testify you may be found in contempt and subject to such penalties as are provided by law.

WITNESS: R. Keith Higginson, DIRECTOR, Department of Water Resources, State of Idaho.

RECEIVED

MAR 28 1995

EXHIBIT A

TO

KEITH NOTTINGHAM

INTERPRETATION: The paragraph heading as well as the underlining of any word or phrase used herein are for convenience only and are not to be used in interpreting any word or sentence or paragraph herein.

DEFINITIONS: When used herein, the terms following shall have the meanings following:

--- "**subject lease**" means the Materials Lease entered into on October 26, 1987, between Dale Rumsey and Donald Rumsey and the Idaho Department of Transportation, Division of Highways, and the Supplemental Materials Lease dated November ___, 1988, between Dale Rumsey and Donald Rumsey and the Idaho Department of Transportation, Division of Highways for Materials Source BO-51 in Boise County, Idaho.

1. All files, notes, working papers, reports, records, surveys, documents, maps, and photographs kept, maintained, assembled, developed and prepared by the Idaho Department of Transportation, Division of Highways with regard to the subject lease.

8 1995

ATTEST my hand and the seal of the Department of Water Resources this 11TH day of MARCH, 1993.

DEPARTMENT OF WATER RESOURCES

By _____

28 MAR 1995

Re: Double Diamond Transfer Nos. 65-3103, 65-10746 65-10747 and 65-2540

Place: IDWR, 1301 N. Orchard, Boise, ID

Date: Monday, March 8, 1993

Hearing conducted by: ~~Glen Saxton~~ Gary Spackman

ROSTER OF ATTENDANCE

Name	Address	Representing
Jack D Riddlemoser	Meridian	Double Diamond
Donald Russell	Horseshoe Bend	Double Diamond
Ella C Cockrum	Horseshoe Bend	Double Diamond
Christie Shirley	Horseshoe Bend Id	Christie Shirley
George Dovel	Horseshoe Bend, ID	George Dovel
Richard B Eismann	Nampa, Idaho	George Dovel
DEAN WILLIS	Eagle - ID	CAPITOL Reporters
Don Watts	Boise, ID	G. Dovel
Court Thursday	March 11, 1993	DGR Conf Rm B
Jack Riddlemoser	Meridian	Double Diamond
Donald Russell	Horseshoe Bend	Double Diamond
Ella Cockrum	Horseshoe Bend	Double Diamond
George Dovel	Horseshoe Bend	George Dovel
MIKE MUSETTI	BOISE, ID.	Idaho Transportation Dept.
Keith Nottingham	Boise, Id.	Idaho Transportation Dept.
Richard B Eismann	Nampa Idaho	George Dovel
Christie Shirley	Horseshoe Bend	George Dovel
Dean Willis		Capitol Reporters
Don Watts	Boise	George Dovel

MAR 2 8 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 10, 1993

Re: Application for Transfer of Water Rights Nos. 65-03101, 65-10746, 65-10747, and 65-02540 in the name of Double Diamond, Inc.

Dear Interested Party:

The Department has scheduled the continued hearing in connection to the above referenced transfers.

The continued hearing is scheduled for March 11, 1993 at 1:00 pm at the Division of Environmental Quality, 1410 North Hilton, Conference Room B, Boise, Idaho. The Division of Environmental Quality building is located to the northwest, directly behind the Department of Water Resources building.

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

Sincerely,

Karen L Gustafson

Karen L. Gustafson
Secretary/Records Manager

Enclosures

MAR 28 19

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03101, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.	))))))	NOTICE OF CONTINUED HEARING

A hearing was conducted on March 8, 1993, beginning at the hour of 1:00 pm. At approximately 5:15 pm the hearing was continued because of other conflicts, and parties tentatively agreed to resume the hearing and complete it on either March 11 or March 12, 1993. After coordinating schedules with the parties, all parties can attend a hearing the afternoon of Thursday, March 11, 1993.

The hearing will be conducted at the following time and place:

Time: Thursday, March 11, 1993 at 1:00 PM

Place: Division of Environmental Quality
1410 North Hilton
Conference Room B
Boise, Idaho

The Division of Environmental Quality building is located immediately to the northwest of the offices of the Department of Water Resources. If the hearing is not finished at closing hours, the remainder of the hearing will be conducted in the Department of Water Resources conference room. The Department has arranged for a video cassette recorder to view a recorded video.

I suggest that a copy of the video tape be made available to Mr. Riddlemoser prior to the hearing for review.

Dated this 10th day of March, 1993.

Gary Spackman
Hearing Officer

MAR 28

CERTIFICATE

I hereby certify that on the 10th day of March, 1993, I sent by facsimile machine a true and correct copy of the foregoing Notice of Hearing to the following:

Richard B Eismann Esq
Eismann Law Offices
3016 Caldwell Blvd
Nampa, ID 83651-6416
Fax: 466-4498

Steve Lester
Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, ID 83705

I also certify that since Mr. Riddlemoser's office does not possess a facsimile machine, his office was notified by telephone of the continued hearing time and date. His office was notified on March 9, 1993 at 4:30 pm.

Karen L. Gustafson
Secretary/Records Manager

MAR 28

****
*** ACTIVITY REPORT ***
****

TRANSMISSION OK

TX/RX NO.	1846
CONNECTION TEL	6p914664498
CONNECTION ID	EISMANN LAW OFF.
START TIME	03/10 09:28
USAGE TIME	01'16
PAGES	3
RESULT	OK

FILMED
MAR 8 1995

****
*** ACTIVITY REPORT ***
****

TRANSMISSION OK

TX/RX NO.	1848
CONNECTION TEL	6p9 334 2348
CONNECTION ID	WESTERN
START TIME	03/10 09:30
USAGE TIME	01'53
PAGES	3
RESULT	OK

FILMED
8 1995

EISMANN LAW OFFICES

Telephone (208) 467-3100
Facsimile (208) 466-4405

3016 CALDWELL BLVD
NAMPA, IDAHO 83651-6416

RICHARD B. EISMANN
DEBRA L. EISMANN

February 23, 1993

DELIVERED BY FAX

DAVID R. TUTHILL, JR., P.E.
MANAGER, WESTERN REGIONAL OFFICE
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751 in the name of Double Arrowhead, Inc.

Dear Tuthill:

The protest hearing in the above matters is now scheduled to be held on Monday, March 8, 1993, beginning at 1:00 o'clock P.M.

Pursuant to Rule 9.21 of the Idaho Department of Water Resources Practice and Procedure Rules and Regulations, my client, George Dovel, requests that a transcript of this hearing be made by a qualified court reporter and suggests that Dean Willis or any of the reporters from Capitol Reporters in Boise are qualified reporters.

If you should have questions, please contact me.

Thank you.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

MAR 28 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103, 65-10746, 65-10747 AND 65-02540 IN THE NAME OF DOUBLE DIAMOND, INC.	NOTICE OF HEARING

On March 19, 1991, Double Diamond, Inc. filed with the Department of Water Resources an application for transfer of water rights in the State of Idaho. The application was protested by George Dovel, and a conference was held by the Department on September 19, 1991. The application was amended on April 2, 1992, and a follow-up conference was held on October 5, 1992.

The Department has now set the matter of protest for a hearing to be held on Monday, March 8, 1993, at 1:00 p.m. in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department

MAR 28 1995

of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 2nd day of February, 1993.

David R. Tuthill

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

I hereby certify that on the 3rd day of February, 1993, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor

Sue Taylor
Secretary

Certified Mail

DOUBLE DIAMOND INC
C/O DONALD RUMSEY
200 SUNRISE RIM
BOISE ID 83705

GEORGE DOVEL
ROUTE 1 BOX 61
HORSESHOE BEND ID 83629

DAVID P HIRSCHI
HORSESHOE BEND HYDROELECTRIC CO
180 S 300 W STE 220
SALT LAKE CITY UT 84101

Non-Certified Mail

JACK C RIDDLEMOSER ESQ
712 E FAIRVIEW
PO BOX 373
MERIDIAN ID 83642

RICHARD B EISMANN ESQ
EISMANN LAW OFFICES
3016 CALDWELL BLVD
NAMPA ID 83651-6416

MAR 2 8 1995

CONFERENCE AND HEARING PROCEDURE
IN THE MATTER OF A PROTESTED APPLICATION FOR TRANSFER

In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the application and protest:

1) Will the proposed transfer, if approved, injure water rights?

2) Will the proposed transfer, if approved, constitute an enlargement in use of the original right?

3) Is the proposed transfer in the local public interest as defined in Section 42-203A, Idaho Code?

4) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1,2& 4 above, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 3, local public interest, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing. At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

MAR 28 1995

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and to request oral argument before the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

If you require special accommodations for a disability in order to participate in or attend the conference (hearing) (public meeting) please advise the department within ten (10) days prior to the conference, hearing or public meeting.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

MAR 2 8 1995

HORSESHOE BEND HYDROELECTRIC COMPANY
180 South 300 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

RECEIVED
DEC 9 1992
Department of Water Resources

December 7, 1992

Jack C. Riddlemoser
Attorney at Law
712 East Fairview
P.O. Box 37
Meridian, ID 83680

RE: WATER RIGHT APPLICATION TRANSFER FILED BY DOUBLE DIAMOND (RUMSEY) - YOUR LETTER DATED NOVEMBER 18, 1992

Dear Jack:

Thank you for your letter, dated November 18, 1992, regarding the above referenced matter. In your letter you state that the land on which we are dealing with the Rumseys is not part of any land affected by the proposed transfer and that such land is served by a totally different Water Right.

If you would please provide the undersigned with a copy of the Water Right relating specifically to the land which is the subject of the current condemnation proceedings, I will be happy to review that information against our files and withdraw our protest to the Water Rights Application Transfer, if appropriate.

Thank you for your assistance on this matter.

Very truly yours,

David P. Hirschi
Vice President
and General Counsel

DPH:dmy
H/corres

cc: Kenneth W. Bell
Gary Spackman

✓Dar Protest
File —

HORSESHOE BEND HYDROELECTRIC COMPANY
180 South 300 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

RECEIVED
NOV 5 1992
Department of Water Resources
Western Regional Office

November 3, 1992

Mr. Gary Spackman, Manager
Water Rights Permit Section
Dept. of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RE: YOUR LETTER OF OCTOBER 22, 1992, REGARDING PROTEST TO APPLICATIONS FOR TRANSFER FILED BY DOUBLE DIAMOND INC.; WATER RIGHT NOS. 65-03103, 65-10773, 65-10746, AND 65-12751

Dear Gary:

I am in receipt of your letter of October 22, 1992, relating to the above referenced protest. As you are aware, Horseshoe Bend Hydroelectric Company is developing the Horseshoe Bend Hydroelectric Project, a portion of which will be constructed on properties presently owned by Donald and Dale Rumsey, aka Double Diamond Inc., pursuant to an Order and Memorandum Decision recently rendered by Judge Callister in a condemnation action filed by Horseshoe Bend Hydroelectric Company against the Rumseys in the United States District Court for the District of Idaho, Case No. CIV 91-0539-S-MJC.

Provided that Mr. Riddlemoser can demonstrate to Horseshoe Bend Hydroelectric Company that the applications for transfer will not impact the property which is the subject of the eminent domain Order or the water rights currently held by Horseshoe Bend Hydroelectric Company in connection with the development and operation of the hydroelectric project, Horseshoe Bend Hydroelectric Company will likely withdraw its protest to the Applications.

MAR 28 [illegible]

We look forward to hearing from Mr. Riddlemoser on these matters and we will keep you advised of any progress which we make.

Very truly yours,

David P. Hirschi
Executive Vice President
and General Counsel

DPH:dmy
H/corres

cc: Kenneth W. Bell
Dave Tuthill
Jack Riddlemoser, Esq.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 6, 1992

RICHARD B EISMANN ESQ
EISMANN LAW OFFICES
3016 CALDWELL BLVD
NAMPA ID 83651-6416

JACK C RIDDLEMOSER ESQ
712 E FAIRVIEW
PO BOX 37
MERIDIAN ID 83680

Re: Application for Transfer of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751 in the Name of Double Diamond, Inc.

Gentlemen:

We are getting ready to set the above-referenced matter for a hearing. Would you please let us know which dates in the latter part of February you would be available?

Please call this office if you have any questions.

Sincerely,

David R. Tuthill Jr.

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

DRT:st

MAR 2 8 1995

HORSESHOE BEND HYDROELECTRIC COMPANY
180 South 300 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

RECEIVED
DEC 9 1992
Department of Water Resources

RECEIVED
DEC 14 1992
Department of Water Resources
Western Regional Office

December 7, 1992

Jack C. Riddlemoser
Attorney at Law
712 East Fairview
P.O. Box 37
Meridian, ID 83680

RE: WATER RIGHT APPLICATION TRANSFER FILED BY DOUBLE DIAMOND (RUMSEY) - YOUR LETTER DATED NOVEMBER 18, 1992

Dear Jack:

Thank you for your letter, dated November 18, 1992, regarding the above referenced matter. In your letter you state that the land on which we are dealing with the Rumseys is not part of any land affected by the proposed transfer and that such land is served by a totally different Water Right.

If you would please provide the undersigned with a copy of the Water Right relating specifically to the land which is the subject of the current condemnation proceedings, I will be happy to review that information against our files and withdraw our protest to the Water Rights Application Transfer, if appropriate.

Thank you for your assistance on this matter.

Very truly yours,

David P. Hirschi
Vice President
and General Counsel

DPH:dmy
H/corres

cc: Kenneth W. Bell
Gary Spackman

MAR 2 8 1995

JACK C. RIDDLEMOSER
Attorney at Law
712 E. Fairview
P.O. Box 37
Meridian, Idaho 83680

888-1491

RECEIVED
NOV 20 1992
Department of Water Resources

NOV 20 1992
Department of Water Resources
Western Regional Office

November 18, 1992

ATTN: Mr. David P. Hirschi
Horseshoe Bend Hydroelectric Company
180 South 300 West Suite 220
Salt Lake City, UT 84101

65-3103
10773
12715
10746

RE: Water Right Application Transfer filed by Double Diamond (Rumsey)

Dear Sir:

I have discussed with Don Rumsey the contents of your letter of November 3 to Gary Spackman of the Department of Water Resources. From our review of the matter, the land which you are dealing with the Rumseys on is not a part of any of the land affected by the proposed transfer, and such land is in fact served by a totally different water right than is involved in the proposed transfer.

From this, I do not see how the proposed transfer affects in any way the Rumsey property you are dealing with.

We will look forward to hearing from your.

Very truly yours,

JACK C. RIDDLEMOSER
Attorney at Law

cc Client
Gary Spackman

HORSESHOE BEND HYDROELECTRIC COMPANY
180 South 300 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

RECEIVED
NOV 0 5 1992
Department of Water Resources

November 3, 1992

Mr. Gary Spackman, Manager
Water Rights Permit Section
Dept. of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RE: YOUR LETTER OF OCTOBER 22, 1992, REGARDING PROTEST TO APPLICATIONS FOR TRANSFER FILED BY DOUBLE DIAMOND INC.; WATER RIGHT NOS. 65-03103, 65-10773, 65-10746, AND 65-12751

Dear Gary:

I am in receipt of your letter of October 22, 1992, relating to the above referenced protest. As you are aware, Horseshoe Bend Hydroelectric Company is developing the Horseshoe Bend Hydroelectric Project, a portion of which will be constructed on properties presently owned by Donald and Dale Rumsey, aka Double Diamond Inc., pursuant to an Order and Memorandum Decision recently rendered by Judge Callister in a condemnation action filed by Horseshoe Bend Hydroelectric Company against the Rumseys in the United States District Court for the District of Idaho, Case No. CIV 91-0539-S-MJC.

Provided that Mr. Riddlemoser can demonstrate to Horseshoe Bend Hydroelectric Company that the applications for transfer will not impact the property which is the subject of the eminent domain Order or the water rights currently held by Horseshoe Bend Hydroelectric Company in connection with the development and operation of the hydroelectric project, Horseshoe Bend Hydroelectric Company will likely withdraw its protest to the Applications.

MAR 2 8 1995

We look forward to hearing from Mr. Riddlemoser on these matters and we will keep you advised of any progress which we make.

Very truly yours,

David P. Hirschi
Executive Vice President
and General Counsel

DPH:dmy
H/corres

cc: Kenneth W. Bell
Dave Tuthill
Jack Riddlemoser, Esq.

MICROFILMED
MAR 28 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 22, 1992

David P. Hirschi
Horseshoe Bend Hydroelectric Co.
180 S. 300 W., Suite 220
Salt Lake City, UT 84101

RE: Protest to Applications for Transfer Filed by Double Diamond Inc.; Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751

Dear Mr. Hirschi:

Horseshoe Bend Hydroelectric Company (Horseshoe Bend Hydro) protested an application for transfer filed by Double Diamond Inc. The application for transfer proposes a change in the place of use of Porter Creek and Payette River rights.

A prehearing conference was scheduled and conducted on October 5, 1992, at the offices of the Department of Water Resources. My review of the file at the conference revealed the protest by Horseshoe Bend Hydro, and also revealed that we neglected to notify Horseshoe Bend Hydro of the conference.

One other protestant, George Dovel of Horseshoe Bend, was represented at the hearing by his attorney, Richard B. Eismann, 3016 Caldwell Blvd., Nampa, Idaho 83651-6416. Double Diamond Inc. was represented by Jack C. Riddlemoser, 712 E. Fairview, P.O. Box 373, Meridian, Idaho 83642.

George Dovel feels approval of the application for transfer will injure his use of Porter Creek water and will also enlarge the traditional use of the water. There may also be some issues of local public interest and conservation of water that have not been identified. I am enclosing a summary sheet which describes the criteria the Department must consider and the respective burdens of proof of the parties.

I suggested to Mr. Riddlemoser that he contact you directly to try to resolve your concerns. I suspect that if the applicants can show no interference with the power project, perhaps the protest can be resolved.

MAR 28 1995

I would like to avoid conducting another prehearing conference if possible. A prehearing conference is not required by our rules and regulations, but helps us to focus the issues. If you feel a prehearing conference would be productive, please let me know. Otherwise we will schedule the matter for hearing in the near future.

Sincerely,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Dave Tuthill
Richard B. Eismann
Jack Riddlemoser

81795

P 054 455 006

Receipt for Certified Mail

No Insurance Coverage Provided

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, June 1991

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

2 If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article

3 If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits Otherwise, affix to back of article Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number

4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

--U S GPO 1991—302 916

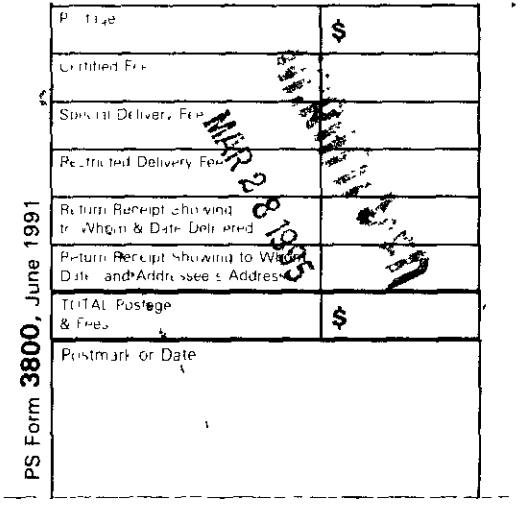
PS Form **3800**, June 1991 *(Reverse)*

P 054 455 007

Receipt for Certified Mail

No Insurance Coverage Provided

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629



STICK POSTAGE STAMPS TO ARTICLE TO *COVER FIRST CLASS POSTAGE*, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address *leaving the receipt* attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

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6 Save this receipt and present it if you make inquiry

U S GPO 1991—302 916

PS Form **3800**, June 1991 *(Reverse)*

P 388 917 153

Receipt for Certified Mail
No Insurance Coverage Provided

RICHARD B EISMANN ESQ
EISMANN LAW OFFICES
3016 CALDWELL BLVD
NAMPA ID 83651-6416

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

MAR 28 1995

PS Form **3800**, June 1991

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address *leaving the receipt attached and present the article* at a post office service window or hand it to your rural carrier (no extra charge)

2 If you do not want this receipt postmarked, stick the gummed stub to the right of the return *address of the article, date, detach and retain the receipt, and mail the article*

3 If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed *ends if space permits* Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number

4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

105603-92-B-0226

PS Form **3800**, June 1991 *(Reverse)*

P 423 600 23

Receipt for Certified Mail

No Insurance Coverage Provided

Do not use for International Mail

JACK C RIDDLEMOSER ESQ
712 E FAIRVIEW
PO BOX 373
MERIDIAN ID 83642

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, June 1991

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).

1 *If you want this receipt postmarked, stick the gummed stub to the right of the return address* leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

2 *If you do not want this receipt postmarked, stick the gummed stub to the right of the return* address of the article, date, detach and retain the receipt, and mail the article

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4 *If you want delivery restricted to the addressee, or to an authorized agent of the addressee,* endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt. If *return receipt is requested, check the applicable blocks in item 1 of Form 3811*

6 Save this receipt and present it if you make inquiry

105603-92-B-0226

PS Form **3800**, June 1991 *(Reverse)*

P 423 600 624

Receipt for Certified Mail
No Insurance Coverage Provided

GEORGE DOVEL
ROUTE 1 BOX 61
HORSESHOE BEND ID 83629

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

MAY 28 1992

PS Form **3800**, June 1991

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

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4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

105603-92-B-0226

PS Form **3800**, June 1991 *(Reverse)*

P 397 917 194

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

DOUBLE DIAMOND INC
C/O DONALD RUMSEY
200 SUNRISE RIM
BOISE ID 83705

Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, June 1991

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

2 If you do not want this receipt postmarked, stick the *gummed stub to the right of the return* address of the article, date, detach and retain the receipt, and mail the article

3 If you want a *return receipt, write the certified mail number and your name and address* on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits Otherwise, affix to back of article Endorse front of article **RETURN RECEIPT REQUESTED** *adjacent to the number*

4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

105603-92-B-0226

PS Form **3800**, June 1991 *(Reverse)*

P 423 600 622

Receipt for Certified Mail
No Insurance Coverage Provided

DAVID P HIRSCHI
HORSESHOE BEND HYDROELECT
180 S 300 W STE 220
SALT LAKE CITY UT 84101

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, June 1991

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, *AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES* (see front).

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

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5 Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

105603-92-B-0226

PS Form **3800**, June 1991 *(Reverse)*

SENDER Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side Failure to do this will prevent this card from being returned to you The return receipt fee will provide you the name of the person delivered to and the date of delivery For additional fees the following services are available Consult postmaster for fees and check box(es) for additional service(s) requested

1 ☐ Show to whom delivered, date, and addressee's address *(Extra charge)* 2 ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

4. Article Number

Type of Service:

☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5 Signature — Addressee

X

6 Signature — Agent

X Delores D Knapp

7 Date of Delivery

2-17-92

8 Addressee's Address *(ONLY if requested and fee paid)*

PS Form 3811, Apr 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below

- Complete items 1, 2, 3, and 4 on the reverse
- Attach to front of article if space permits, otherwise affix to back of article
- Endorse article "Return Receipt Requested" adjacent to number

BOISE ID 837 APR 31 13 02-17-92

AUG 19 19?2

Department of Water Resources
Western Regional Office

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

MAR 28 1995

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-03183

SENDER Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side Failure to do this will prevent this card from being returned to you The return receipt fee will provide you the name of the person delivered to and the date of delivery For additional fees the following services are available Consult postmaster for fees and check box(es) for additional service(s) requested

1 ☐ Show to whom delivered, date, and addressee's address *(Extra charge)* 2 ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

4. Article Number
P 654 455 007

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5 Signature — Addressee
X

6 Signature — Agent
X Christie Shirley

7 Date of Delivery
AUG 20 1992

8 Addressee's Address *(ONLY if requested and fee paid)*

AUG 21 1992

Department of Water Resources
Western Regional Office

PS Form 3811, Apr 1989 ★USGPO 1989-238-815 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below

- Complete items 1, 2, 3, and 4 on the reverse
- Attach to front of article if space permits, otherwise affix to back of article
- Endorse article "Return Receipt Requested" adjacent to number

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

2 8 1985

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-03103

SENDER:

- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee)

1 ☐ Addressee's Address

2 ☐ Restricted Delivery

Consult postmaster for fee.

3 Article Addressed to:

MAR 28 1995

DAVID P HIRSCHI
HORSESHOE BEND HYDROELECTI
180 S 300 W STE 220
SALT LAKE CITY UT 84101

4a Article Number

P 423 606 622

4b. Service Type

☐ Registered ☐ Insured

☑ Certified ☐ COD

☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5 Signature (Addressee)

8 Addressee's Address (Only if requested and fee is paid)

6 Signature (Agent)

PS Form **3811**, December 1991 ☆ USGPO 1992-307-530 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

FEB 1993

MAR 28 1995

Print your name, address and ZIP Code here

Department of Water Resources
Western Regional Office

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-310 3

SENDER:

- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee)

1 ☐ Addressee's Address

2 ☐ Restricted Delivery

Consult postmaster for fee.

3 Article Addressed to

GEORGE DOVEL
ROUTE 1 BOX 61
HORSESHOE BEND ID 83629

4a Article Number

P 423 600 624

4b. Service Type

☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

2-5-93

5 Signature (Addressee)

6 Signature (Agent)

8 Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆ USGPO 1992-307-530 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

ZIP CODE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MAR 2 8 1995

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-3103

SENDER:

- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee)

1 ☐ Addressee's Address

2 ☐ Restricted Delivery

Consult postmaster for fee

3 Article Addressed to

MAR 2 8 1995

DOUBLE DIAMOND INC
C/O DONALD RUMSEY
200 SUNRISE RIM
BOISE ID 83705

4a. Article Number

P 397 912 194

4b. Service Type

☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

3-4-95

5 Signature (Addressee)

8 Addressee's Address (Only if requested and fee is paid)

6 Signature (Agent)

R Searer

PS Form **3811**, December 1991 ☆ USGPO 1992-307-530 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, $300

U.S. MAIL

RECEIVED
FEB 3 1993

MAR 2 8 1995

Print your name, address and ZIP Code here

Department of Water Resources
Western Regional Office

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-3103

SENDER.

- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee)

1 ☐ Addressee's Address

2 ☐ Restricted Delivery

Consult postmaster for fee.

3 Article Addressed to:

JACK C RIDDLEMOSER ESQ
712 E FAIRVIEW
PO BOX 373
MERIDIAN ID 83642

4a Article Number

P 423 600 623

4b. Service Type

☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

FEB 4 1993

5 Signature (Addressee)

6 Signature (Agent)

8 Addressee's Address (Only if requested and fee is paid)

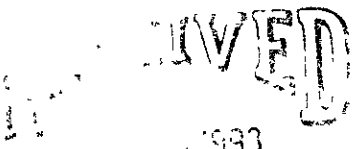
PS Form **3811**, December 1991 ☆ USGPO 1992-307-530 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, $300

U.S. MAIL

MAR 2 8 1995

Department of Water Resources
Western Regional Office

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-397 917 193

SENDER:

- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee)

1 ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3 Article Addressed to

RICHARD B EISMANN ESQ
EISMANN LAW OFFICES
3016 CALDWELL BLVD
NAMPA ID 83651-6416

4a Article Number

P 397 917 193

4b. Service Type

☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5 Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6 Signature (Agent)

FEB 4 1993

PS Form **3811**, December 1991 ☆ USGPO 1992-307-530 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

03-31-95 21 23

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MAR 2 8 1995

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

Re: Double Diamond Inc., Transfer, Nos. 65-10773, 65-12751

Place: IDWR, 1301 N. Orchard, Boise, ID

Date: October 5, 1992

Hearing conducted by: David R. Tuthill, JR.

ROSTER OF ATTENDANCE

Name	Address	Representing
Donald Rumsey	Horseshoe Bend	Double Diamond
Jack Riddlemoser	Meridian	Double Diamond
Dale Rumsey	Horseshoe Bend	Double Dia. Rch
Richard B. Eismann	Nampa Idaho	George Dovel

MAR 28 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-03103 AND 65-10746 IN THE NAME OF DOUBLE DIAMOND INC.	NOTICE OF CONFERENCE

On March 19, 1991, Double Diamond, Inc. filed with the Department of Water Resources an application for transfer of water rights. The application was protested by George Dovel.

A conference was held on September 19, 1991. The Department has set the matter of protest for a second conference to be held on October 5, 1992, at 10:00 a.m., in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 14th day of August, 1992.

David R. Tuthill

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

MAR 28 1995

I hereby certify that on the 14th day of August, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Secretary

Certified Mail

DOUBLE DIAMOND INC
C/O DONALD RUMSEY
200 SUNRISE RIM
BOISE ID 83705

GEORGE DOVEL
ROUTE 1 BOX 61
HORSESHOE BEND ID 83629

- -
- Non-Certified Mail

JACK C RIDDLEMOSER ESQ
712 E FAIRVIEW
PO BOX 373
MERIDIAN ID 83642

RICHARD B EISMANN ESQ
EISMANN LAW OFFICES
3016 CALDWELL BLVD
NAMPA ID 83651-6416

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

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

1) Will the proposed use reduce the quantity of water under existing rights?

2) Is the proposed water supply insufficient for the purposes intended?

3) Is the application made in good faith or for delay or speculative purposes?

4) Has the applicant sufficient financial resources with which to complete the proposed project?

5) Will the proposed use conflict with the local public interest?

6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1,2,3,4,& 6 above, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with the both the applicant and protestant as to factors which they are most knowledgable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

MAR 28 1995

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not predjudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

8 1995

AMENDED APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 65-03103 & 65-10746 & 65-02540 & 65-10747

RECOMMENDATION OF WATERMASTER

I, Henry A. Bernstein, watermaster of Porter Creek, of Water District No. 65B, County of Boise, State of Idaho, whose address is 1553 Sunset Dr. Emmett 83617-9584 have read the attached copy of the application for transfer of water right for Double Diamond Inc. (name), and to the best of my knowledge believe the application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend that the Director of the Department of Water Resources approve the transfer subject to the following conditions: Separate Line From Payette River Pump To Pond, Provisions To Lock Mixed Water To Pond When Water Master on Duty.

OR

B. I do not endorse approval of the above numbered Application for Transfer as requested for the following reasons: _____

Dated at Emmett, Idaho, this 02 day of July 19 92

RECEIVED
JUL -2 1992
Department of Water Resources
Western Regional Office

Henry A Bernstein
(signature)

MAR 28 1995

Please use reverse side if needed.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 8, 1992

Mr. Hank Bernsten
Watermaster, Porter Creek Water District
1553 Sunset Drive
Emmett, ID. 83617-9584

RE: Water Use Complaint

Dear Hank:

A complaint was received at this office that George Dovel is irrigating additional lands via a pipe down the stream from his home and also land across the road from his home. On your next visit to the area, please use the district map to see if Mr. Dovel is using water on the land described in his rights. You may need to talk to him to clarify his water use. Let me know if anything improper is found. If everything looks correct, there is no need to contact me.

On another matter, have you had a chance to review the amended transfer application for Double Diamond? If so, please send the completed Watermaster comment form with your recommendation to me as soon as possible.

I contacted the Boise County Treasurer today and was informed that all parties have paid their bills for 1992 and for any previous assessments. No one will be cut off this year due to outstanding bills.

Thanks for your help in these items.

Sincerely,

Steve Lester
Sr. Water Resource Agent

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 10, 1992

DAVID P HIRSCHI
HORSESHOE BEND HYDROELECTRIC CO
180 S 300 W SUITE 220
SALT LAKE CITY UT 84101

Re: Application for Transfer No. 65-3103, 65-10773, 65-10746 and 65-12751 in the name of Double Diamond, Inc.

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The following are the principle items we can consider with respect to either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does 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 applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. 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,

David R. Tuthill, Jr.

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

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

May 10, 1992

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

DOUBLE DIAMOND INC
C/O DONALD RUMSEY
200 SUNRISE RIM
BOISE ID 83705

Re: Application for Transfer No. 65-3103, 65-10773, 65-10746 and 65-12751 in the name of Double Diamond, Inc.

Dear Applicant:

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

1. Are other water rights injured by the transfer?
2. Does 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.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for 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,

David R. Tuthill Jr.

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

HORSESHOE BEND HYDROELECTRIC COMPANY
180 South 300 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

MAY 08 1992
Department of Water Resources
Western Regional Office

May 4, 1992

VIA FACSIMILE

Idaho Dept. of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705
Attention: David Tuthill

RE: PROTEST TO NOTICE OF AMENDMENT OF PROPOSED CHANGE OF WATER RIGHT NOS. 65-03103, 65-10773, 65-10746, and 65-12751

Dear Mr. Tuthill:

Horseshoe Bend Hydroelectric Company, a Delaware corporation, hereby protests the proposed Amendment of Proposed Change of Water Right Nos. 65-03103, 65-10773, 65-10746 and 65-12751, applied for by Double Diamond Inc. c/o Donald Rumsey of Boise, Idaho, as published in the Idaho World, Wednesday, April 15, 1992.

The basis of this protest is Horseshoe Bend Hydroelectric Company's desire to determine the effect of this Amendment of Proposed Change on the water rights and diversion rights associated with the Permit to Appropriate Water No. 65-12563, held by Horseshoe Bend Hydroelectric Company in connection with the development of the Horseshoe Bend Hydroelectric Project in Boise County, Idaho.

It is my understanding, based upon our telephone conversation this date, that the Department will accept this protest by facsimile transmission with hard copy to follow by regular mail. Please contact me immediately should you have any questions or comments concerning this letter of protest.

Very truly yours,

David P. Hirschi
Executive Vice President
and General Counsel

MAR 2 8 1995

DPH:dmy
H/corres

cc: Kenneth W. Bell
Orlin V. Clements, P.E.

Form 222
1-87

Page 1 of 12

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MAR 19 1991
Department of Water Resources
Western Regional Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Replaced with Amended Transfer

Name of applicant Double Diamond Inc. Phone 336-4801

Post Office address c/o Donald Rumsey 200 Sunrise Rim Boise Id 83705

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 Exchange senior & junior Porter Creek rights to maximize efficient use of limited water supply. Currently, 56 acres covered by 65-03103 & 65-10746 are not irrigated due to gravel pit excavation related to Hwy 55 construction on Horseshoe Bend highway. Appurtenant water can be relocated to owner's benefit. Transfer also clarifies water right record error in 523 LOTS 4 & 5 (see Attachment A, memo of 6/28/90).

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
65-03103 (water district #2)	1-1-1872	3.82 cfs .90 cfs	Irrigation Irrigation	4-1 to 11-1 4-1 to 11-1
65-10773	6-1-1900	.02 cfs	Stockwater	1-1 to 12-31
65-10746	4-1-1960	.44 cfs	Irrigation	4-1 to 11-1
65-12751	10-22-1985	.31 cfs	Irrigation	4-1 to 11-1

2. Total amount of water being transferred 5.49 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Porter Creek tributary to Payette River
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	12	7N	2E	Boise	FOR ALL 4 Rights
02		SW	NW	07	7N	3E	Boise	FOR 65-03103 AND 65-10773

Replaced

5 Lands irrigated or place of use: ALL ARE UNIQUE ACRES

MAR 28 1995

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals	
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼		
7N	2E	12			33	7										12			52	65-03103
		23												2.5 8			2.5 31		39	193
		26	13	30	26	3	2.1 13			2.2 5						12			102	
7N	2E	12				12													12	65-10773
		23		in gravel pit			(4 of these acres				in gravel pit					2.4 2			2	45
		26	11	10							2.3 9				1				31	
7N	2E	26			13		2.1 9								in gravel pit				22	65-10746
7N	2E	26					2.1 1			2.2 17						1			19	65-12751

in gravel pit

Total acres 279

Transfer No _____

PART 1

6 General Information

a Description of diversion system S. 7: headgate, pipeline with flowmeter, booster pump; S. 12: diversion dam, headgate, 3 ft. C.crestted weir & staff gauge, ditch to pipeline; all for sprinkler irrigation.

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 ATTACHMENT C

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

56 acres in S.26 are not irrigated & will not be until gravel pit project is complete and land is restored to agricultural use. Transfer will provide senior rights ① & ④ for land in S.12 and will switch use right ④ for jr. right ⑫ in S.23 & 26. Junior rights ⑫ & ⑮ will include 41 of the 56 acres not in irrigation. Balance of non-irrigated land will be covered by right ④.

d. Remarks:

Other rights on gravel pit land are Republic River rights 65-02540 & 65-10747. The appropriate portions of these rights will not be used as long as gravel pit operates (anticipate less than 5 years) & thus do not need to be transferred (lack of use prevents expansion).

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

Witness my hand this _____ day of _____, 19____.

RECEIVED
MAR 28 1995

 Transfer No. _____

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. 65-03103 Decreed to Double Diamond Inc.
   in case of State of Idaho vs. A & C Corp, ET AL.
   dated 1/21/1986 in 3rd Judicial Dist. county of Gem
   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: ATTACHMENT C
   ☑ Tax Notice ☐ Warranty Deed ☐ Other _____
3. Source of water Porter Creek tributary to Payette River
4. Date or priority 1/1/1872
5. Water is used for the following purpose.
   amount 3.82 cfs for Irrigation purposes from 4/1 to 11/1
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
6. Total amount of water under right 3.82 cubic feet per second and/or _____ acre-feet per annum.
7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	12	7N	2E	Boise	same diversion as 65-10746

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	
7N	2E	23															L.5 39		39
		26	13	40	39	3	L.1 23			L.2 22						14			154

MAR 28 1995

Total acres 193

9. Describe any other water rights used for the same purpose as described above 65-02540, 65-10747 (both Payette River source)

PART 2

Transfer No. _____

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 N/A

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

1. amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)

2. Point(s) of Diversion.

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

3. Lands irrigated or place of use:

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

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)* N/A

1. amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

MICROFILMED
MAR 28 1995

 Transfer No. _____

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. 65-10773 Decreed to Arlie L. Woods
   in case of State of Idaho vs. A & C Corp., Et Al.
   dated 1/2/1986 in 3rd Judicial Dist. county of Gem
   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: ATTACHMENT C
   ☒ Tax Notice ☐ Warranty Deed ☒ Other Woods Authorization
3. Source of water Porter Creek tributary to Payette River
4. Date or priority 6/1/1900
5. Water is used for the following purpose:
   amount .90 cfs (cfs/ac-ft) for Irrigation purposes from 4/1 to 11/1
   amount .02 cfs (cfs/ac-ft) for Stockwater purposes from 1/1 to 12/31
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
6. Total amount of water under right .92 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
02		SW	NW	07	7N	3E	Boise	Same diversion as 65-12751

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	
7N	2E	12			33											12			45
					S											S			

MAR 28 1995

Total acres 45

9. Describe any other water rights used for the same purpose as described above NONE

PART 2

Transfer No. _____

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

NU If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED N/A

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

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)* N/A

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3 Lands irrigated or place of use:

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

Total acres _____

RECEIVED
2 8 1995

 Transfer No. _____

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. 65-10746 Decreed to Double Diamond Inc.
      in case of State of Idaho vs. A & C Corp., Et Al.
      dated 1/21/1986 in 3rd Judicial Dist county of Gem
   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: ATTACHMENT C
   ☑ Tax Notice ☐ Warranty Deed ☐ Other _____
3. Source of water Porter Creek tributary to Payette River
4. Date or priority 4/1/1960
5. Water is used for the following purpose:
   amount .44 cfs for Irrigation purposes from 4/1 to 11/1
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
6. Total amount of water under right .44 cubic feet per second and/or _____ acre-feet per annum.
7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	12	7N	2E	Boise	same diversion as 65-03103

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	
7N	2E	23													1.4 2				2
		26	11								2.3 9								20

Total acres 22

9. Describe any other water rights used for the same purpose as described above 65-02540, 65-10747, 65-10749 (all Payette River Sources)

MAR 28

PART 2

Transfer No _____

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 N/A

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

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)* N/A

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

MAR 2 8 1995

Total acres _____

 Transfer No. _____

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. 65-12751 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: ATTACHMENT C
   ☑ Tax Notice ☐ Warranty Deed ☐ Other _____
3. Source of water Porter Creek tributary to Payette River
4. Date or priority 10/22/1985
5. Water is used for the following purpose:
   amount .31 (cfs/ac-ft) cfs for Irrigation purposes from 4/1 to 11/1
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
6. Total amount of water under right .31 cubic feet per second and/or 66.5 acre-feet per annum.
7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
02		SW	NW	07	7N	3E	Boise	Same diversion as 65-10773

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	
7N	2E	12				.19													.19

MAR 28 1995

Total acres 19

9. Describe any other water rights used for the same purpose as described above NONE

PART 2

Transfer No. _____

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 N/A

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

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)* N/A

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

FILED
2 8 1994

Total acres _____

Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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

See attached orthophoto = Attachment B

MICROFILMED
MAR 28 1995

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

 Transfer No _____

PART 3

B. CHANGES IN NATURE OF USE N/A

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

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

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

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

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

Donald Russell
(Signature of Applicant)

Subscribed and sworn to before me this FOURTH day of MARCH, 19 91.

Catherine M. Kuyte
(Notary Public)

My commission expires 4/14/94

FOR DEPARTMENT USE ONLY

Transfer contains 12 pages and 3 attachments

Received by SL Date 3/19/91 Protest filed by _____

Prelim check by CJH Fee $50

Receipted by SL Date 3/19/91 #W013123

Published in ID World Copies of protest forwarded by _____

Pub. dates 4/3 & 4/10/91 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

MAR 28 1995

CONSOLIDATED TAX NOTICE AND RECEIPT 1990
BOISE COUNTY TAX COLLECTOR
P. O. BOX 156
IDAHO CITY, ID 83631 REAL PROPERTY

163434 6-00 RP07N02E262450A 6211

T7N R2E SEC 26
NE LESS TAX 144, LOTS 1 & 2.
L 81306 TAX 31 & TAX 94
I 81628

217.093 RUMSEY, DONALD J. & BETTY E.
TOT ACRES & RUMSEY, DALE
DELINQUENT CERT 200 SUNRISE RIM
BOISE, ID 83705

STATE WTR POLL			FULL AMOUNT
COUNTY	.003470	367.12	2,119.98
SCH DIST # 73	.004134	575.64	
PIONEER CEM	.000087	14.22	
HSB LIBRARY	.000599	97.90	
SCH BND DIST 73	.004081	666.98	
HSB HOSP DIST	.000478	78.12	1ST INSTALLMENT
			1,059.99
SOLID WASTE		20.00	
			2ND INSTALLMENT
			1,059.99
TOTAL	.013849	2,119.98	

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E262450A
RUMSEY, DONALD J. & BETTY E.
& RUMSEY, DALE 6211

PE	TAX			
93	10.00	1,049.99	1,059.99	6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991
DATE PAID CHECK #
PAID BY CASH

APR 28 1995

CONSOLIDATED TAX NOTICE AND RECEIPT
BOISE COUNTY TAX COLLECTOR 1990
P. O. BOX 156
IDAHO CITY, ID 83631 REAL PROPERTY

32207 6-00 RP07N02E264851A 6213

T7N R2E SEC 26
L 32207 SOUTHERLY PORTION OF NWSE,
SOUTHERLY PORTION OF LOT 3,
LOT 4. SWSE

111.147 GARRETT, JOHN
TOT ACRES % DOUBLE DIAMOND INC.
DELINQUENT CERT 200 SUNRISE RIM
BOISE, ID 83705

STATE WTR POLL			FULL PAYMENT
COUNTY	.003470	111.76	413.84
SCH DIST # 73	.004134	133.14	
PIONEER CEM	.000087	2.80	
HSB LIBRARY	.000599	19.30	
SCH BND DIST 73	.004081	131.44	
HSB HOSP DIST	.000478	15.40	1ST INSTALLMENT
			206.92
			2ND INSTALLMENT
			206.92
TOTAL	.012849	413.84	

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E264851A
GARRETT, JOHN
% DOUBLE DIAMOND INC. 6213

FINAL CODE	TAX CODE	REAL	AD VAL	1ST INSTALLMENT
		206.92	206.92	6-00

2nd
6B

MAR 28 1995

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156, ID.CITY, ID 83631
PHONE: 392-4441, 793-2616.
342-0509 OR 462-3073

DELINQUENT ENTERED, BEFORE JUNE 20, 1991
DATE PAID
PAID BY CASH
CHECK #

CONSOLIDATED TAX NOTICE AND RECEIPT

BOISE COUNTY TAX COLLECTOR 1990

P. O. BOX 156

IDAHO CITY, ID 83631 REAL PROPERTY

5842 6-00 RP07N02E232450A 6107

T7N R2E SEC 23
W1/2 OF LOT 1
L 5852

2.250 KNIPE, WILLIAM
TOT ACRES % RUMSEY, DONALD J & BETTY E
DELINQUENT CERT & DALE
200 SUNRISE RIM
BOISE, ID 83705

STATE WTR PULL		
COUNTY	.003470	20.32
SCH DIST # 73	.004134	24.20
PIONEER CEM	.000087	.52
HSD LIBRARY	.000599	3.52
SCH BND DIST 73	.004081	23.88
HSD HOSP DIST	.000478	2.80
SOLID WASTE		2.00
TOTAL	.012849	77.24

FULL PAYMENT 77.24

1ST INSTALLMENT 38.62

2ND INSTALLMENT 38.62

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 28 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E232450A
KNIPE, WILLIAM
% RUMSEY, DONALD J & BETTY E 6107

73	1.00	37.62	38.62	6-00

2nd
68

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

IF YOUR STUB IS NOT PAID AT CLOSE OF ESCROW

DATE PAID JUNE 20, 1991
PAID BY CHECK # CASH

CONSOLIDATED TAX NOTICE AND RECEIPT
BOISE COUNTY TAX COLLECTOR 1990
P. O. BOX 15A
IDAHO CITY, ID 83631 REAL PROPERTY

15814 6-00 RP07N02E238450A 6202

T7N R2E SEC 23
LOT 5

L 15814

40.650 RUMSEY, DONALD J. & BETTY E.
TOT ACRES & RUMSEY, DALE
DEPARTMENT CERT 200 SUNRISE RIM
BOISE, ID 83705

STATE WTR POLL		FULL PAYMENT
COUNTY	.003470	54.88 203.22
SCH DIST # 73	.004134	65.38
PIONEER CEM	.000087	1.38
HSB LIBRARY	.000599	9.48
SCH BND DIST 73	.004081	64.54
HSB HOSP DIST	.000478	7.56 1ST INSTALLMENT
		101.61
		2ND INSTALLMENT
		101.61
TOTAL	.012849	203.22

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E238450A
RUMSEY, DONALD J. & BETTY E.
& RUMSEY, DALE 6202

CODE	DUE	AREA	1ST INSTALLMENT	
	101.61		101.61	6-00

PER
SUBDIV
LOT
TOT

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO
BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DATE PAID JUNE 20, 1991
PAID BY CASH CHECK #

CONSOLIDATED TAX NOTICE AND RECEIPT
BOISE COUNTY TAX COLLECTOR 1990
P. O. BOX 156
IDAHO CITY, ID 83631 REAL PROPERTY

35303 6-00 RP07N02E121800A 6133

T7N R2E SEC 12
S1/2NE, N1/2SE LESS TAX 182

320/6
3227

158.610 WOODS, ARLIE L.
LOT ACRES % RUMSEY, DONALD J. ETAL
DELINQUENT CERT 200 SUNRISE RIM
BOISE, ID 83705

STATE WTR POLL			
COUNTY	.003470	122.50	473.64
SCH DIST # 73	.004134	145.94	
PIONEER CEM	.000087	3.08	
HSB LIBRARY	.000599	21.16	
SCH BND DIST 73	.004081	144.08	
HSB HOSP DIST	.000478	16.88	
			1ST INSTALLMENT
			236.82
SOLID WASTE		20.00	
			2ND INSTALLMENT
			236.82
TOTAL	.013849	473.64	

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 28 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E121800A
WOODS, ARLIE L.
% RUMSEY, DONALD J. ETAL 6133

93	10.00	226.82	236.82	6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO
BOISE COUNTY TAX COLLECTOR
P.O.BOX 156,ID.CITY,ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DUPLICATE IF NOT PAID YOUR SERVICE
DATE PAID JUNE 20, 1991
PAID BY CHECK # CASH

Contract to buy land from Arlie - must be paid for

CONSOLIDATED TAX NOTICE AND RECEIPT

BOISE COUNTY TAX COLLECTOR — 1990

P. O. BOX 156

IDAHO CITY, ID 83631 — REAL PROPERTY

10149 6-00 RP07N02E120050A 6132

T7N R2E SEC 12
NW1/4, N1/2NE
10149 INST.#128370

240.000 RUMSEY, DONALD J & DALE M
TOT ACRES *
DELINQUENT CERT 200 SUNRISE RIM RD
BOISE, ID 83705

STATE WTR POLL			
COUNTY	.003470	35.22	130.42
SCH DIST # 73	.004134	41.96	
PIONEER CEM	.000087	.88	
HSB LIBRARY	.000599	6.08	
SCH BND DIST 73	.004081	41.42	
HSB HOSP DIST	.000478	4.86	
			65.21

65.21

TOTAL .012849 130.42

YOUR CANCELLED CHECK IS YOUR RECEIPT
PLEASE ENCLOSE PROPER STUB WITH PAYMENT

MAR 2 8 1995

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP07N02E120050A
RUMSEY, DUNALD J & DALE M
*
6132

65.21 65.21 6-00

2nd
6B

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE

MAKE CHECKS PAYABLE TO

BOISE COUNTY TAX COLLECTOR
P.O.BOX 156, ID.CITY, ID 83631
PHONE: 392-4441, 793-2616,
342-0509 OR 462-3073

DATE PAID JUNE 20, 1991
CHECK #
PAID BY CASH

MEMORANDUM

TO: WATER RIGHT FILES 65-02540, 65-03103, 65-10746, 65-10747
FROM: STEVE LESTER
DATE: JUNE 28, 1990
SUBJ: PLACE OF USE CORRECTION

During my involvement with the Porter Creek water district, an apparent data base error was found. The error involves situations in which a government lot falls within two quarter-quarters (QQ) instead of one. For Porter Creek rights 65-03103 and 65-10746, the QQ correction can occur in the transfer process (transfer application in preparation for 65-03103, 65-10773, 65-10746, and 65-12751, Porter Creek rights). Also, the Payette River rights can be corrected based on the attached information. SRBA data base changes should also be made to compliment the water right data.

See attached:

Fig. 1 shows the irrigated land in Lot 4 NWSE, Lot 5 SESW + SWSE. Irrigated land is indicated with green diagonal lines. Government lots are outlined with red lines.

Fig. 2 is a Payette River Adjudication working map and lists the four rights within NWSE, SESW, and SWSE. Note that two acres in Lot 4 NESE may occur under 65-02540 (probably not, see Payette Adjud. claim 65-2540), although 2540 might be mistakenly written in NESE instead of NWSE. 65-10746 and 65-10747, Porter Creek and Payette River rights, are definitely shown in NWSE but not in NESE.

Figs. 3-5 include the original claim information in the Payette Adjudication. A microfiche copy for 65-3103 is not available except on the misc. roll not found at Western. Note that 65-10746 claims 2 acres in Lot 4 NWSE S. 23. This is also true for 65-2540 and 65-10747.

Note that Lot 5 includes SESW and SWSE. The SWSE does not have 39 acres of irrigatable land even if the area east of the county road is added. Based on a 7.5′ orthophoto and recent field checks, it appears that 8 acres in SESW and 31 acres in SWSE are irrigated in Lot 5.

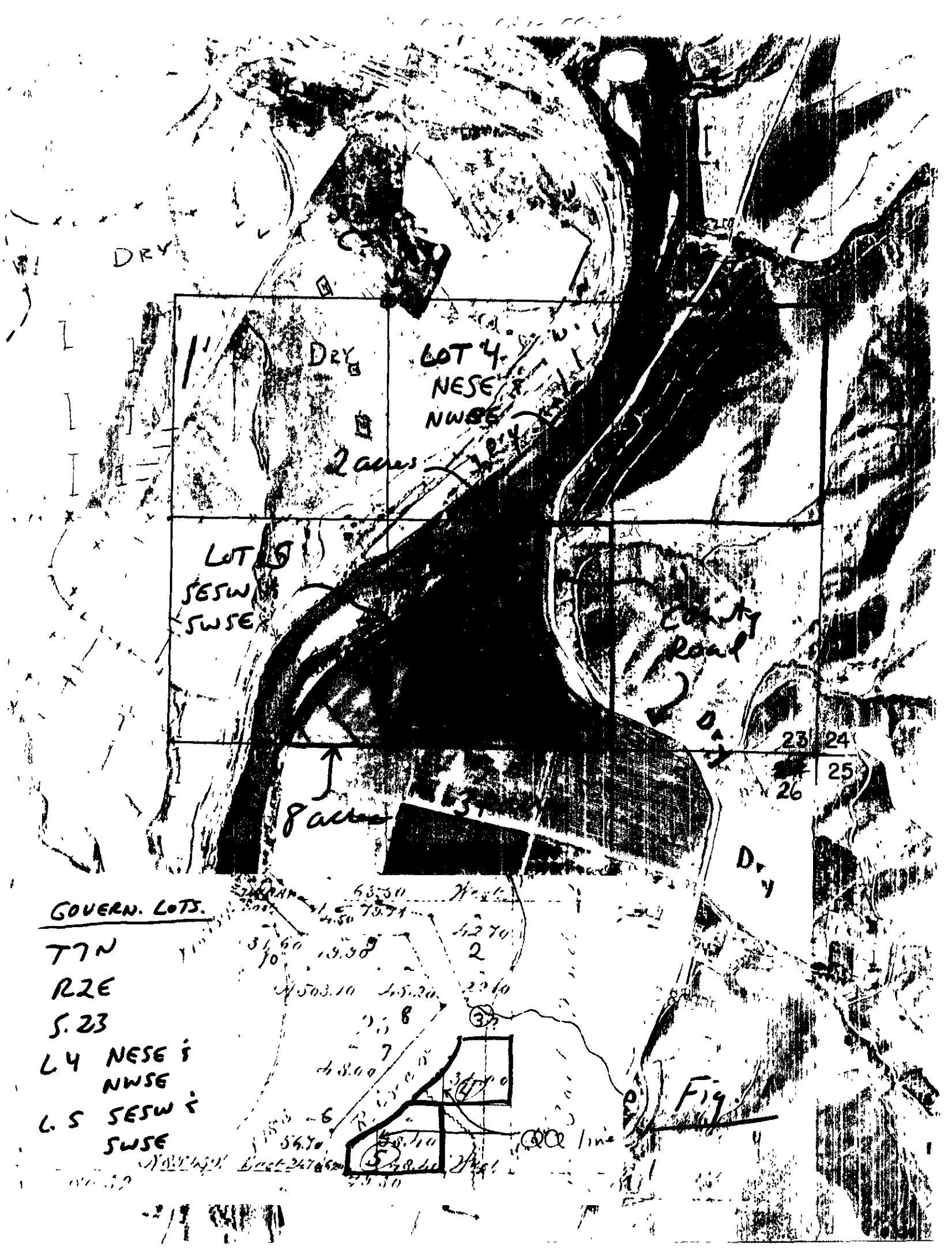
Decreed: T7N, R2E, S. 23 Lot 4 NESE 2 acres for 65-02540, 65-10746, 65-10747.
Corrected: " Lot 4 NWSE " " " ".

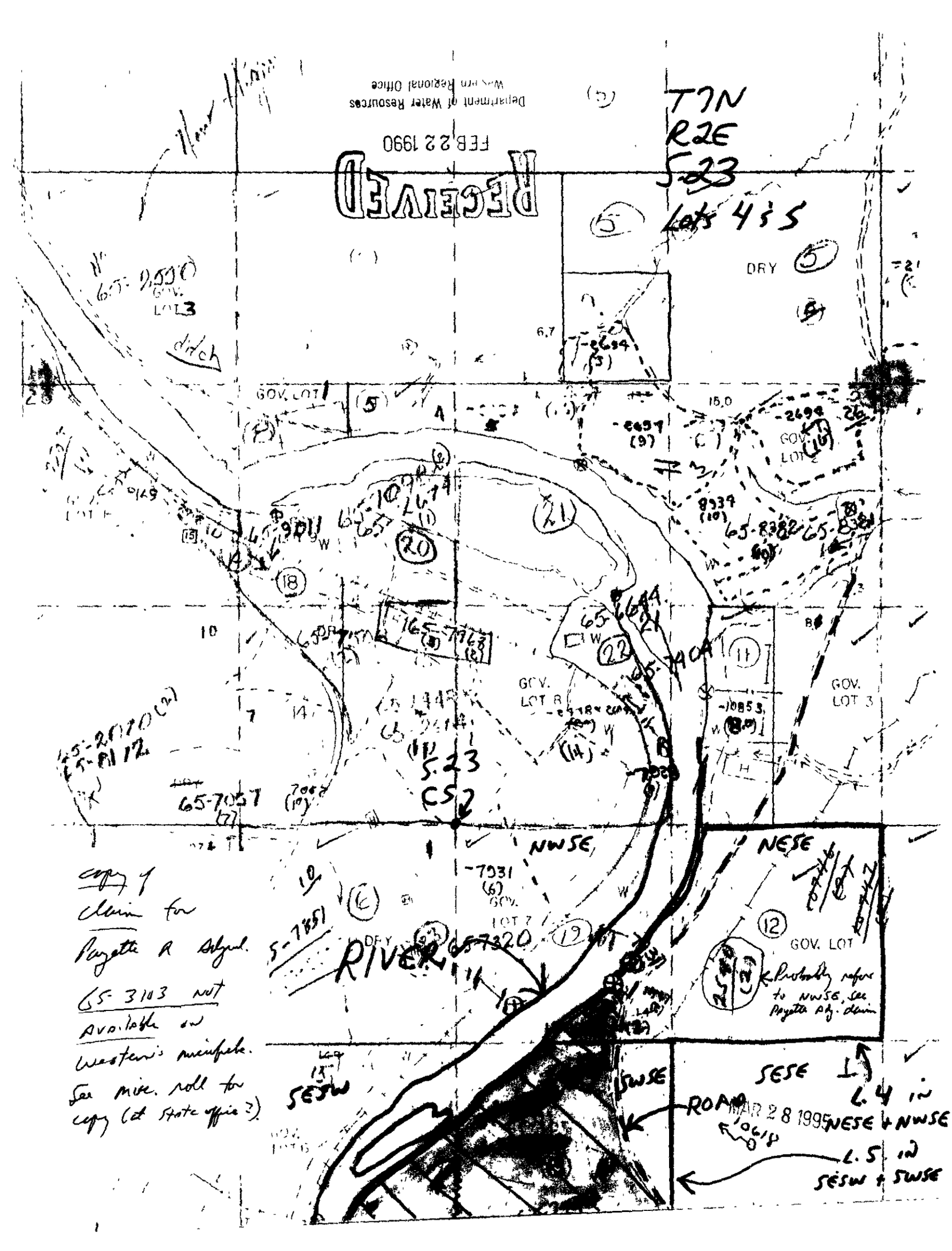
Decreed: T7N, R2E, S. 23 Lot 5 SWSE 39 acres for 65-02540, 65-03103, 65-10747.
Corrected: " Lot 5 SESW 8 " " " " and
" Lot 5 SWSE 31 " " " ".

MAR 28 1995

CC: State and Region files for Water District 65-B

Attachment A


DRY
DRY
LOT 4
NESE
NWSE
2 acres
LOT 5
SESW
SWSE
County Road
23
24
25
26
8 acres
Dry
GOVERN. LOTS.
T7N
R2E
S. 23
L4 NESE ¼
NWSE
L5 SESW ¼
SWSE
QQ line
Fig. 4



copy of claim for Poyatta A Adjud. 65-3103 NOT Available on Western's microfiche. See misc. roll for copy (at State office?)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF PAYETTE RIVER DRAINAGE BASIN.

NOTICE OF CLAIM TO A WATER RIGHT

IDENT. NO. B 65-10746 MAP NO.

Notice is hereby given that Double Diamond Inc., c/o Don Rumsey (Name of Claimant)

Horseshoe Bend, ID 83629 (Mailing Address), claims a right to the diversion and beneficial use of the surface or groundwater, of or tributary to

RECEIVED AUG 12 1977 Department of Water Resources Western Region Office

The extent and nature of said claim is as follows

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) April 1, 1960

(2) Describe the source of water (Name of stream, lake, spring, etc., or groundwater) Crooked Creek trib to Payette R

Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity .44 cfs (CFS GPD AF.) Use Irrigation (Domestic, irrigation, stock, etc.) Period of Use From Apr 1 (Mo., Day) To Nov 1 (Mo., Day) (Both Dates Inclusive)

Quantity (CFS GPD AF.) Use (Domestic, irrigation, stock, etc.) Period of Use From (Mo., Day) To (Mo., Day) (Both Dates Inclusive)

Quantity (CFS GPD AF.) Use (Domestic, irrigation, stock, etc.) Period of Use From (Mo., Day) To (Mo., Day) (Both Dates Inclusive)

.44 cfs (CFS GPD AF.) TOTAL QUANTITY CLAIMED.

A) Point of Diversion Give location of point where water is diverted from its source NW ¼ SE ¼, Sec 12, Twp 7N, Rge 2E, B M ; additional points.

B) Describe means of diversion of water (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities, be as specific as possible Porter Ditch

A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

R	SEC	NE¼				NW¼				SW¼				SE¼				TOTAL
		NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2E	23														2			2
	26	11								9 (Lot 3)					(illegible)			20

Total No. of acres 22

B) If water is used for other than irrigation, fully describe that use, being as specific as possible.

Effluent, sewage waste, or return water from this use is discharged into

If you are claiming water as a member of an organization, list name of organization.

Remarks This right is used on lands not mentioned in decreed right #65-3103. This right when combined with rights 65-2540 and 65-10747 shall provide no more than .02 cfs/ac/35 AFA/acre. 65-10799 ADD

Basis of claim (Check one) XX A) Right based on diversion and beneficial use.

☐ B) Right decreed by court, cite title of case.

☐ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Administration.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Individual

(Date) Donald Rumsey (Signature of Claimant)

(Signature of Spouse)

Organization Double Diamond Inc

(Signature of Authorized Agent)

KEYPUNCHED 12-16-77 8 1995 Seal

State of Idaho

County of Ada ss.

On this 1 day of November, in the year 1977, before me, a notary public, personally appeared Donald Rumsey known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or) executed the same.

William R Fecho

Notary Public residing at 3157 Oak Grove Ave L A

My commission expires 2/1/1980

OFFICIAL SEAL WILLIAM R. FECHO NOTARY PUBLIC - CALIFORNIA LOS ANGELES COUNTY My commission expires FEB 25, 1980

DRT 11-18-77

Fig. 3-5

IN THE DI[illegible]T C[illegible]IRT OF THE [illegible] JUDICI[illegible] DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF [illegible]

IN THE MATTER OF THE GENER[illegible]L DETER- NOTICE OF CLAIM IDENT. NO. [illegible] MAP NO. [illegible]-2-0,E
MINATION OF RIGHTS TO THE USE O[illegible] TO A
PAYETTE RIVER DRAINAGE BASIN. WATER RIGHT

Notice is hereby given that Double Diamond Inc., c/o Don Rumsey (Name of Claimant)
Horseshoe Bend, ID 83629 (Mailing Address) claims a right to the diversion
and beneficial use of the surface or groundwater, of or tributary to Snake River
The extent and nature of said claim is as follows:

(1) Date of priority (When was the water first applied to a beneficial use, or date that permit was issued) April 1, 1960

(2) Describe the [illegible]e of water (Name of stream, lake, spring, etc., or groundwater) [illegible]River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed

881.3 AFA 382

Quantity .9 cfs (CFS GPD AF) Use irrigation (Domestic, irrigation, stock, etc) Period of Use From Apr 1 (Mo, Day) To Oct 31 (Mo, Day) (Both Dates Inclusive)

Quantity _____ (CFS, GPD AF) Use _____ (Domestic, irrigation, stock, etc) Period of Use From _____ (Mo, Day) To _____ (Mo, Day) (Both Dates Inclusive)

Quantity _____ (CFS, GPD, AF.) Use _____ (Domestic, irrigation, stock, etc) Period of Use From _____ (Mo, Day) To _____ (Mo, Day) (Both Dates Inclusive)

(4) .9 cfs (CFS GPD AF) TOTAL QUANTITY CLAIMED.

(5) A) Point of Diversion Give location of point where water is diverted from its source Lot 4 ¼ ¼, Sec. 23, Twp 7, Rge 25, B M, and if possible other points: [illegible]

B) Describe means of diversion of water (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc) Give sizes and capacities, be as specific as possible pump, SPRINKLE SYSTEM

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box If use is not for irrigation, place an "X" in appropriate box to show location

T	R	SLC	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
[illegible]	25	23													[illegible]	39	9	1	42
															[illegible]		(Lt 5)		
			13	40	3	3	23			22	3						14		162
						(Lt 7)				(Lt 2	(Lt 3)								

Total No. of acres 205

B) If water is used for other than irrigation, fully describe that use, being as specific as possible

(7) Effluent, sewage waste, or return water from this use is discharged into

(8) If you are claiming water as a member of an organization, list name of organization

(9) Remarks NOTE: NEW, LARGER PUMP INSTALLED AT THIS TIME
(This right when combined with rights 65-3103 and 65-11146 and 65-2540 shall provide no more than .02 cfs/ac and 3.5 AFA/acre)

(10) Basis of claim (Check one)
☐ A) Right based on diversion and beneficial use
☐ B) Right decreed by court, cite title of case
☐ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Administration

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Individual

Nov. 9 1977 (Date) Received 11/21/77 (Signature of Claimant)

KEYPUNCHED 5/11/78 OSH (Signature of Spouse)

Organization MAR 28 1990

Seal (Signature of Authorized Agent)

State of [illegible]

County of [illegible] ss

On this [illegible] day of [illegible], in the year [illegible], before me, a notary public, personally appeared [illegible], known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or [illegible]) executed the same.

OFFICIAL SEAL
WILLIAM R FECHO
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
Comm. Expires FEB 25, 1980

Notary Public residing at [illegible]

My commission expires 5/24/78

DRI 11-18-77

IN THE D[illegible] COURT OF THE [illegible] JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF [illegible]

IN THE MATTER OF THE GENERAL DETER[illegible] — NOTICE OF CLAIM — IDENT. NO. [illegible] — CLAIM NO. [illegible]

MINATION OF RIGHTS TO THE USE OF [illegible] — TO A — [illegible]

WATER IN THE [illegible] DRAINAGE BASIN — WATER RIGHT

RECEIVED
AUG 22 1977
Department of Water Resources
Western Regional Office

I, [illegible], hereby give the Double Diamond Inc. c/o Don Rumsey (Name of Claimant)

[illegible] Horseshoe Bend, ID 83629 (Mailing Address) claims a right to the diversion and beneficial use of the surface or groundwater, of or tributary to [illegible]

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) April 26, 1951

(2) Describe the source of water: (Name of stream, lake, spring, etc., or groundwater) [illegible]

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

718 AF

Quantity 3.2 cfs (CFS, GPD, AF.) Use irrigation (Domestic, irrigation, stock, etc.) Period of Use From Apr 1 (Mo., Day) To Nov 1 (Mo., Day) (Both Dates Inclusive)

Quantity _____ (CFS, GPD, AF.) Use _____ (Domestic, irrigation, stock, etc.) Period of Use From _____ (Mo., Day) To _____ (Mo., Day) (Both Dates Inclusive)

Quantity _____ (CFS, GPD, AF.) Use _____ (Domestic, irrigation, stock, etc.) Period of Use From _____ (Mo., Day) To _____ (Mo., Day) (Both Dates Inclusive)

(4) 3.2 cfs (CFS, GPD, AF.) TOTAL QUANTITY CLAIMED.

(5) A) Point of Diversion: Give location of point where water is diverted from its source ~~NW~~ Lot 4 ¼ ~~SE~~ ¼, Sec. 23, Twp. 7N, Rge. 2E, B.M.; additional points: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities, be as specific as possible. pump and sprinkler system

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	I	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7N	2E	23												~~S~~		8 (Lt 4)	39 (Lt 3)	1 (Lt 5)	42
		26	13 (Lt 1)	40	39	3	23			22 (Lt 2)	9 (Lt 3)					14			163

Total No. of acres 205

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: _____

(7) Effluent, sewage waste, or return water from this use is discharged into _____

(8) If you are claiming water as a member of an organization, list name of organization. _____

(9) Remarks: This right when combined with rights 65-10746, 65-10747 and 65-X03 shall provide no more than .02 cfs/acre nor 3.5 AFA/acre.

(10) Basis of claim (Check one)
☐ A) Right based on diversion and beneficial use.
☐ B) Right decreed by court, cite title of case. _____
☒ C) Right based on application, permit, license, or claim filed with the Idaho Department of Water Administration. License

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Aug 9 1977 (Date)

Individual Donald Rumsey (Signature of Claimant)

KEYPUNCHED 8/24/77

Organization Double Diamond Inc.

Donald Rumsey (Signature of Authorized Agent)

State of California

County of Los Angeles

Organization Seal 1995

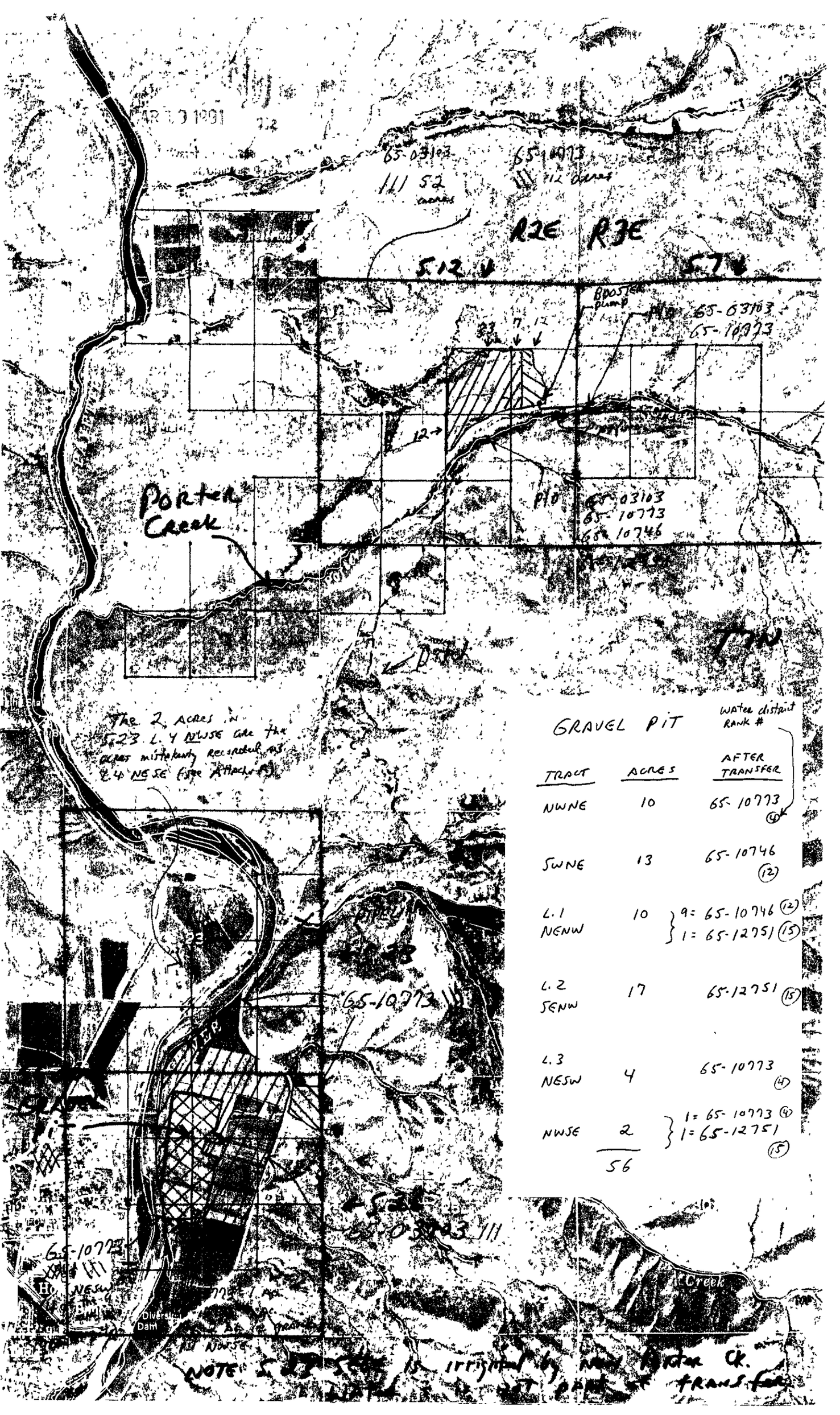
On this 9th day of August, in the year 1977, before me, a notary public, personally appeared Donald Rumsey, known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they) executed the same.

OFFICIAL SEAL
WILLIAM R. FECHO
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires FEB 29, 1980

My commission expires 2/29/1980

Notary Public residing at 7757 Parkview Ave. Los Angeles, Ca 90045

DRT 11/18/77



GRAVEL PIT

TRACT	ACRES	Water district RANK # AFTER TRANSFER
NWNE	10	65-10773 (4)
SWNE	13	65-10746 (12)
L.1 NENW	10	9= 65-10746 (12) 1= 65-12751 (15)
L.2 SENW	17	65-12751 (15)
L.3 NESW	4	65-10773 (4)
NWSE	2	1= 65-10773 (4) 1= 65-12751 (15)
	56	

MAR 1 9 1991

We the undersigned, Arlie L. Woods and Pauline Woods agree to the water right transfer on Porter Cr. by Double Diamond Partnership.

Arlie L. Woods

Pauline Woods

STATE OF IDAHO)
) ss
County of Ada)

On this 4 day of March 1991, before me, the undersigned a Notary Public in and for said State, personally appeared Arlie L Woods & Pauline Woods, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledgeto me that they executedthe same.

IN WITNESSWHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for ~~Idaho~~
Residing at: Rexburg
My commission Expires
June 1991

8 1995

ATTACHMENT C

DOUBLE DIAMOND R, ,H
HORSESHOE BEND, IDAHO
200 SUNRISE RIM ROAD • BOISE, IDAHO 83705
(208) 336-4401
RANCH
BEND

Department of Water Resources
Western Regional Office

March 11, 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Western Region
2735 Airport Way
Boise ID 83705-5082

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

Dear David:

After our last meeting it was very apparent to me that separating the various water rights would be a problem. At that time, we were talking about three (3) rights at the main ranch; No. 1, No. 4, and No. 12. It could be done, but due to all the problems in our district it would require alot of the Watermaster's time.

At that time we didn't know how much land we could recover. Now we have the numbers. It appears the the pond will be 22 acres. That is a loss from 191 acre rights.

We would like to transfer the 22 acres of No. 1 right to the three parcels that now have No. 12 right, then there would only be No. 1 right on the main ranch. No. 12 right, which is a flood right with all others users satified prior to our right, we would like to put in the 22 acre pond for the next two years to see if it will hold water. If it does, then we will try to make a fish pond out of it.

Sorry for the delay in answering your letter, but I thought Jack Riddlemoser had taken care of it.

Best Regards,

DOUBLE DIAMOND RANCH

Donald J Rumsey

Donald J Rumsey
Partner

Steve Here is the reclamation plan that we rec'd. Does this match the info that you have received from A. Madarietta? Did you create a map that reflects this?

Dave

Still need more info but solicited same in 3/18/92 letter to Don Rumsey, see file 65-03103 etc, Protest drawer. -SL

The Idaho World

P O Box 220
Idaho City, ID 83631
208 392-4989

P O Box 99
Garden Valley, ID 83622
208 462-3487

State of Idaho >
>
County of Boise >

Wayne Hart, being duly sworn, deposes and says: that he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and the State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for Two (2) consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy eight weeks past previous to the first publication of this notice. Such notice was published with the issue beginning with April 15, 1992 and ending with the issue of April 22, 1992. May 28 1995

Wayne Hart

State of Idaho >
>
County of Ada >

On this 1st day of May in the year 1992, before me, a notary public, personally appeared WAYNE HART known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me ~~that~~ he executed the same.

Jan E Hart
Notary Public for Idaho

Boise ID
Residing at

My commission expires 9/10/96

MAY - 5 1992

Idaho Department of Water Resources
Southwestern Regional Office

28 1995

NOTICE OF AMENDMENT OF PR ED CHANGE OF WATER RIGHT
NOS. 65-03103, 65-10773, 65-10746, 65-12751

Notice is hereby given that Double Diamond Inc., C/O Donald Rumsey of Boise, Idaho applied to the Department of Water Resources for a change in the above Porter Creek rights on 3/19/1991 The proposed change was published in the "Idaho World" on 4/3 and 4/10/1991 The applicant now amends the proposal as follows:

No diversion points or priority dates will be changed Rights 65-10773 and 65-12751 will be eliminated from the proposal. Payette River rights 65-02540 and 65-10747 will be added. Priority dates for these rights are 4/26/1951 and 4/1/1960, respectively The river rights are diverted from Lot 4 (NWSE), S 23, T7N, R2E and use 4.10 cfs to irrigate 205 acres from 4/1-11/1 in S 23 & 26, T7N, R2E

The following uses are now proposed during the irrigation season

Right	AMOUNT	Use	Place of Use
65-03103 4, acres	3.82 cfs	Irrigation	SESW, W1/2 SE1/4, S.23; NE1/4, E1/2 NW1/ NESW, NWSE S 26, T7N, R2E, Total 193 (switch 22 acres with 65-10746)
65-10746	44 cfs	Diversion to Storage & Recreation	W1/2 NE1/4, E1/2 NW1/4, S 26, T7N, R2E, Recreation pond
	77 af	Recreation Storage	
65-02540	2 85 cfs	Irrigation	183 acres in place of use in 65-03103 listed above, plus 1 acre in SESE, S.23
	.35 cfs	Diversion to Storage & Recreation	Recreation pond shown in 65-10746 above
	77 af	Recreation Storage	
65-10747	.80 cfs	Irrigation	183 acres in place of use in 65-03103 and 65-02540 above
	10 cfs	Diversion to Storage & Recreation	Recreation pond shown in 65-10746 & 65-02540 above
	42.6 af	Recreation Storage	

Total irrigated acres after the proposed change is 194

Any protest against the approval of the proposed amendment must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 4, 1992.

R. Keith Higginson
Director

Published in The Idaho World April 15, 22, 1992.

The Idaho World

P O Box 220, Idaho City, ID 83631
208 392-4989

State of Idaho >
>
County of Boise >

Wayne Hart, being duly sworn, deposes and says: that he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and the State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for two (2) consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy eight weeks past previous to the first publication of this notice. Such notice was published with the issue beginning with April 3, 1991 and ending with the issue of April 10, 1991.

Wayne Hart

State of Idaho >
>
County of Ada >

On this 10th day of May in the year 1991, before me, a notary public, personally appeared WAYNE HART known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Dan E Hart
Notary Public for Idaho

Boise ID
Residing at
My commission expires 9/10/96

MAR 28 1995

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 65-03103, 65-10773, 65-10746, 65-12751

Notice is hereby given that Double Diamond Inc., C/O Donald Rumsey of Boise, Idaho has applied to the Department ofWater Resources for a change of point of diversion and place of use of the water of Porter Creek, tributary to the Payette River. The rights sought to be changed are evidenced by Decree and License and are recorded as follows.

Right	AMT(cfs)	Priority	Point of Diversion	Used For	Place of Use	Total Acres
65-03103	3.82	1-01-1872	NWSE S.12 T7N R2E	Irrigation	SWSE S. 23 NE1/4, NWSE, E1/2NW1/4 S.26 T7N R2E	193
65-10773	0.92	6-01-1900	SWNW S.7 T7N R 3E	Irrigation Stockwate	SWNE, NWSE S.12 T7N R2E	45
65-10746	0.44	4-01-1960	NWSE S.12 T7N R2E	Irrigation	NESE S23 NENE, NESW S26 T7N R2E	22
65-12751	0.31	10-22-1985	SWNW S.7 T7N R3E	Irrigation	SENE S12 T7N R2E	19
					TOTAL ACRES	279

——CHANGED AS FOLLOWS—

Right	AMT(cfs)	Priority	Point of Diversion	Used For	Place of Use	Total Acres
65-03103	3.82	1-01-1872	NWSE S.12 T7N R2E, SWNW S7 T7N R 3E	Irrigation	S1/2NE1/4, NWSE S.12 SESW, SWSE, S.23 NE1/4, E1/2NW1/4, NWSE S.26 T7N R2E	193
65-10773	.92	6-01-1900	NWSE S.12 T7N R2E, SWNW S.7 T7N R3E	Irrigation Stockwater	SENE S.12 NWSW S.23 N1/2NE1/4, NESW, NWSE S.26 T7N R2E	45
65-10746	44	4-01-1960	NWSE S.12 T7N R2E	Irrigation	SWNE, NENW S.26 T7N R2E	22
65-12751	31	10-22-1985	NWSE S 12 T7N R2E	Irrigation	E1/2NW1/4, NWSE S.26 T7N R2E	19
					TOTAL ACRES	279

E Minor Change
Non-fatal.
Dnr 10 Jun 91

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before April 22, 1991.

R. Keith Higginson
Director

Published in the Idaho World on 4/3 and 4/10/1991

HOMESTAKE MINING HYDROELECTRIC COMPANY
120 South 600 West, Suite 220
Salt Lake City, Utah 84101
Telephone (801) 359-0090
Facsimile (801) 359-0097

MAR 2 8 1995

RECEIVED

APR 23 1992

Department of Water Resources
Western Regional Office

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 65-03103, 65-10773, 65-10746, 65-12751
Porter creek, Porter creek, Porter creek, Porter cr

RECOMMENDATION OF WATERMASTER

I, HENRY A. BERNTSEN, watermaster of Porter creek, of Water District No. 65B, County of Boise, State of Idaho, whose address is 1553 SUNSET DR EMMETT, ID. 83617-9584 have read the attached copy of the application for transfer of water right for Double Diamond, Inc. (name), and to the best of my knowledge believe the application to be true.

1991 #1 65 03103 2.79 CFS #15 65 12751 .131 CFS
#4 65 10773 .90 CFS
#12 65 10746 .44 CFS
TOTAL 4.44 CFS.

A. I hereby endorse the above numbered Application for Transfer and recommend that the Director of the Department of Water Resources approve the transfer subject to the following conditions: _____

OR

B. I do not endorse approval of the above numbered Application for Transfer as requested for the following reasons: PORTER CREEK WATER FOR ALL RIGHTS 1991 D.D. WAS ONLY 4.44 CFS. POND WATER SHOULD ONLY COME FROM PAYETTE RIVER RIGHTS. DISTRIBUTION PIPE LINE FOR PAYETTE RIVER RIGHTS IN PLACE.

Dated at EMMETT, Idaho, this 23 day of APRIL 19 92.

HENRY A. BERNTSEN

Henry A Berntsen
(signature)

5/12/92
meet watermaster in field & give him copy of amended transfer appl. + Curtis comment form. He will review this & send in new form - sounds like he will support the transfer idea.

MAR 21 RECEIVED

8 1995

WATERMASTER RECOMMENDATION

EISMANN LAW OFFICES

Telephone (208) 467-3100
Facsimile (208) 466-4498

3016 CALDWELL BLVD
NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

April 17, 1992

DAVID R. TUTHILL, JR., P.E.
MANAGER, WESTERN REGIONAL OFFICE
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

Re: Application for Transfer: Water Right Nos. 65-3103, 65-10746, 65-12751 by Double Diamond, Inc.
Protestant: George Dovel

Dear Mr. Tuthill:

In response to your letter of April 13, 1992, please be advised that on April 28, 1992, I am unavailable for a telephone conference as I will be in court for a divorce trial which at this point will go to trial as there have been no settlement negotiations thus far.

I would appreciate it if you would reschedule the telephone conference. My calendar changed daily so it is difficult for me to provide available dates. I might suggest that your office telephone Mr. Riddlemoser's office and then my secretary, Viki, to reschedule the telephone conference. As of today's date, I am available the morning of April 30, 1992, for a telephone conference, and that is my only available date for such conference until after May 15, 1992, unless we were to schedule the conference for early some morning at 8:00 or 8:30 o'clock a.m.

Thank you for your consideration.

If you should have questions, please contact me.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

Delay response pending end of protest period.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 13, 1992

HENRY BERNTSON
1553 SUNSET DR
EMMETT ID 83617

Re: Application for Transfer of Water Right No. 65-03103, 65-10773, 65-10746 and 65-12751 in the Name of Double Diamond, Inc.

Dear Watermaster:

Enclosed is an application(s) for transfer of a water right(s) within your water district. Also enclosed is a form for your recommendation concerning this application for permit.

Please review the application and return your recommendation within two weeks. If you have questions or need information, feel free to contact this office.

Sincerely,

David R. Tuthill

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

DRT:st

Enclosure: Copy of Application
Recommendation of Watermaster Form

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 13, 1992

Richard B. Eismann, Esq.
Eismann Law Offices
3016 Caldwell Blvd.
Nampa. ID 83651-6416

RE: Application for Transfer of Water Rights Nos. 65-03103, et al, in the Name of Double Diamond, Inc.

Dear Mr. Eismann:

The reclamation plan which was to be submitted by Double Diamond, Inc. in the above-referenced matter was submitted to this office in the form of an amended application for transfer. Enclosed is a copy of the amended application.

This office considers the protest of the original application to apply to this amended application. Please review the amended application, with attachments, and advise this office if there is any change in the status of the protest.

I will plan to conduct a conference call with yourself and Mr. Riddlemoser at 10:00 am on Tuesday, April 28 to ascertain the status and future actions with respect to the application. If this date and time are not acceptable, please provide some acceptable alternatives.

Sincerely,

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

cf w/encl: Jack C. Riddlemoser, Esq.
George Dovel

INTER-DEPARTMENT MEMO — 1

FROM Steve

DATE 4/2/92

TO Cindy, then Sue

SUBJECT TRANSFER – DOUBLE DIAMOND

Please expedite for advertising. Use attached "notice of.." instead of traditional ad. Don't need to show price and is new ad.

~~FOR SUE~~ Comment letter to watermaster.
Copy of amended appl. to protestant along with letter for Dave's signature. He can advise on what letter should say & can mail of appl to copy.

SIGNATURE

AMENDED TRANSFER PUBLICATION

NOTICE OF AMENDMENT OF PROPOSED CHANGE OF WATER RIGHT
NOS. 65-03103, 65-10773, 65-10746, 65-12751

Notice is hereby given that Double Diamond Inc., C/O Donald Rumsey of Boise, Idaho applied to the Department of Water Resources for a change in the above Porter Creek rights on 3/19/1991. The proposed change was published in the "Idaho World" on 4/3 and 4/10/1991. The applicant now amends the proposal as follows:

No diversion points or priority dates will be changed. Rights 65-10773 and 65-12751 will be eliminated from the proposal. Payette River rights 65-02540 and 65-10747 will be added. Priority dates for these rights are 4/26/1951 and 4/1/1960, respectively. The river rights are diverted from Lot 4 (NWSE), S.23, T7N, R2E and use 4.10 cfs to irrigate 205 acres from 4/1-11/1 in S.23 & 26, T7N, R2E.

The following uses are now proposed during the irrigation season:

Right	AMOUNT	Use	Place of Use
65-03103	3.82 cfs	Irrigation	SESW, W1/2 SE1/4, S.23; NE1/4, E1/2 NW1/4, NESW, NWSE S.26, T7N, R2E, Total 193 acres (switch 22 acres with 65-10746)
65-10746	.44 cfs	Diversion to Storage & Recreation	W1/2 NE1/4, E1/2 NW1/4, S.26, T7N, R2E, Recreation pond
	77 af	Recreation Storage	
65-02540	2.85 cfs	Irrigation	183 acres in place of use in 65-03103 listed above, plus 1 acre in SESE, S.23
	.35 cfs	Diversion to Storage & Recreation	Recreation pond shown in 65-10746 above
	77 af	Recreation Storage	
65-10747	.80 cfs	Irrigation	183 acres in place of use in 65-03103 and 65-02540 above
	.10 cfs	Diversion to Storage & Recreation	Recreation pond shown in 65-10746 & 65-02540 above
	42.6 af	Recreation Storage	

Total irrigated acres after the proposed change is 194.

Any protest against the approval of the proposed amendment must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 4, 1992.

R. Keith Higginson
Director

Published in the Idaho World on 4/15 and 4/22/1992

Form 222a
6/78

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

65-03103
10746
10747
2540

INITIAL REVIEW BY: GJ

1. Right number _____ Applicant Double Diamond

2. Type of right: ☒ Decree ☐ License ☐ Claim

3. Purpose of transfer: ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use ☒ Other Change N/U

4 Check:

a ☐ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use

b ☒ Description of original point of diversion

c. ☒ Description of original place of use.

5 Amount of land &/or water transferred

a ☒ All of right

b ☐ Part of right *(NOTE! Part B should be filled in only if part of the right is owned by the applicant)*

c. ☒ Check description of point(s) of diversion

d ☐ Check description of place of use

e ☒ Check map (shows p d and p u after transfer)

f ☒ Check for correct signature, notarization, and fee

g ☒ Check proof of ownership of right &/or land from which water is transferred

h ☒ Check for expansion in use of right Comments No expansion unless winter storage is attempted. Per SL, applicant advised of ap for permit requirement for winter storage.

i ☒ Check for existing water rights from same source on land water is being transferred to Right number(s) all included in transfer

j ☒ Is use within a Watermaster District? ☒ Yes ☐ No

If yes, what district? 65B Comment letter sent ☐ Yes ☐ No

FINAL PROCESSING REVIEW BY: _____

1 Watermaster recommendation requested on _____ Received on _____

2 Is transfer published correctly? ☐ Yes ☐ No

3 Protest received? ☐ Yes ☐ No

RECOMMENDED ACTION

1 ☐ Approve

2 ☐ Deny

3 Conditions* _____

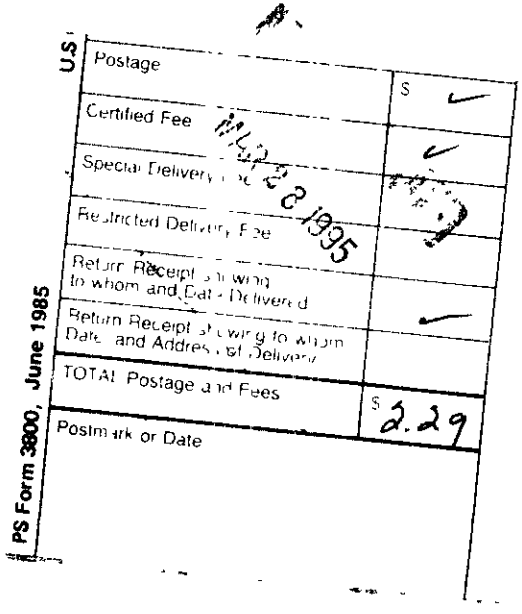
4 By _____ Date _____

* *All uses within Watermaster Districts require special conditions*

P-503 149 857

RECEIPT FOR CERTIFIED MAIL
INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

Marilyn Cunningham
P.O. Box 59
Ola, ID 83657



STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

2 If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article

3 If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits Otherwise, affix to back of article Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number

4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

P-581 149 764

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
FOR INTERNATIONAL MAIL

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

U.S.	Postage	$ .29
	Certified Fee	1—
	Special Delivery Fee	
	Restricted Delivery Fee	
	Return Receipt Showing to Whom and Date Delivered	1—
	Return Receipt Showing to Whom Date and Address of Delivery	
	TOTAL Postage and Fees	$ 2.29
PS Form 3800, June 1985	Postmark or Date	

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

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4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6 Save this receipt and present it if you make inquiry.

P-581 149 858

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

Brad Little
Little Land & Livestock
Box 205
Emmett, ID 83617

Postage	$ ✓
Certified Fee	✓
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	✓
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 2 29
Postmark or Date	

PS Form 3800, June 1985

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

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4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make inquiry

P-581 149 765

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

CO.

Postage	$ .29
Certified Fee	1.-
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing whom and Date Delivered	1.-
Return Receipt Showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	$ 2.29
Postmark or Date	

PS Form 3800, June 1985

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front)

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

65-3103

SENDER Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side Failure to do this will prevent this card from being returned to you The return receipt fee will provide you the name of the person delivered to and the date of delivery For additional fees the following services are available Consult postmaster for fees and check box(es) for additional service(s) requested

1 ☐ Show to whom delivered, date, and addressee's address *(Extra charge)* 2 ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

4 Article Number

P 581 149 855

Type of Service

☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5 Signature — Addressee

X

6 Signature — Agent

X Debra S. Knapp

7 Date of Delivery

7-25-91

8 Addressee's Address *(ONLY if requested and fee paid)*

MAR 2 8 1995

PS Form **3811**, Apr 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below

- **Complete items 1, 2, 3, and 4 on the reverse**
- **Attach to front of article if space permits, otherwise affix to back of article**
- **Endorse article "Return Receipt Requested" adjacent to number**





PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

MAR 2 8 1995

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-3103

SENDER: Complete items 1 and 2 when additional services are desired and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side Failure to do this will prevent this card from being returned to you The return receipt fee will provide you the name of the person delivered to and the date of delivery For additional fees the following services are available Consult postmaster for fees and check box(es) for additional service(s) requested

1 ☐ Show to whom delivered, date, and addressee's address *(Extra charge)* 2 ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

4 Article Number
P 581 149 856

Type of Service
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5 Signature — Addressee
X George Dovel

6. Signature — Agent
X

7 Date of Delivery
7-25-91

8 Addressee's Address *(ONLY if requested and fee paid)*

8 1995

PS Form **3811**, Apr 1989 ★U S G P O 1989-238-815 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below

- Complete items 1, 2, 3, and 4 on the reverse
- Attach to front of article if space permits, otherwise affix to back of article
- Endorse article "Return Receipt Requested" adjacent to number

JUL 26 1991

Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

MAR 28 1995

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

65-3103

SENDER Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side Failure to do this will prevent this card from being returned to you The return receipt fee will provide you the name of the person delivered to and the date of delivery For additional fees the following services are available Consult postmaster for fees and check box(es) for additional service(s) requested

1 ☐ Show to whom delivered, date, and addressee's address *(Extra charge)* 2 ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

4 Article Number
P 584 149 764

Type of Service
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

8 Addressee's Address *(ONLY if requested and fee paid)*

5 Signature — Addressee
X

6 Signature — Agent
X Charles O'Knapp

7 Date of Delivery
8-12-91

AUG 13 1991
AUG 8 1995
Department of Water Resources
Western Regional Office

PS Form **3811**, Apr 1989 ★U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

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- Endorse article "Return Receipt Requested" adjacent to number



PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

1995

65-3103

SENDER Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1 ☐ Show to whom delivered, date, and addressee's address *(Extra charge)*

2 ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

4 Article Number

P 581 149 765

Type of Service

- ☐ Registered
- ☑ Certified
- ☐ Express Mail
- ☐ Insured
- ☐ COD
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5 Signature — Addressee

X George Dovel

6 Signature — Agent

X

7 Date of Delivery

8-12-91

8 Addressee's Address *(ONLY if requested and fee paid)*

MAR 28 1995

PS Form **3811**, Apr 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

AUG 15 199

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below

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- Attach to front of article if space permits, otherwise affix to back of article
- Endorse article "Return Receipt Requested" adjacent to number

AUG 12 PM

U.S. MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

MAR 2 8 1995

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

Form 222a
6/78

Watermaster Comment Letter

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: CJH

65-03103(D)
65-10773(D)
65-10746(D)
65-12751(L)

1. Right number see margin Applicant Double Diamond Inc.
2. Type of right: ☒ Decree ☒ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
   ☐ Other _____
4. Check:
   a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
   b. ☒ Description of original point of diversion.
   c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
   a. ☒ All of right.
   b. ☐ Part of right *(NOTE! Part B should be filled in only if part of the right is owned by the applicant).*
   c. ☒ Check description of point(s) of diversion.
   d. ☒ Check description of place of use.
   e. ☒ Check map (shows p.d. and p u. after transfer).
   f. ☒ Check for correct signature, notarization, and fee.
   g. ☒ Check proof of ownership of right &/or land from which water is transferred.
   h. ☒ Check for expansion in use of right. Comments 65-02540 & 65-10747 are Payette River Rts for gravel pit lands. These lands are un-irrigable at this point so H_2O is not being used = no expansion.
   i. ☒ Check for existing water rights from same source, on land water is being transferred to.
      Right number(s) ~~[illegible]~~ 65-02540 & 65-10747
   j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
      If yes, what district? 65 B Comment letter sent ☐ Yes ☐ No ← N/A IDWR still WM now

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☐ Yes ☐ No
3. Protest received? ☐ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* _____
4. By _____ Date _____

* *All uses within Watermaster Districts require special conditions.*

CONVERSATION MEMORANDUM

DATE 3/31/92

FILE 65.05103 etc

NAME OF PARTY Donald Ramsey

EMPLOYEE Steve Leiter

RE: OFFICE VISIT - RESPONSE TO MY 3/18/92 LETTER

Mr. Ramsey visited the office today & provided info to amend transfer application. The following points were made:

1) A 148.7 A-F pond for Recreation use would be created by switching Jr. & Sr. Porter Ck. water & appurtenant rights from use.
2) The pond season will be same as irrigation season.
3) The amended transfer serves as the reclamation or mgt. plan
4) $20 amendment fee was paid.

I will prepare the amended appl. for his signature. He plans to stop by on Fri 4/3/92 to sign it.

MAR 2 8 1995

DOUBLE DIAMOND RANCH
HORSESHOE BEND, IDAHO
200 SUNRISE RIM ROAD • BOISE IDAHO 83705
208) 336-4801

RECEIVED
MAR 31 1992
Department of Water Resources
Western Regional Office

March 31, 1992

HAND-DELIVERED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Western Region
2735 Airport Way
Boise, ID 83705-5082

ATTN: Steve Lester

Dear Steve,

In further answer to your letter dated March 18, 1992, I have measured the area that water can be retained in the pond. Due to the decrease in depth, caused by the fall in the grade from north to south, the pond will be fifteen feet (15) deep at the north end and two feet (2) deep at the south end. However, there will be a considerable volume of water. It will hold 48,439,475 gallons, 6,475,447 cubic feet or 148.65 acre feet.

After our conversation last week, when I told you we would not pur our Payette River water in the pond, I have decided that we should. This would help maintain the water level in the pond during the time we take water from the Payette, this would be after Porter Creek dries up.

All of this water would be used for non-irrigating purposes. It would create a large wetland area.

Steve, I don't see recovering any more of the pond area, unless we decide to grow rice and I don't think this is possible.

Best Regards,

DOUBLE DIAMOND RANCH

Donald J. Rumsey
General Partner

MAR 28 1995

CONVERSATION MEMORANDUM

DATE 3/23/92

FILE Transfer 65-03163 etc

NAME OF PARTY Don Kramsey

EMPLOYEE Steve Keith

RE: TRANSFER - RESPONSE TO 3/18/92 LETTER FROM IDWR

(1) will have pond in 22 pit-site. Will send details about dimensions.

(2) will use #12 pipeline to H2o to fill pond.

(3) Not thinking about using Payette R. water for pond at this time.

(4) Yes, is a switch of 22 ccwr worth of #1 & #12 creek water.

(5) Will send all above + info about reclamation ASAP for very soon

MAR 2 8 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 18, 1992

Mr. Donald Rumsey
Double Diamond Inc.
200 Sunrise Rim
Boise, ID. 83705

Re: Application for Transfer of Porter Creek Water

Dear Mr. Rumsey:

As we discussed after the Porter Creek Water District meeting on 3/9/92, your transfer application to change Porter Creek water rights requires additional information before an amended transfer application can be completed and advertised. I revised the application as much as possible based on the information provided to this office by Mr. Madarieta.

In order to proceed, please furnish additional information as follows.

1. The reclamation plan describing how land has been or will be reclaimed was due by 3/6/1992. This office has not received a written explanation of reclamation efforts. The plan should include a map and details showing the process to return land to an irrigatable status.

2. If 22 acres will remain in a non-irrigated state, explain what water use, if any, will occur on the 22 acres. A pond or ponds were mentioned as possible uses at the site. If so, pond(s) dimensions and other details should be included. When and how would water be diverted to a pond(s)? Would Porter Creek and/or Payette River water be used for non-irrigation purposes?

3. Apparently, the revised transfer intends to place the #12 Porter Creek water on the non-irrigated acres and move 22 acres of #1 creek water to the place of use defined in #12. Is this correct?

4. A $20 fee is needed to amend the transfer.

Please respond by 4/1/92. Without an adequate and timely response, this office must void the transfer application.

If you need additional information, please call me at 334-2190.

Sincerely,

Steve Lester

Steve Lester
Sr. Water Resource Agent

MAR 2 8 1995

CONVERSATION MEMORANDUM

DATE 2-26-92

FILE 65 03103 etc

NAME OF PARTY Angie Mastrangelo for DOL Grazing

EMPLOYEE Steve Lester

RE: RECLAMATION INFO REQUESTED BY 3/6/92:

Apparently, not all of the land can be reclaimed. Approx. 22 acres of gravel pit will or does Remain. The applicant proposes to modify the transfer application.

Would like to transfer 22 acres from 65-10746 (#12) to p.t. more 22 acres from 65-03103 (#1) to lands currently id. as #12.

Not sure of use of 22 acres remaining in p.t. Possible fish ponds? aesthetic? recreation? What about role of Poplar & water associated with any of those lands?

3/2/92 Angie M. visited office with ASCS plat showing location of 22 acre p.t. Told him D'd propose an amended application

3/3/92 Still need info to complete amended appl.
① Reclamation plan
② use of Haz - Pony - in p.t.

MAR 18 1995 Will discuss with Dave Rumsey on 3/9 at water dist. meeting.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 10, 1992

JACK C RIDDLEMOSER ESQ
712 EAST FAIRVIEW
PO BOX 373
MERIDIAN ID 83642

RE: Application for Transfer of Water Rights Nos. 65-3103, et al, in the name of Double Diamond, Inc.

Dear Mr. Riddlemoser:

Pursuant to your request dated February 6, 1992, this office is hereby delaying the deadline for the reclamation plan in this matter to March 6, 1992. The deadline for response by Mr. Eismann is hereby extended to March 30, 1992, unless we receive an objection to this date from either party in the matter.

Sincerely,

David R. Tuthill

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

DRT:st

CC: Richard Eismann

MAR 2 8 1995

FEB 0 6 1992
Department of Water Resources
Western Regional Office

JACK C. RIDDLEMOSER
Attorney at Law
712 East Fairview
P.O. Box 373
Meridian, Idaho 83642

888-1491

February 6, 1992

David R. Tuthill, Jr. P.E.
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE: Application for Transfer of Water Rights Nos. 65-03103, et al, in the name of Double Diamond, Inc.

Dear Sir:

In the proposed schedule set up for this matter, Double Diamond, Inc., as applicant, was to have its reclamation plan prepared and distributed by January 7, 1992. This was not able to be accomplished by reason of a change in the plan with the State of Idaho. The back-filling of the gravel pit has been completed and the areas involved can now be measured.

Mr. Rumsey advised that they are now in a position to get this plan prepared for this purpose and he is able to start on this right away. He will expedite this as quickly as possible but they are hereby requesting an extension of thirty days or until March 6, 1992 in which to have the plan prepared and distributed. The remainder of the schedule would have to be revised accordingly in view of this extension.

Very truly yours,

JACK C. RIDDLEMOSER
Attorney at Law

JCR/ch

cc Client

cc Richard Eismann

MAR 2 8 1995

OCT 29 1991
Department of Water Resources
Western Regional Office

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES
3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

RICHARD B EISMANN
DEBRA L EISMANN

October 28, 1991

DAVID R. TUTHILL, JR., P.E.
MANAGER, WESTERN REGIONAL OFFICE
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

Re: Application for Transfer: Water Right Nos. 65-3103, 65-10746, 65-12751 by Double Diamond, Inc.
Protestant: George Dovel

Dear Mr. Tuthill:

In response to your letter of October 24, 1991, please be advised that I presently have two first degree murder trials scheduled to begin on January 27, 1992, and to continue through February 21, 1992, or longer if necessary, with pretrial motions and trial preparation in those two cases beginning on January 9, 1992.

Because the two cases mentioned above involve the defense first degree murder charges which could result in death penalties, I simply cannot divert my attention from them barring an extreme emergency.

I would respectfully request that the protestant's response time now set by you for February 18, 1992, be changed to the date of March 2, 1992, and the telephone conference call with all parties moved to March 16, 1992.

If you should have questions or would like to discuss the matter, please contact me.

Thank you for your consideration.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

NOV 28 1995

November 7, 1991

Katy, of Double Diamond, called this morning to record a change in their attorney. Their new attorney is:

Jack Riddlemoser
PO Box 373
Meridian ID 83642

1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

October 24, 1991

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Jack C. Riddlemoser
Attorney at Law
712 E. Fairview
P.O. Box 373
Meridian, ID 83642

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

RE: Application for Transfer of Water Rights Nos. 65-03103, et al, in the Name of Double Diamond, Inc.

Gentlemen:

This office has received a request from Mr. Riddlemoser dated October 18, 1991, to extend the due date for the reclamation plan in the above-referenced matter by 60 days beyond the original date of November 7, 1991. The proposal was copied by Mr. Riddlemoser to Mr. Eismann, who submitted a letter dated October 22, 1991. His letter included no objection to the proposal but instead requested that the Department review this matter and advise the parties of a new proposed schedule.

Accordingly, this office proposes the following revised schedule in this matter:

Reclamation plan is prepared by applicant and distributed to the Department and the protestant: January 7, 1992

Responses are prepared by the protestant and submitted to the applicant and the Department: February 18, 1992

Department conducts a conference call with attorneys for the applicant and the protestant, to determine need for and date of a hearing: March 3, 1992

If either party objects to this proposed schedule, please advise this office no later than November 7, 1991. If no objection is received, the proposed schedule will become the active schedule without further notice.

Sincerely,

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

MAR 28 1995

RECEIVED
OCT 23 1991
Department of Water Resources
Western Regional Office

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES
3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

October 22, 1991

DAVID R. TUTHILL, JR., DIRECTOR
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

Re: Application for Transfer: Water Right No. 65-3103.
65-10746, 65-12751
Applicant: Diamond, Inc.
Protestant: George Dovel

Dear Mr. Tuthill:

I have received a copy of the letter dated October 18, 1991, sent to you by Attorney Jack C. Riddlemoser regarding the above application for transfer and the extension of time given to Double Diamond to file a reclamation plan on the gravel pit area.

I would suggest that you now review this matter in view of that delay and send letters to Mr. Riddlemoser and myself with the schedule you now propose with which each party is to comply and with what each party is to do by that proposed schedule.

If you should have questions, please contact me.

Thank you.

Very truly yours,

Richard B. Eismann
RBE/vn/8
CLT: George Dovel
Jack C. Riddlemoser

28 1995

JACK C. RIDDLEMOSER
Attorney at Law
712 East Fairview
P.O. Box 373
Meridian, Idaho 83642

888-1491

RECEIVED
OCT 21 1991
Department of Water Resources
Western Regional Office

October 18, 1991

David R. Tuthill, Jr., P.E.
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, ID 83705

RE: APPLICATION FOR TRANSFER OF WATER RIGHT NO. 65-3103, 65-10773, 65-10746, and 65-12751 in the name of Double Diamond, Inc.

Dear Sir:

At the preliminary hearing held on the above transfers on September 19, 1991, Double Diamond was given until November 7, 1991, to file a reclamation plan on the gravel pit area. Since that time there has been a change in the proposed reclamation plan which has to be approved by the State Land Board. By reason of this fact, it is not going to be possible to have the reclamation plan available by November 7 and Mr. Rumsey is requesting a 60 day extension to get this matter completed.

The proposal under discussion at this time is to back fill to grade the south part of the pit to the extent of the material available, and to leave the balance as a gravel pit.

If this can be approved and accomplished, Double Diamond will be amending its application for the transfer of these water rights, but the exact amendment cannot be known until acreage is known of the filled area.

By reason of these facts and circumstances, the request for the 60 day extension is justified. We will look forward to hearing from you on this matter.

Very truly yours,

JACK C. RIDDLEMOSER
Attorney at Law
JCR/nr
cc Client
Richard Eismann, Attorney at Law

RECEIVED
MAR 28 1995

Conference Notes
Application for Transfer of Water Rt Nos. 65-03103 et al
by Conf officer : D. Tuthill
3/19/1991 10:00 am

Applicant -
Proposes that rights be changed as shown in app.

Protestant
Any measurement of ditch loss in the 2.5 mile ditch?
Not aware of any
In sections 23 & 26, 90% wheel line
7 wheel lines + Undetermined no of hand lines
pressure is normally 50-60 lb near the booster pump - there was a pressure gauge for some time.

Concerns of protestant:
1. An increase to 191 inches will injure the rights of junior water rights
2. Wants to look at gravel pit agreement
3. Plan as to how junior rights only would be used on senior lands only.

RECEIVED
MAR 28 1995

Additional Info Req'd of Applicant

1. Agreement between State & Applicant re: gravel pit
2. Plan for delivery

Plan due: 7 November

Response: Objection 16 December
from Protestant

Order by Dept setting hearing date Mid Feb
(use conf call w/ Eismann & Riddlemoser)

DRR

MAR 2 8 1995

Re: Double Diamond Inc. Transfer #65-3103, 65-10773, 65-10746, 65-12751

Place: ID Dept. of Water Resources, 1301 N. Orchard, Boise, ID

Date: September 19, 1991

Hearing conducted by: David R. Tuthill, Jr.

ROSTER OF ATTENDANCE

Name	Address	Representing
George Dovel	Rt 1, Box 61 Horseshoe Bend, ID 83629	Dovel/Wallace Ranch
Dale Russey	Horseshoe Bend Id. 83629	Double Dia. Ranch
Dean Bess	Horseshoe Bend Id. 83629	Double Diamond Ranch
Cles Cockrum	RT 1 Box 54 Horseshoe Bend	Double Diamond
Harold Rumpler	HORSESHOE BEND	DOUBLE DIAMOND
Jack Riddlemoser	Meridian	Double Diamond
Richard B. Eisman	Nampa	George Dovel

RECEIVED

MAR 28 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
)
TRANSFER OF WATER RIGHTS NOS.)
)
65-3103, 10773, 10746 AND 12751 IN)
)
THE NAME OF DOUBLE DIAMOND, INC.)

CHANGE OF
CONFERENCE DATE

Pursuant to a request by the applicant, the date of the conference in the above-referenced matter is hereby changed from Wednesday, August 21, 1991, to Thursday, September 19, 1991. The time and place of the conference remain the same, as 10:00 a.m., in the Upstairs Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706.

David R. Tuthill Jr.

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

I hereby certify that on the 9th day of August, 1991, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor

Sue Taylor
Secretary

Certified Mail

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

George Dovel
Route 1 Box 61
Horseshoe Bend, ID 83629

MAR 28 1995

Non-Certified

Jack C. Riddlemoser, Esq.
712 E. Fairview
P.O. Box 373
Meridian, ID 83642

JACK C. RIDDLEMOSER
Attorney at Law
712 East Fairview
P.O. Box 373
Meridian, Idaho 83642

888-1491

RECEIVED
AUG 05 1991
Department of Water Resources
Western Regional Office

August 2, 1991

David R. Tuthill, Jr., P.E.
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

RE: APPLICATION FOR TRANSFER OF WATER RIGHTS AFFECTING DOUBLE DIAMOND, INC.

Dear Sir:

Enclosed herewith is Motion to Reset Conference on the application of Double Diamond, Inc., to transfer certain water rights. The conference is heretofore set for August 21, 1991, and Mr. Rumsey is not available at that time.

We will look forward to receiving notice of the new date as soon as possible.

Very truly yours,

JACK C. RIDDLEMOSER
Attorney at Law

JCR/nr

Enc.

cc Client

MAR 28 1995

JACK C. RIDDLEMOSER
Attorney at Law
712 East Fairview Avenue
P.O. Box 373
Meridian, Idaho 83642
Telephone: (208) 888-1491

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS NOS. 65-3103, 10773, 10746, AND 12751 IN THE NAME OF DOUBLE DIAMOND, INC.	MOTION TO RESET CONFERENCE

COMES NOW, DOUBLE DIAMOND, INC., by and through its attorney, Jack C. Riddlemoser, and moves for a resetting of the conference on the above entitled matter heretofore set for August 21, 1991. This motion is made for the reason that Donald Rumsey, President of Double Diamond, Inc., is not available on August 21, 1991, and will not be available until after September 10, 1991.

This motion makes the request that the conference on the above entitled matter be reset for a date after September 16, 1991.

DATED this 2nd day of August, 1991.

JACK C. RIDDLEMOSER
Attorney for Double Diamond, Inc.

AUG 28 1995

I hereby certify that on the 2nd day of August, 1991, I mailed a true and correct copy, postage prepaid, of this document to:

GEORGE DOVEL
Rout 1, Box 61
Horseshoe Bend, ID 83629

JACK C. RIDDLEMOSER

28 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
) NOTICE OF CONFERENCE
TRANSFER OF WATER RIGHTS NOS.)
)
65-3103, 10773, 10746 AND 12751 IN)
)
THE NAME OF DOUBLE DIAMOND, INC.)

On March 19, 1991, Double Diamond, Inc. filed with the Department of Water Resources an application to transfer the point of diversion and place of use of water rights nos. 63-3103, 63-10773, 63-10746 and 63-12751. The application was protested by George Dovel.

The Department has set the matter of protest for a conference on Wednesday, August 21, 1991, at 10:00 a.m., in the Upstairs Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 23rd day of July, 1991.

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.

MAR 28 1995

I hereby certify that on the 24th day of July, 1991, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Secretary

Certified Mail

Double Diamond Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

MAR 28 1995

CONFERENCE INFORMATION
IN THE MATTER OF APPROVAL OF AN PROPOSED TRANSFER

In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the application and protest:

1. Will the proposed transfer, if approved, injure other water rights?

2. Will the proposed transfer, if approved, constitute an enlargement in use of the original right?

3. Is the proposed transfer in the local public interest as defined in Section 42-203A, Idaho Code?

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

Failure to appear at the time and place set for hearing by the applicant(s) or protestant(s) may allow the Department to dismiss without prejudice the protests or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

D 2 8 1995

X-fer

Application No. 65-3103
65-10773
65-10746
65-12751

SPECIAL NOTE: _____

PROTEST INFORMATION SHEET

Protestant - Name(s)

George Dovel

Address Rt. 1 Box 61, Horseshoe Bend, ID

Attorney - Name & Address _____

Date Filed 3-19-91 Protest Date 4-22-91

Issues _____

Applicant - Attorney - Name & Address _____

Dates: _____

Acknowledgement letters: 4-22-91

Hearing Notice: _____

Hearing Date: _____

Other: _____

MAR 28 1995

Protest Information submitted in Computer (following hearing): _____

Route 1, Box 61
Horseshoe Bend, ID 83629
April 18, 1991

RECEIVED
APR 18 1991
Department of Water Resources
Western Region

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

Re: Application for transfer of water rights 65-03104, 65-10773, 65-10746 and 65-12751

HAND DELIVERED

Dear Sir:

I herewith protest approval of the four above referenced applications for transfer of Double Diamond, Inc. Porter Creek water rights for the following reasons:

1. Other Porter Creek water rights will be injured by the transfer.

2. The proposed changes constitute an enlargement in the use of all of the rights.

3. The proposed change will conflict with the local public interest.

4. Portions of all four of the abovelisted rights have not been used and should, therefore, be declared forfeited.

I herewith respectfully request that a hearing be scheduled by the department to afford me the opportunity to present testimony by myself and other witnesses, as well as evidence supporting the validity of my reasons for this protest.

Thank you.

Sincerely,

George Dovel

George Dovel

CLT - Richard Eismann

MAR 28 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 19, 1991

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

Re: Application for Transfer of Water Right No. 65-3103, 65-10773, 65-10746 & 65-12751 in the name of Double Diamond, Inc.

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute 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?

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

Sincerely,

David R. Tuthill, Jr.

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

DRT:st

cc: State Office

MAR 28 1991

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 19, 1989

Double Diamond, Inc.
c/o Donald Rumsey
200 Sunrise Rim
Boise, ID 83705

Re: Application for Transfer of Water Rights Nos. 65-3103, 65-10773, 65-10746 & 65-12751

Dear Mr. Rumsey:

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

1. Are other water rights injured by the transfer?
2. Does 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 applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. 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,

David R. Tuthill Jr.

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

DRT:st

MAR 28 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

February 21, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

Double Diamond, Inc.
C/O Mr. Donald Rumsey
200 Sunrise Rim
Boise, ID. 83705

MAR 19 1991
Dept of Water Resources
Western Regional Office

Re: Application for Transfer of Porter Creek Right Nos. 65-03103, 65-10773, 65-10746, 65-12751 (District Right Nos. 1, 4, 12, 15)

Dear Mr. Rumsey:

Enclosed is a transfer application to provide senior Porter Creek rights for 64 acres north of the creek and a mixture of senior and junior rights for 215 acres on the irrigated land south of the creek and across the river from Horseshoe Bend. For the estimated 56 acres in the gravel pit, 41 acres are proposed under junior rights and the remainder will be covered by a senior right, right no. 65-10773 or #4 in the water district terminology. The transfer application represents the maximum use of senior rights from your upstream diversion in Section 7 and minimizes the use of senior rights within the gravel pit area in Section 26.

I prepared the application based on information provided to me by Mr. A. Madarieta during his visit on your behalf on 6/27/90. Because right 65-12751 was licensed on 2/15/91, the transfer application can now be filed. Please review the document and answer items 6b on page 2 and A2 on pages 3, 5, 7, and 9 (show proof of ownership of all land involved). A notarized signature and your title are needed on page 12. The application fee is $50.

One complication related to the transfer application already exists. The #1 diversion headgate in Section 12 has not been replaced with a suitable headgate as discussed in my letter to you dated 8/27/90. My site visit yesterday confirmed that the headgate has not been repaired or replaced. The **Watermaster will not deliver any water to the diversion in Section 12 until this requirement is met.** This could jeopardize the transfer application.

I sent a copy of this letter to Mr. C. Cockrum due to the headgate matter. Please let me know if additional help is needed.

Sincerely,

Steve Lester
Sr. Water Resource Agent

Enclosure: Transfer Application
CC: Mr. C. Cockrum
Water District 65-B Files

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

No. 65-03103 65-10773
65-10746 65-12751

Notice is hereby given that Double Diamond Inc, c/o Donald Rumsey of Boise, ID has applied to the Department of Water Resources for a change of point of diversion & place of use of the water of Porter Creek, tributary to the Payette River.

The right~~s~~ sought to be changed ~~is~~ are evidenced by ~~Payette River Decree nos. 65-03103, 65-10773, 65-10746, & license 65-12751~~ and ~~is~~ are recorded as follows:

Amount: _____ Priority: _____

Point(s) of Diversion: _____

The water is used for _____ purposes _____

_____

_____

See attached table.

TO BE CHANGED AS FOLLOWS

Amount: _____

Point(s) of Diversion: _____

The water will be used for _____ purposes _____

_____

_____

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Statehouse, Boise, ID 83720 on or before _____.

R. Keith Higginson
Director

Published in the _____

on _____ and _____

MAR 28 1995

DOUBLE DIAMOND TRANSFER SUPPLEMENTAL TABLE

AS RECORDED

RIGHT NO.	AMT(cfs)	PRIORITY	POINT OF DIVERSION	USED FOR	PLACE OF USE	TOTAL ACRES
65-03103	3.82	1-1-1872	NWSE Sec 12 7N 2E	IRRIG	SWSE Sec23 NE1/4,NWSE, E1/2NW1/4 Sec 26 7N 2E	193
65-10773	0.92	6-1-1900	SWNW Sec 7 7N 3E	IRRIG STOCKWATER	SWNE,NWSE Sec 12 7N 2E	45
65-10746	0.44	4-1-1960	NWSE Sec 12 7N 2E	IRRIG	NESE Sec23 NENE,NESW Sec 26 7N 2E	22
65-12751	0.31	10-22-1985	SWNW Sec 7 7N 3E	IRRIG	SENE Sec12 7N 2E	19
						279 acres total

CHANGED AS FOLLOWS

RIGHT NO.	AMT(cfs)	PRIORITY	POINT OF DIVERSION	USED FOR	PLACE OF USE	TOTAL ACRES
65-03103	3.82	1-1-1872	NWSE Sec 12 7N 2E SWNW Sec 7 7N 3E	IRRIG	S1/2NE1/4, NWSE Sec12 SESW, SWSE Sec 23 NE1/4, E1/2NW1/4, NWSE Sec26 7N 2E	193
65-10773	.92	6-1-1900	NWSE Sec 12 7N 2E SWNW Sec 7 7N 3E	IRRIG STOCKWATER	SENE Sec12 NWSE Sec23 N1/2NE1/4, NESW, NWSE Sec 26 7N 2E	45
65-10746	.44	4-1-1960	NWSE Sec 12 7N 2E	IRRIG	SWNE, NENW Sec 26, 7N 2E	22
65-12751	.31	10-22-1985	NWSE Sec 12 7N 2E	IRRIG	E1/2NW1/4, NWSE Sec26 7N 2E	19
						279 acres total

RECEIVED
8 1995

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 65-03103, 65-10773, 65-10746, 65-12751

Notice is hereby given that Double Diamond Inc., C/O Donald Rumsey of Boise, Idaho has applied to the Department of Water Resources for a change of point of diversion and place of use of the water of Porter Creek, tributary to the Payette River. The rights sought to be changed are evidenced by Decree and License and are recorded as follows:

Right	AMT(cfs)	Priority	Point of Diversion	Used For	Place of Use	Total Acres
65-03103	3.82	1-01-1872	NWSE S.12 T7N R2E	Irrigation	SWSE S.23 NE1/4, NWSE, E1/2NW1/4 S.26 T7N R2E	193
65-10773	0.92	6-01-1900	SWNW S.7 T7N R 3E	Irrigation Stockwater	SWNE, NWSE S.12 T7N R2E	45
65-10746	0.44	4-01-1960	NWSE S.12 T7N R2E	Irrigation	NESE S23 NENE, NESW S26 T7N R2E	22
65-12751	0.31	10-22-1985	SWNW S.7 T7N R3E	Irrigation	SENE S12 T7N R2E	19
					TOTAL ACRES	279

---- CHANGED AS FOLLOWS ----

Right	AMT(cfs)	Priority	Point of Diversion	Used For	Place of Use	Total Acres
65-03103	3.82	1-01-1872	NWSE S.12 T7N R2E, SWNW S7 T7N R 3E	Irrigation	S1/2NE1/4, NWSE S.12 SESW, SWSE, S.23 NE1/4, E1/2NW1/4, NWSE S.26 T7N R2E	193
65-10773	.92	6-01-1900	NWSE S.12 T7N R2E, SWNW S.7 T7N R3E	Irrigation Stockwater	SENE S.12 NWSW S.23 N1/2NE1/4, NESW, NWSE S.26 T7N R2E	45
65-10746	.44	4-01-1960	NWSE S.12 T7N R2E	Irrigation	SWNE, NENW S.26 T7N R2E	22
65-12751	.31	10-22-1985	NWSE S.12 T7N R2E	Irrigation	E1/2NW1/4, NWSE S.26 T7N R2E	19
					TOTAL ACRES	279

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before April 22, 1991.

R. Keith Higginson
Director

Published in the Idaho World on 4/3 and 4/10/1991.

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MAR 8 1995