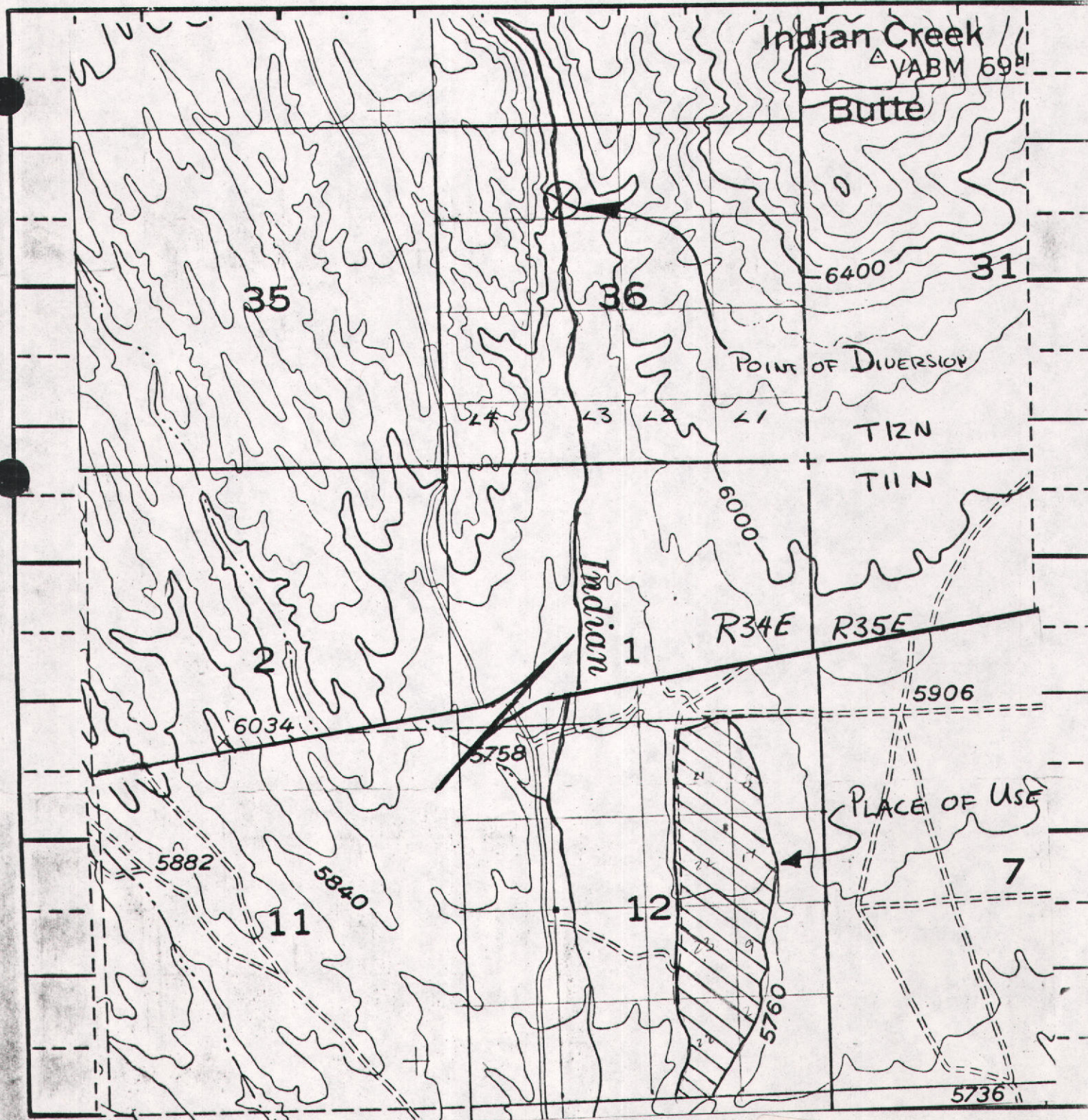


TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
11N	34E	12	8	21	22	17									9	23	22	2	124

Total number of acres to be irrigated 124

4. Describe any other water rights used for the same purpose as described above. 32-0057
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

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

To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant WAHOO or BHA, INC. Phone 356-3178

Post Office address Sugar Route 1, Sugar City, ID 83448

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____ (Name)
in case of _____ vs _____
dated in _____ in _____ county of _____
Decree 32-0014/0015/0016 (T1987) (Name of court)
b. License No. _____ issued by the Idaho Department of Water Resources
c. Claim No. _____ on file with the Idaho Department of Water Resources

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired _____

3. Source of water Indian Creek tributary to Medicine Lodge Creek
32-0014 (6/15/1883) 32-0016 (Not specified)
4. Date of priority 32-0015 (5/1/1884)

5. Water is used for the following purposes:

- 32-0014 amount 0.50 cfs for Irrigation purposes from _____ to _____
32-0015 amount 1.32 cfs for Irrigation purposes from _____ to _____
32-0016 amount 3.00 cfs for Irrigation purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 4.82 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 36
Township 12N Range 34E B.M., in Clark County
Additional points of diversion, if any _____

8. Lands irrigated or place of use Based on conclusions of law from Memorandum Decision and Order dated February 9, 1977.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
11N	34E	12	X	X	X	X									X	X	X	X	124

Total number of acres to be irrigated 124

9. Describe any other water rights used for the same purpose as described above 32-0057

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

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B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. 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	

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information

- a. Amount of water to be diverted 4.82 c.f.s. &/or _____ acre feet
- b. Description of diverting works Headgate to pipeline for gravity sprinkler system.
- c. Describe the reasons for the proposed changes To replace washed out headgates and specify acres irrigated.

2. Change in point of diversion

Point of diversion NE ¼ NW ¼, Section 36 Township 12N
Range 34E, B.M., Clark County
Additional points _____

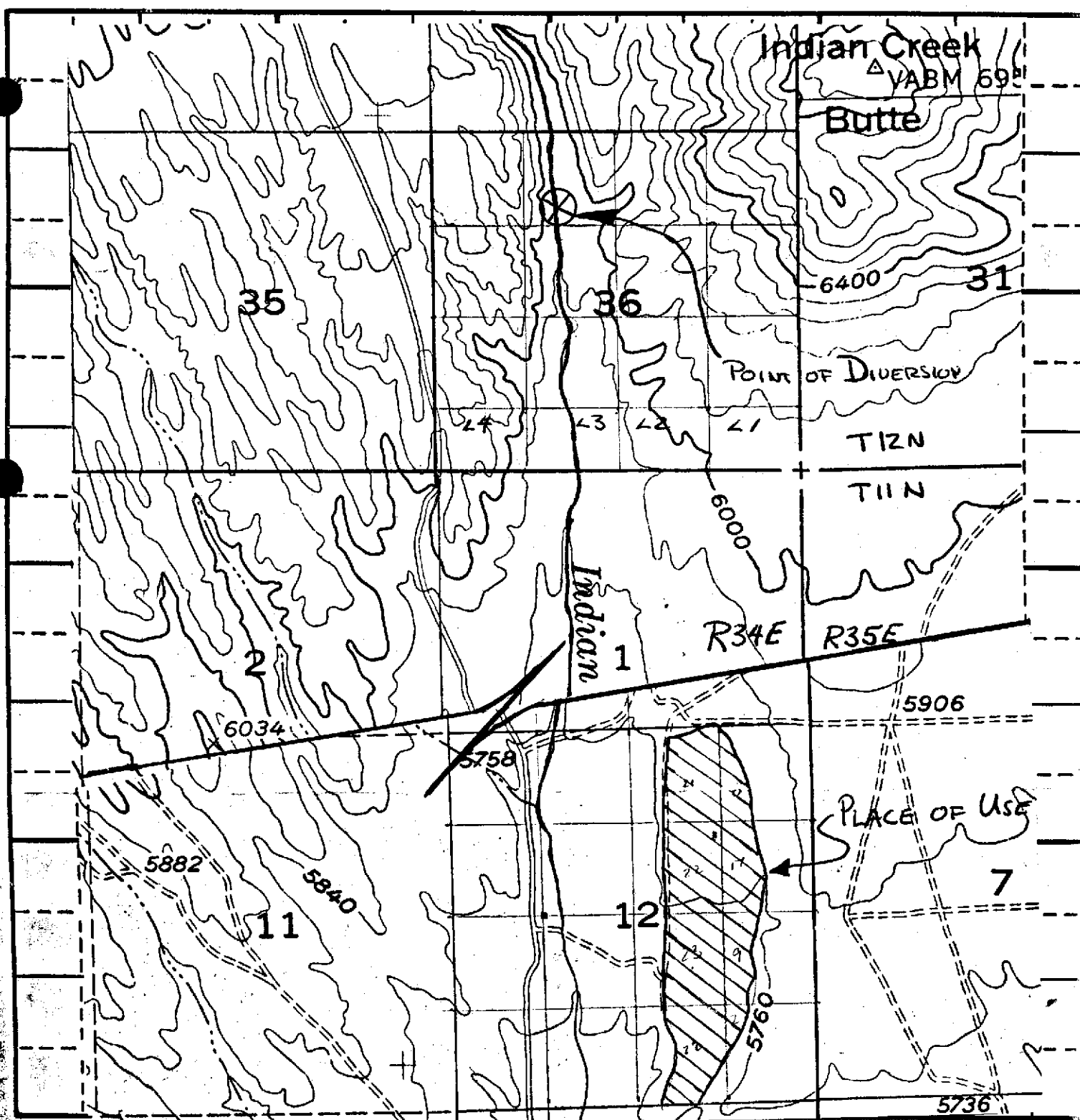
3. Change in place of use No Change

- a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
None

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
11N	34E	12	8	21	22	17									9	23	22	2	124

Total number of acres to be irrigated 124

4. Describe any other water rights used for the same purpose as described above. 32-0057
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

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D. 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 willfull misrepresentations made in this application may result in voiding its approval.

Shant W. Skraft
(Signature of Applicant)

Subscribed and sworn to before me this 16th day of May, 19 85

Marie Davis
(Notary Public)

My commission expires Jan 11, 1991

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 32-0014/0015/0016 and said application is hereby APPROVED, subject to the following limitations and conditions:

1. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 32C, Medicine Lodge Creek.
3. Approval of this transfer does not grant any right-of-way across the land of another.
4. The maximum combined volume to be diverted under the rights identified in this transfer shall not exceed 372.6 acre feet/annum.

Witness my hand this 29th day of August, 19 85

J. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by CW Date 5-22-85 Protest filed by _____
Prelim. check by _____ Fee \$50.00 # 33244 _____
Receipted by CT Date 5-29-85 _____
Published in Post Register Copies of protest forwarded by _____
Pub. dates 6-6 & 6-13-85 Hearing held by _____ Date _____
Watermaster recommendation requested on 6-4-85 Recommended for approval denial _____
WD #32-C rec'd. 7-8-85 by RDC

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See 32.0014
for correspondence
relating to transfer
#1987.

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

IN THE MATTER OF APPLICATION FOR TRANSFER
NO. 32-0014/0015/0016/2049/2071/2079 IN THE
NAME OF WHA00 AND BHA, INC.

ORDER ADOPTING PROPOSED
MEMORANDUM DECISION AND ORDER
FINAL DECISION

WHEREAS, C. Stephen Allred, Director of the Department of Water Resources, having issued and served a copy on the parties thereto on May 16, 1980 a Proposed Memorandum Decision and Order Issued on Rehearing in the above-captioned matters, pursuant to Idaho Code, Section 67-5211; and,

WHEREAS, more than fifteen (15) days have past since the service of the Proposed Memorandum Decision and Order Issued on Rehearing; and,

WHEREAS, no exceptions to that Proposed Memorandum Decision and Order have been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order.

Dated this 13 day of June, 1980.


C. STEPHEN ALLRED
Director

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

IN THE MATTER OF APPLICATION FOR
TRANSFER OF WATER RIGHT NO'S 32-
0014/0015/0016/2049/2071/2079 IN
THE NAME OF WHA00 & BHA, INC.

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 18th day of June, 1980, true and correct
copies of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER
FINAL DECISION, were mailed, postage prepaid to:

Gene Cook
Dubois, ID 83423

Ben Fayle
Dubois, ID 83423

Dean Shenton
Dubois, ID 83423

Elman T. Woodfield
Dubois, ID 83423

George Whittaker
Dubois, ID 83423

Ned Gneiting
Dubois, ID 83423

Dave Steltzer
Dubois, ID 83423

Lynn Hoggan
Dubois, ID 83423

G. Rich Andrus
RIGBY, THATCHER, & ANDRUS
25 N. 2nd E.
Rexburg, ID

Hugh Webster
Dubois, ID 83423

Holmes Brothers
Dubois, ID 83423

Bennie D. Fayle
Dubois, ID 83423

Mr. and Mrs. Hollis Shenton
Dubois, ID 83423

Leland Small
Dubois, ID 83423

Thomas Steltzer
Dubois, ID 83423

Allyn K. May
Dubois, ID 83423

Grant Ashcraft
Route 1
Sugar City, ID 83448

Jack and Pat McGary
Dubois, ID 83423


RITA I. FLECK

RECEIVED

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 32-0014/0015/)
0016/2049/2071/2079 IN THE)
NAME OF WHAOO & BHA, INC.)

ORDER ISSUING
PROPOSAL FOR DECISION
I.C. SECTION 67-5211

C. Stephen Allred, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, Section 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on February 9, 19 79, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

Each party to these proceedings who appeared at the hearing is hereby afforded the opportunity, pursuant to Idaho Code Section 67-5211, to file exceptions to the attached proposed decision and to present briefs and oral arguments in accordance with the provisions of this order. Exceptions may not be filed and briefs and oral arguments may not be presented by parties who did not appear at the hearing of this case. If no timely and proper exceptions are received, an order by the Director will be entered adopting and issuing the proposed decision as his final decision.

I.

EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision, and

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2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions.

B. Exceptions not in compliance with the above stated requirements will not be considered and will be deemed an acceptance of the proposed decision.

II.

BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. Any party desiring to file a brief in response to any exceptions filed by any other party may do so by filing such brief with the Director on or before the 15th day following the last day any exceptions by any other party were served upon that party desiring to respond.

III.

ORAL ARGUMENTS

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exceptions.

B. If oral arguments have been properly requested by a party filing exceptions, any other party shall have the right to present oral arguments in response to the exceptions filed, provided that party files a request with the Director on or before the 15th day following the day the last exceptions by any other party were served upon that party.

C. After all exceptions, briefs and requests for oral arguments have been received by the Director and if oral arguments have been properly requested, the Director will, within a reasonable time, set the case for oral arguments and notify each party of the place

date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATION OF SERVICE

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

V.

FINAL DECISION

A. Following the submission of all exceptions and briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

DATED this 16 day of May, 1990



CL STEPHEN ALLRED
Director
Department of Water Resources

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 32-0014/0015/	)	PROPOSED
0016/2049/2071/2079 IN THE NAME OF)		MEMORANDUM DECISION AND
WHAOO & BHA, INC.	)	ORDER ISSUED ON REHEARING
	)	

The application to transfer water right Licenses No. 32-2049, 32-2071, and 32-2079 first came before the Department of Water Resources on May 10, 1976, when Grant Ashcraft, President of WHAOO & BHA, INC., applied to the Department to consolidate the points of diversion for six different rights to a new point of diversion located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, Twp. 12N, Rge. 34E B.M., Clark County.

As a result of the requisite advertising in the Enterprise Citizen several protests to the granting of this application were received from water users in Water District No. 32-C. A conference and/or hearing in the matter was set for August 12, 1976. Based upon the information presented at the conference and upon the records and field inspection of the Department, the parties agreed to allow the Department to reach a decision in the matter. By its Memorandum Decision and Order issued February 9, 1977, the Department approved a change in the point of diversion of the decreed rights 32-0014, 32-0015 and 32-0016 but denied the transfer of the three licensed rights.

The applicant petitioned for rehearing of the Department's decision and requested opportunity to submit evidence. On February 8, 1979, the matter came before the Department for rehearing.

Department Jurisdiction

The applicant argues that, "the Department was without jurisdiction to refuse to grant the application for the change in point of diversion and went beyond its jurisdiction in making a

conclusion of law to the effect that a water right had been forfeited through nonuse." The applicant further asserts that, "the law is clear that the Department simply does not have jurisdiction to adjudicate the existence, the forfeiture or abandonment of water rights"

The arguments which the applicant raises must be analyzed in view of Section 42-222 of the Idaho Code which provides the legal mechanism for transferring water rights. This section requires the following of the applicant, the director, and those wishing to protest an application for transfer:

1) Any person "who shall desire to change the point of diversion or place of use . . . shall first make application to the department of water resources for approval of such change."

2) "It shall be the duty of the director of the department of water resources to examine same . . . and cause notice of proposed change to be published. . . ."

3) "Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department. . . ."

4) "It shall be the duty of the director of the department of water resources to investigate the same and conduct a hearing thereon."

5) "He (the director) shall also advise the watermaster of the district in which such water is used of the proposed change . . . and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof" (emphasis added)

6) "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 and the change does not constitute an enlargement in use of the original

rights." (emphasis added)

7) "All rights to the use of water . . . 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. . . ."

8) "Upon proper showing before the director of the department of water resources of good and sufficient reason for non-application 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 for forfeiture of title . . . for a period not to exceed five (5) additional years."

It is clear from the above referenced provisions of Section 42-222, Idaho Code, the Director has a number of specific responsibilities to fulfill before he grants any change in the point of diversion or place of use of a water right. However, the primary responsibility placed upon the Director by this section of the code is that emphasized in No. 6 above, i.e., the protection of other water rights.

The question that must be asked is, "How can a water right be injured?" To answer this, one must first remember that the watermaster is elected and called to deliver water rights according to the existing decrees and licenses; and therefore, it is apparent that when the watermaster is called, the water supply is insufficient to meet the demand.

Thus, any factor which would tend to reduce normal water supplies will tend to injure other water rights. These factors can include increased percolation, evaporation and conveyance losses. This also includes diverting more water from the source than has normally been diverted. This may result from irrigating more land with a given water right or commencing the use of a water right that has not been used for many years. This is clearly the reason that the forfeiture provisions are included in 42-222.

Thus, if the Director finds that the right described on an application for transfer has not been exercised for a time period exceeding five years, and that a resumption of the use of such right would result in injury to established water rights, he cannot approve the application for transfer. If the Director fails in his responsibility at this point, the injured parties may be left with no recourse except a costly court action to protect their rights against the resumption of a forfeited right. A recent decision of the District Court of Idaho, Harshbarger v. Idaho Department of Water Resources, Fremont Co. No. 7264 (Dist. Ct. 7th Jud. Dist, Sept. 4, 1979), has held that the prior loss or relinquishment of a water right sought to be transferred is an issue which the Director may consider in order "to avoid a multiplicity of law suits."

The Department thus continues the position that it may properly consider whether a water right sought to be transferred has been lost and forfeited by a failure for the term of five years to apply it to the beneficial use for which it was appropriated.

Applicant's other argument is that the Department lacks jurisdiction to adjudicate water rights in its administrative proceedings. The order portion of the Department's February 9, 1977 Memorandum Decision and Order in this matter does not purport to be an adjudication of the rights described therein. What the order does is approve certain rights for transfer and deny certain other rights based upon criteria set out in Section 42-222, Idaho Code. The partial denial is based upon evidence that certain of the rights to be transferred have not been used since 1955 and thus have been forfeited through nonuse pursuant to Section 42-222(2), Idaho Code. Consideration of the issue of forfeiture by the Department was proper. See, Harshbarger, supra. The decision and order denies an application to transfer the rights in question based upon evidence showing that such rights have in fact been statutorily forfeited.

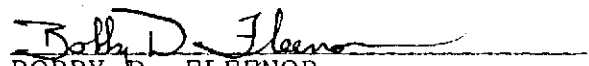
It is the determination of the Director that the evidence submitted by the applicant at the February 8, 1979 rehearing was not substantially different from the information presented at the August 12, 1976 conference.

The applicant weakly asserts that water was diverted under licensed rights 32-2049, 32-2071 and 32-2079 by its predecessor in interest, Mr. A. G. Eddie. However, the evidence is unrefuted that only 124 acres have ever been irrigated under the combination of six rights shown on the application for transfer. The three decreed rights authorized to be transferred by the Department represents a total diversion rate of 4.82 cubic feet per second. Utilized on 124 acres, this represents a diversion rate of 0.038 cfs per acre or nearly twice the normal rate of 0.02 cfs per acre. It has not been shown that an even greater diversion rate is needed to irrigate these lands.

Further, no new evidence or testimony was produced at the rehearing to show that the lands listed under the three licensed rights have been irrigated since 1955, or that water has been diverted at the licensed points of diversion. The findings of fact and the conclusions of law made in the original order are incorporated in this decision as though fully set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED that the Memorandum Decision and Order of the Director entered herein on February 9, 1977 is hereby reaffirmed in all respects.

DATED this 6 day of May, 1980.


BOBBY D. FLEENOR
Hearing Officer

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER OF WATER RIGHT NO'S. 32-
0014/0015/0016/2049/2071/2079 IN
THE NAME OF WHA00 & BHA, INC.

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 16th day of May, 1980, true and correct
copies of the foregoing ORDER ISSUING PROPOSAL FOR DECISION and PROPOSED MEMORANDUM
DECISION AND ORDER, were mailed, postage prepaid to:

Gene Cook
Dubois, ID 83423

Hugh Webster
Dubois, ID 83423

Ben Fayle
Dubois, ID 83423

Holmes Brothers
Dubois, ID 83423

Dean Shenton
Dubois, ID 83423

Bennie D. Fayle
Dubois, ID 83423

Elman T. Woodfield
Dubois, ID 83423

Mr. and Mrs. Hollis Shenton
Dubois, ID 83423

George Whittaker
Dubois, ID 83423

Leland Small
Dubois, ID 83423

Ned Gneiting
Dubois, ID 83423

Thomas Steltzer
Dubois, ID 83423

Dave Stelzer
Dubois, ID 83423

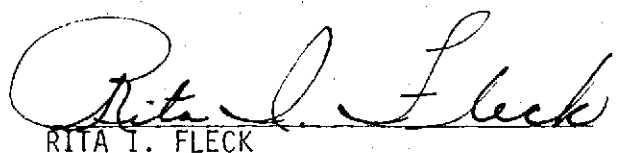
Allyn K. May
Dubois, ID 83423

Lynn Hoggan
Dubois, ID 83423

Grant Ashcraft
Route 1
Sugar City, ID 83448

G. Rich Andrus
RIGBY, THATCHER & ANDRUS
25 N. 2nd E.
Rexburg, ID

Jack and Pat McGary
Dubois, ID 83423


RITA I. FLECK

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO's. 32-0014/
32-0015/32-0016/32-2049/32-2071/32-2079
IN THE NAME OF WHA00 & BHA, INC.

ORDER GRANTING A
REHEARING

WHEREAS, on May 10, 1976, WHA00 & BHA, Inc. applied to the Department of Water Resources for a change in the point of diversion of water rights nos. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079; and,

WHEREAS, a conference was held on August 12, 1976, in Dubois, Idaho, at which the protestants and the applicant agreed to allow the Director of the Department of Water Resources to reach a decision based upon the information obtained during the conference; and,

WHEREAS, on February 9, 1977, the Director issued his Memorandum Decision and Order; and,

WHEREAS, on February 16, 1977, we received a letter from Mr. G. Rich Andrus, attorney for WHA00 & BHA, Inc., requesting copies of the files involved so that a petition for rehearing could be filed; and,

WHEREAS, on February 28, 1977, the copies were forwarded to him; and,

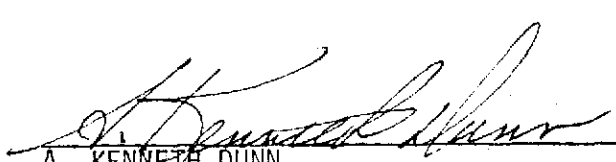
WHEREAS, on March 7, 1977, the petition for rehearing was received from WHA00 & BHA, Inc.; and,

WHEREAS, the petition, under the circumstances, was timely filed; and,

WHEREAS, the petition set forth the sufficient grounds for rehearing;

IT IS, THEREFORE, HEREBY ORDERED that the petition for rehearing is granted.

Dated this 25 day of March, 1977.


A. KENNETH DUNN

Administrator, Operations Division

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

IN THE MATTER OF APPLICATION FOR TRANSFER NO.
32-0014/~~32-0015~~/32-0016/32-2049/32-2071/32-2079
IN THE NAME OF WHA00 & BHA, INC.

MEMORANDUM DECISION
AND ORDER

On May 10, 1976, Whaoo & BHA, Inc. applied to the Department of Water Resources to change the point of diversion of three rights (Nos. 32-0014/32-0015/32-0016) decreed to A. G. Edie in the case of Thomas A. Robson, et al -vs- James Colson, et al, as modified by the stipulated agreement dated September 15, 1953, and three licensed rights (Nos. 32-2049/32-2071/32-2079). The water rights more specifically described as:

No.	Amount	Priority	Point of Diversion
32-0014	0.50 cfs	6/15/1883	none listed in decree
32-0015	1.32 cfs	5/01/1884	none listed in decree
32-0016	3.00 cfs	none listed	none listed in decree
32-2049	3.50 cfs	1/10/1914	SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1, 11N, 34E
			SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, 12N, 34E
32-2071	6.60 cfs	7/26/1917	NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, 11N, 34E
32-2079	2.00 cfs	10/04/1930	SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, 12N, 34E

The applicant proposes to change the location of the point of diversion so that 16.92 cubic feet of water per second is diverted from Indian Creek at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, Twp. 12N, Rge. 34E, B.M.

Notice of this proposed change in the point of diversion was published in the Enterprise-Citizen at Rexburg, Idaho, on May 20 and May 27, 1976, and subsequently was protested by fifteen waterusers of Water District 32C.

A conference was held to hear the objections to the granting of the proposed change was held in Dubois, Idaho, on August 12, 1976. The applicant was present and represented by Grant Ashcraft, President of WHA00 & BHA, Inc., and G. Rich Andrus, Attorney-at-Law of the firm Rigby, Thatcher & Andrus. The protestants were present and represented themselves. The primary issues raised concerned the current status of the licensed rights the applicant is seeking to transfer and a claimed expansion of the area of irrigation under the decreed rights. Testimony on behalf of the applicant and protestants was presented.

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After having reviewed all the evidence presented at the conference and the pertinent information in the Department's official files and based upon the Director's understanding of the law, the Director of the Department of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1) The applicant is the owner of decreed rights 32-0014, 32-0015, and 32-0016 which were originally decreed to A. G. Edie for the irrigation of the E $\frac{1}{2}$, Sec. 12, Twp. 11N, Rge. 34E, B.M., in the case entitled Thomas A. Robson, et al -vs- James Colson, et al, as modified by the stipulated agreement dated September 15, 1953.

2) The 3.00 cfs identified as right No. 32-0016 is available for use contingent upon the maintenance and use of a concrete flume constructed as a water saving works.

3) The watermaster's records indicate that the decreed rights have been delivered during each irrigation season with the exception of right no. 32-0016 which has not been delivered during the past two years due to the failure of the owner to maintain the water saving works.

4) A field inspection and an examination of the aerial photographs of the place of use show that aforementioned decreed rights have been used for the irrigation of 124 acres of land located within the E $\frac{1}{2}$, Sec. 12, Twp. 11N, Range 34E, B.M.

5) There is evidence that water under licensed rights 32-2049, 32-2071 and 32-2079 has not been used by the previous land owner or the applicant since 1955.

6) Section 42-222 of the Idaho Code states that "... 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 non-use or forfeiture such rights to such water shall revert to the State and be again subject to appropriation under this chapter."

7) The stipulated agreement of September 15, 1953, setting forth the recognized water rights is further evidence that the water under the licensed rights was not being used since they were not included in the agreement.

8) The applicant has requested no change in the place of use by said application.

CONCLUSIONS OF LAW

1) The applicant is the successor in interest to the rights originally decreed to A. G. Edie and is entitled to change the point of diversion of these rights.

2) The applicant is entitled to irrigate the 124 acres of land within the E $\frac{1}{2}$ of Sec. 12, Twp. 11N, Rge. 34E, B.M. historically irrigated with his present rights.

3) The water rights evidenced by licenses 32-2049, 32-2071 and 32-2079 have been forfeited through non-use.

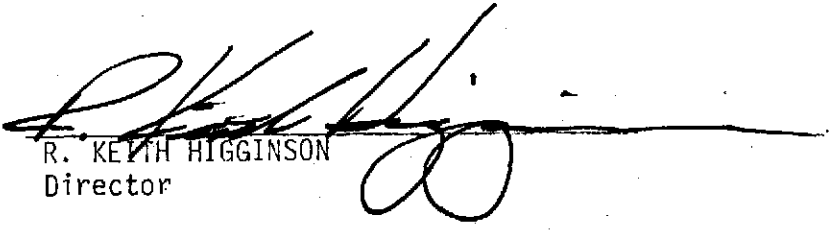
ORDER

IT IS, THEREFORE, HEREBY ORDERED and that portion of Application for Transfer involving rights No. 32-0014, 32-0015 and 32-0016 is hereby APPROVED subject to the following conditions:

- 1) That a measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.
- 2) That the delivery of said rights shall remain under the control of the watermaster of Water District 32C.

IT IS, FURTHER ORDERED and that portion of Application for Transfer involving rights No. 32-2049, 32-2071 and 32-2079 is hereby DENIED pursuant to Section 42-222, Idaho Code.

Dated this 9 day of February, 1977.


R. KEITH HIGGINSON
Director

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant WHA00 & BHA, INC. Phone 356-3178
Post office address Sugar Rt. #1

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree to A. G. Edie (Name)
in case of Thomas A. Robson et al vs James Colson et al
dated Sept. 15, 1953 in Ninth Judicial Court county of Clark
32-2049, (Name of court)
b. License No. 32-2071, 32-2079 issued by the Idaho Department of Water Resources
c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
Through purchase of land.

3. Source of water Indian Creek tributary to Medicine Lodge Creek
32-0015 5-01-84
4. Date of priority (32-0014) - 6-14-83 32-2049 1-10-14 32-2079 10-04-30
32-0016/ - 32-2071 7-26-17

5. Water is used for the following purposes:
amount 16.92 for Irrigation purposes from Apr. 1 to Nov. 1
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day - both dates inclusive)

6. Total amount of water under right: a. 16.92 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 1
Township 11N Range 34E, B.M., in Clark County
Additional points of diversion, if any SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E; NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1,
T. 11N, R. 34E, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E, B.M.

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
DECREE																			
11N	34E	12	40	40	40	40									40	40	40	40	320
11N	34E	12	37.5	40	40	40	30			40	40			20	35.5	40	40	21	424

** SEE REMARKS

Total number of acres to be irrigated 450

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

1. Amount of water: a. _____ cubic feet per second

&/or

b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County _____
Additional points _____

3. 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	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion
 - a. Amount of water to be diverted 16.92 c.f.s. &/or _____ acre feet
 - b. Point(s) of diversion NE ¼ SW ¼, Section 36 Township 12N
Range 34E, B.M., Clark County _____
Additional points _____
 - c. Description of diverting works 18" to 6" steel pipeline for gravity sprinkler system
 - d. Describe the reasons for applying for a change in the point(s) of diversion more efficient use of water

2. Change in place of use NO CHANGE

- a. Describe the lands or place of use to which the right will be transferred:

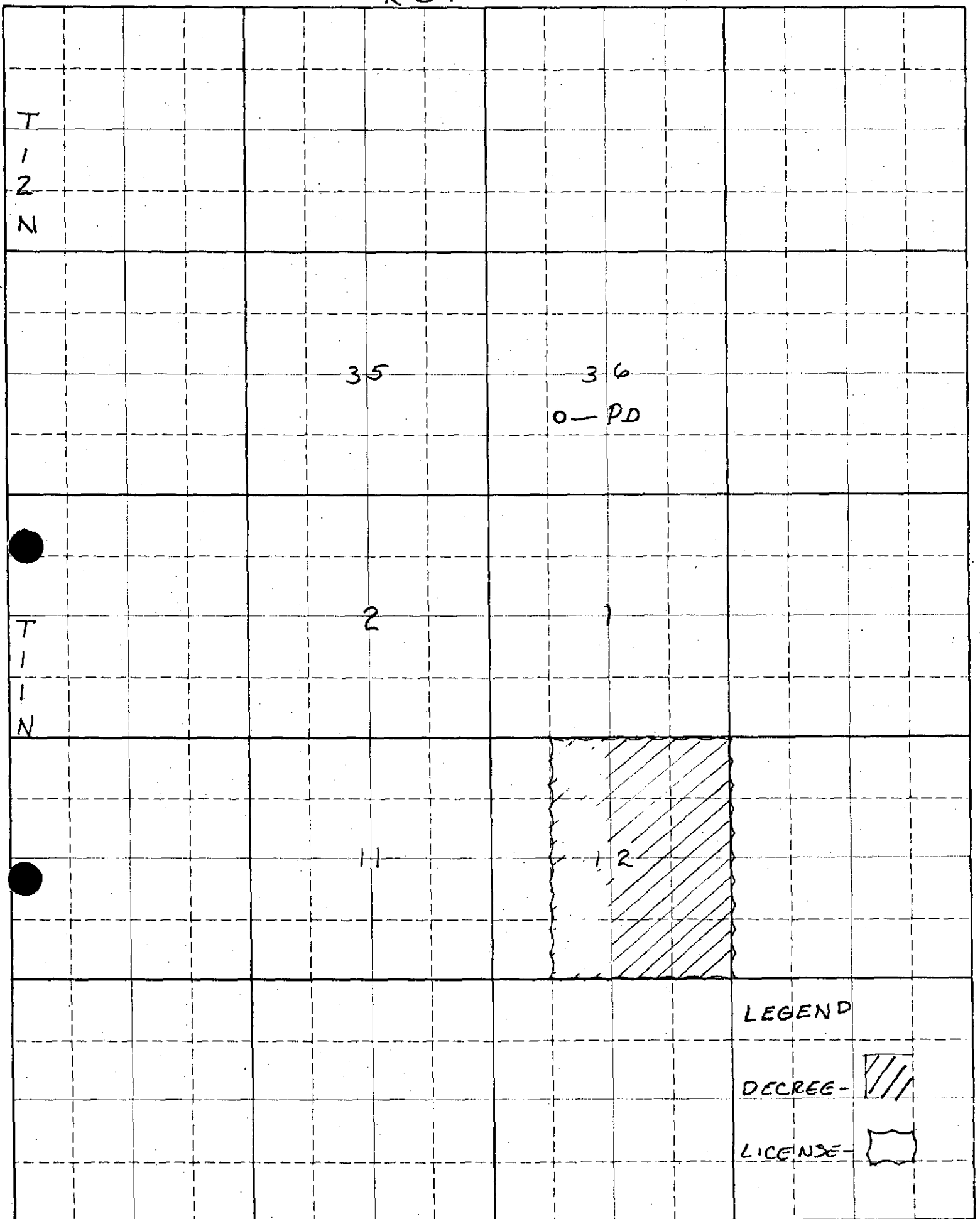
TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

** SEE REMARKS

Total number of acres to be irrigated _____

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

R 34 E



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

WATER SOURCE

10.1

10.2

10.3

10.4

10.5

10.6

10.7

10.8

10.9

11.0

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3. Remarks The licensed rights are classified as high water rights due to
their late priority and are not available most years.

I hereby assert that no one will be injured by such change and 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.

Paul Sherrell Pres. Flamingo
(Signature of applicant) RAA

Subscribed and sworn to before me this 10th day of MAY, 19 76

Ronald J. Carter
(Notary public)

My commission expires 2/19/78

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 _____.

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

PURSUANT TO MEMORANDUM DECISION AND ORDER

DATED THIS DAY. (Rights No. 32-0014, 32-0015 and 32-0016-APPROVED)

2. Denial of said application is for the following reasons: PURSUANT TO MEMORANDUM DECISION

(32-2049, 32-2071, 32-2079-DENIED) AND ORDER DATED THIS DAY.

Witness my hand this 9 day of FEBRUARY, 19 77

R. Keith Higginson
R. KEITH HIGGINSON

FOR DEPARTMENT USE ONLY

Received by CW Date 5-10-76

Prelim. check by RRC Fee 30.00

Received by CW Date 5-10-76

Published in Enterprise Citizen # 15799

Pub. dates May 20 & 27, 1976

Watermaster recommendation requested on 5-13-76

Denial rec'd. 5-20-76

Protest filed by Applicant, John Cant...

Harold Stedent, Sherry Lutz, Pres...

Christine, Selma, James, George...

Whittaker, Mrs. W. H. Hester, Sharon...

Blanche, Wendell, Herman, Sharon...

Adrian, Bess, Barbara, Doyle, Bern, Angie...

Copies of protest forwarded by CW 6-11-76

Hearing held by _____ Date _____

Recommended for _____ approval _____ denial

by _____

32-6
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CERTIFICATE OF ACCEPTANCE AND CONFIRMATION

Having received and considered a certified copy of that certain instrument now of record in Clark County, Idaho, as Instrument No. 19796 in Book 4 of Miscellaneous at Page 176, it is hereby certified that the same is approved, accepted and confirmed and is now on file in the office of the Department of Reclamation of the State of Idaho, in Boise, Idaho.

Mark R. Kulp
MARK R. KULP
State Reclamation Engineer

ROY W. THOMPSON
Supervisor of Water Distribution

Witness to Signature

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 1954, before me _____, a Notary Public in and for the State of Idaho, personally appeared Mark R. Kulp, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in his capacity as State Reclamation Engineer of the State of Idaho.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal.

Notary Public for Idaho
Residence: Boise, Idaho

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STIPULATION AND AGREEMENT

Whereas, there is on file and recorded in the District Court of the Ninth Judicial District of the State of Idaho, in and for Clark County, Idaho, a decree in the case of Robson vs. Colson et al, dated June 13, 1901, in which it proposes to allocate and determine the water rights in Medicine Lodge Creek and its tributaries, in Clark County, Idaho, setting forth therein the description of lands, the names of the owners or purported owners, the number and amount of second feet of water apportioned and the dates of priority and use thereof and,

Whereas, it subsequently and recently develops that some errors in descriptions, priorities and use have arisen, and certain transfers have been attempted which are not in strict compliance with the provisions of law respecting transfers and changes in use and point of diversion, and,

Whereas, the actual use of the waters of Medicine Lodge Creek and its tributaries has been determined, allocated and put to use and agreed to by the original appropriators and/or their successors and assigns, and,

Whereas, all of the lands described in said decree and all of the water rights that were therein set forth are herein set out by name, description, amount of water in second feet and dates of priority and use, and

Whereas, in the interest of settling the rights and priorities of the owners of the lands irrigated and to be irrigated and to establish the uses thereof and allocate the same to the present owners and purported owners in accordance with the uses and practices now, as of the date hereof, and

Whereas, all of the lands involved and all of the water rights pertaining thereto and the uses thereof are within Water District number 37 of the state of Idaho, as established by law.

Now, therefore, the undersigned in consideration of the premises and of the benefits derived and to be derived therefrom, hereby stipulate and agree, as follows, to-wit;

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LAND DESCRIPTION

AMOUNT
DECEASED
IN S.F.

DATE OF
PROPERTY
TOTAL

NAME	SUB-DIVISION	SECTION	TOWNSHIP	RANGE	DECEASED IN S.F.	DATE OF PROPERTY	TOTAL
Fred Small	SW1/4, W1/2, SE1/4 N1/2	24 25	11	34	3.20	4/15/83	3.20

Charles R. Lau	SW1/4, W1/2, SE1/4 W1/2, SE1/4	7 18	12	34	3.74	5/15/83	10.02
	W1/2, SE1/4, E1/2 SW1/4	19	12	34	.50	6/15/83	
	W1/2, SE1/4	20	12	34	.20	2/1/84	
	W1/2, SE1/4	29	12	34	.30	4/15/84	
	W1/2, SE1/4	32	11	34	1.30	5/1/84	
	W1/2, SE1/4	35	11	34	3.74	4/15/85	
	W1/2, SE1/4	36	11	34	.24	11/1/85	
	W1/2, SE1/4	31	11	34			
	W1/2, SE1/4	30	11	34			
	W1/2, SE1/4	31	11	34			

A. G. Edie	SW1/4, W1/2, SE1/4 W1/2, SE1/4	12	11	34	1.50	6/15/83	4.62
	W1/2, SE1/4	12	11	34	1.32	5/1/84	
	W1/2, SE1/4	12	11	34	3.00	See court decree Lee H. Hill & Grand-ville Gauchay vs. Stephen Green, et al	
	W1/2, SE1/4	12	11	34			
	W1/2, SE1/4	12	11	34			
	W1/2, SE1/4	12	11	34			
	W1/2, SE1/4	12	11	34			
	W1/2, SE1/4	12	11	34			
	W1/2, SE1/4	12	11	34			
	W1/2, SE1/4	12	11	34			

Forrest W. Wood	SW1/4, W1/2, SE1/4 NE1/4	13 24	12	32	1.50	4/15/83	2.50
	SW1/4, W1/2, SE1/4	18	12	32	.80	4/15/84	
	SW1/4, W1/2, SE1/4	18	12	32	1.20	11/1/85	

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FEB 27 1986

Department of Water Resources

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 32-0014/)
0015/0016/2049/2071/2079)
IN THE NAME OF WAHOO and)
BHA., INC.)

O R D E R

Case No. 2-345

An Order having been issued by this Court on November 22, 1985, requiring the parties to appear and show cause why this appeal should not be dismissed, and neither party appearing on said date,

IT IS HEREBY ORDERED, that the appeal is dismissed and the Order of Dismissal entered on November 9, 1985, is hereby re-instated.

Dated this 19th day of February, 1986.

Boyd R. Thomas
Boyd R. Thomas
District Judge

FILED THIS 24 DAY OF Feb 19 86
JO ANN S. TAVENNER, Clerk Dist. Court, Clark County, Ida
BY Jessie Lingo DEPUTY

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order was mailed to the following, postage prepaid, on the 24th day of February, 1986:

G. Rich Andrus, Esq.
25 North 2nd East
Rexburg, ID 83440

Kent W. Foster, Esq.
P.O. Box 129
Idaho Falls, ID 83402

State of Idaho
Director, Department of Water Resources
373 West Franklin Street
Boise, ID 83702

Jo Ann S. Tavenner
Clerk of the District Court

By *[Signature]*
Deputy

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

November 5, 1985

Re: Transfer No. 3154 on Water Right Nos. 32-0014 and 32-0016
(WAHOO or BHA, INC.)

Grant Ashcraft
Rt. #1
Sugar City, ID 83448

Dear Mr. Ashcraft:

The Department has received and reviewed your letter of September 8, 1985, in which you requested a hearing on the approval of the above-referenced transfer of water right.

The request for hearing was received in a timely manner, and the Department will conduct a conference/hearing in connection with the request. The hearing will be scheduled by our Eastern Regional office. The issues which can be considered at a formal hearing are described in Section 42-222, Idaho Code and include only the following:

1. Whether other rights will be injured by the proposed change.
2. Whether the change constitutes an enlargement in use.
3. Whether the change is in the local public interest.

Please feel free to contact this office or the regional office if you have questions relative to scheduling preference.

Sincerely,


L. GLEN SAXTON
Chief, Operations Bureau

ls

cc: Eastern Regional Office

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FROM Sharla

DATE 8/29/85

TO File 32-0015

SUBJECT Trans. 3154

See file 32-0014 for all correspondence regarding the above referenced transfer.

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SIGNATURE

G. Rich Andrus
of RIGBY, THATCHER, ANDRUS, BARTON
& WALTERS, Chartered
25 North 2nd East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Appellant.

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

IN THE MATTER OF APPLICATION	)	Case No. _____
FOR TRANSFER NO. 32-0014/	)	
0015/0016/2049/2071/2079	)	<u>NOTICE OF AND PETITION FOR</u>
IN THE NAME OF WAHOO and	)	<u>APPEAL</u>
BHA., INC.	)	

Petitioners, Wahoo, Inc. and BHA, Inc., pursuant to Idaho Code, Section 42-203, hereby appeal that certain order adopting proposed memorandum decision and order final decision dated June 13, 1980, and all prior orders of the Department of Water Resources, upon which such is based, regarding an application of petitioners to transfer water rights, a true copy of which order adopting proposed memorandum decision and order, final decision is attached hereto and is incorporated herein by this reference as Exhibit "A", and petitioners, in support of such appeal, petition and represent as follows:

I.

By an application for transfer of water right, dated May 10, 1976, petitioners, Wahoo, Inc. and BHA, Idaho corporations, applied for trnasfer of water right to change the point of diversion and/or place of use pursuant to an application filed with the Department of Water Resources, a true copy of which is

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attached hereto and is incorporated herein by this reference as Exhibit "B."

II.

Certain individuals protested the application and a conference was held to hear the objections to the granting of the proposed change in the Clark County Courthouse at Dubois, Idaho, on August 12, 1976.

III.

Thereafter, the Department of Water Resources issued its memorandum decision and order, dated February 9, 1977, a true copy of which is attached hereto and is incorporated herein by this reference as Exhibit "C."

IV.

Thereafter, on or about March 1, 1977, the applicants, Wahoo, Inc. and BHA, Inc. requested a re-hearing on the subject matter on the memorandum decision and order dated February 9, 1977, and requested the opportunity to submit evidence and call witnesses. A true copy of the request for re-hearing is attached hereto and is incorporated herein by this reference as Exhibit "D."

V.

A re-hearing was held before the Department of Water Resources on February 8, 1978, at the hour of 3:00 P.M. in the courtroom of the Clark County Courthouse in Dubois, Idaho.

VI.

Following the re-hearing of the matter the Department issued an order issuing proposal for decision, Idaho Code Section 67-5211, dated May 16, 1980, a true copy of which is attached hereto and is incorporated herein by this reference as Exhibit "E" and a proposed memorandum decision and order issued on re-hearing dated May 6, 1980, a true copy of which is attached hereto and is incorporated herein by this reference as Exhibit "F." Thereafter,

the Director of the Department of Water Resources issued his final decision dated June 13, 1980, a true copy of which is attached hereto and is incorporated herein by this reference as Exhibit "A."

V.

The order adopting proposed memorandum decision and order final decision dated June 13, 1980; the order issuing proposal for decision Idaho Code Section 67-5211, dated May 16, 1980; and the proposed memorandum decision and order issued on re-hearing dated May 6, 1980 are in error in that the findings of fact upon which the final decision rests are erroneous, the conclusions of law are erroneous and the Department of Water Resources has made findings, conclusions and a decision which the Department lacks jurisdiction to make.

VI.

For the reasons specified above, the petitioner herein hereby appeals the decision and petitions the District Court to hear by trial de novo the issues raised by the application and protest and presented by this notice of and petition for appeal.

DATED this 28th day of July, 1980.


G. Rich Andrus
of RIGBY, THATCHER, ANDRUS, BARTON
& WALTERS, Chartered
Attorneys for Appellant.

STATE OF IDAHO)
) SS
County of Madison)

GRANT ASHCRAFT, being first duly sworn, states as follows:

That he is the President of Wahoo, Inc., an Idaho corporation and one of the above petitioners, in the foregoing petition; that he has read the petition and the facts therein stated are true to the best of his knowledge.

Grant Ashcraft
Grant Ashcraft, President of
Wahoo, Inc., an Idaho corporation.

SUBSCRIBED AND SWORN to before me this 30th day of July,
1980.

John W. Shenton
Notary Public for Idaho
Residing at: Rexburg, Idaho
Commission expires: (Life)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 1980, a true
copy of the foregoing was sent by U.S. Mail, postage prepaid
to the following:

Gene Cook
Dubois, Idaho 83423

Thomas Steltzer
Dubois, Idaho 83423

Ben Fayle
Dubois, Idaho 83423

Allyn K. May
Dubois, Idaho 83423

Dean Shenton
Dubois, Idaho 83423

Jack and Pat McGary
Dubois, Idaho 83423

Elman T. Woodfield
Dubois, Idaho 83423

George Whittaker
Dubois, Idaho 83423

Ned Gneiting
Dubois, Idaho 83423

Dave Steltzer
Dubois, Idaho 83423

Lynn Hoggan
Dubois, Idaho 83423

Hugh Webster
Dubois, Idaho 83423

Holmes Brothers
Dubois, Idaho 83423

Bennie D. Fayle
Dubois, Idaho 83423

Mr. and Mrs. Hollis Shenton
Dubois, Idaho 83423

Leland Small
Dubois, Idaho 83423

Rich Andrus
Rich Andrus

Notice

Jan. 16 29
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Dear Sirs,

JAN 19 1979

Department of Water Resources
Eastern District Office

We no longer own the
Ranch at Dubois, Idaho
on Medicine Lodge. We
sold it to a Father & Son
Partners.

Their names are -

Jack McGarry - Father

Patrick McGarry - Son.

Star Route 7 Dubois, Idaho

Forwarded copy of hearing
notice not certified
1-23-79 dh

I am returning these

So you may be able
to make what changes

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²
You need to.

Thank you

Sincerely Bennie

M. Bennie D. Fayle
788 S. E. Yonderwood Dr.
Hamilton,
Montana
59840

M. Ben T. Fayle
312 Home Drive
Hamilton,
Montana
59840

14-00000

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APR 13 1979

Department of Water Resources
Eastern District Office

April 10, 1979

Mr. Ron Carlson
I.D.W.R.
1515 Lincoln Road

Dear Ron:

Enclosed you will find a response to the brief by Mr. C. Rich Andrus concerning, WHA00 and BHA, Inc. regarding transfer Nos. 32-2049/32-2071/32-2079

Thank you.

Sincerely,

Donald W. Shenton
Donald W. Shenton

Water Master
Water Dist. #32-C

cc. C Rich Andrus

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Donald W. Shenton
Watermaster, Water Dist. #32-C
Dubois, Idaho 83423

Person Representing Protesting Water Users

April 10, 1979

RE: Briefs submitted by WAHOO INC. AND BHA INC. Following hearing of re-hearing on February 8, 1979, concerning applications for transfers #32-0014, 32-0015, 32-0016, 32-2049, 32-2071, 32-2079.

Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401
Attn: Ron Carlson

The following is a response to the briefs filed with your Department by the applicants attorney, Mr. C. Rich Andrus on March 30, 1979.

Attached also are some comments we wish to make the Department aware of when considering conclusions on the re-hearing.

On Page 1, the applicant charges the Department is without jurisdiction to refuse to grant the application of point of diversion

The section of the Idaho Code authorizing the Department of Water Resources to consider application for change of point of diversion provides in relevant part as follows:

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

Page 1

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It is clear the Department has the authority by the preceeding statement to grant in whole, or in part, or upon condition, provided, there is no injury to other rights, or an enlargement of the original right. Then surely the Department can disapprove a change that will injure others right, or disapprove a change that will enlarge the original right. The protestors feel there is an injury to all existing water licenses and permits which is quite clearly defined by the following protest, which was filed by the protestors June 3, 1976.

We the undersigned do hereby protest the transfer of water right and change of point of diversion in the name of WHAOO AND BHA INC. The reasons for protest are that portion of transfer #32-2049, #32-2071, #32-2079 which are licensed rights and have not been used for many years. You will find this is evidenced by your own daily record books and records. You will also find these waters have been used by other users and by this use have become dependent upon them, while the applicant and the perceeding owner have abandoned said waters by non-use.

We therefore ask that the license numbers listed in this protest be denied as waters not available for diversion by applicant.

The change could result in a reduction of the amount of water available to fill other water rights. (Refer to lines 8, 9, 10, paragraph 1, page 3 of applicants brief.)

It is clear the applicant has already enlarged his original right by the transfer of rights #32-0014, 32-0015, 32-0016. (Decreed and stipulated)

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He is irrigating lands not listed in any decree, stipulation or license. He is irrigating lands purchased just recently with this same water mentioned above. This same type of enlargement of original right is surely planned by additional transfers of licensed rights in question. In the memorandum decision and order, in findings of fact Part (4), a field inspection showed Eddies to be irrigating only 124 acres with his decreed rights.

On pages 3 and 4 of the applicants brief concerning District Courts, adjudication, and decrees, it would appear the use of these materials is irrelevant and would have no bearing on the legal aspects of this particular case.

Page 4, the applicant charges, in part, a determination by the Department of Water Resources that there has been an abandonment of a water right. No where in the memorandum, decision and order, can the word abandonment be found. Section 42-22 of the Idaho Code states that:

"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 non-use or forfeiture such rights to such water shall revert to the State and be again subject to appropriation under this chapter."

This same section was used in the Department's, Finding of Fact Part 6.

Page 3

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In Conclusions of Law, Part 3.

(3) The water rights evidenced by licenses 32-2049, 32-2071 and 32-2079 have been forfeited through non-use.

It is inaccurate to assume the Department ever considered abandonment, as is stated through-out the applicants brief.

At the re-hearing the applicants attorney stated that much new evidence had been presented.

The evidence consisted of a copy of the licenses in question. No one argues that there was a license at one time.

They presented a copy of an old Robsen vs. Colson water decree. This decree has not been used for many years and has no bearing on the licenses in question.

They presented a copy of the Stipulation and Agreement which has no bearing with any licenses on Medicine Lodge or Indian Creek. It only pertains to decreed water rights.

They presented a letter which stated Mr. Eddie used these rights when they were available, but no evidence of when used, or how much. On cross examination, Mr. Dick Eddie testified that he did not know of any time that any watermaster ever delivered any water to their ditch at anytime that was licensed water. It is a matter of fact that the watermaster usually goes on duty May 1 to the end of season each year. If the watermaster didn't deliver water to Eddies, when did they use it? The daily record books show no licensed water, ever recorded.

On page (2) of the Duties of a Watermaster, sent out by the Department of Water to each watermaster, the following is said about daily record books:

"Daily Water Record Books will be furnished you by the Department in which to record the amount of water delivered to each water user. Record Books are to be kept current and complete. These books are the original record of the amount of water delivered and in case of dispute or lawsuit may be used by the courts as the only record."

Testimony entered by Mr. Grant Ashcraft, indicated in the fall of 1975, he had estimated there to be 600 inches of water in Mr. Eddies ditch. Had this guess been correct it would not have been licensed water as this ditch was Mr. Eddies only ditch, which was used for his decreed waters. His licensed waters point of diversion was a different locations, a different place of use and different ditches. His only ditch did not qualify for licensed waters by any form of legal description.

Keeping in mind that Mr. Ashcraft was not an expert on water hydrology or water measurements, and had his guess been correct and had this water been in a legal ditch, and had the amount been 600 inches, there could have only been 359 inches of licensed waters. By priority the decreed amounts would have been first. 600 inches estimated, minus 241 decreed, leave a balance of 359 inches. This would leave 246 inches still not in the ditch as licensed waters.

Your attention is called to further testimony, that this ditch could not hold 12 c.f.s. of water and had never been recorded with any where near that amount.

The record books turned in by the watermaster at the end of the season, indicate Mr. Eddies last recorded delivery to be in the amount of 4.82 c.f.s., on Sept. 30, 1975. The watermaster and his deputy terminated their services that year on October 1, 1975, the reason being no demand for any further irrigation waters, or regulations of such waters.

In conclusion, it should be pointed out that there is not one definite piece of evidence that Eddies ever used licensed waters. There is no recorded piece of evidence that licensed waters were ever used. The applicant or his predecessor didn't have a diversion works, control structure, measuring devices at any of the licensed points of diversion. There is no water user that can remember licensed waters ever being used. It is stated in the duties of a watermaster that only the record of the daily record books can be used in a dispute or a lawsuit. All testimony by applicant, concerning amounts of water was estimated. All testimony by Mr. Eddie was not conclusive to time, dates, or amounts. It is felt that the applicants new evidence presented at the re-hearing has been nil, and in any event the applicant has failed to prove affirmatively, evidence of use of water license #32-2049, 32-2071, and 32-2079.

The protestors agree to the finding of fact, conclusions of law, and memorandum decision and order placed down on the 9th day of Feb. 1977, by the Department of Water Resources.

Dated this 10th day of April, 1979.

Donald W. Shenton
Donald W. Shenton
Representative for Protestors

MICROFILMED

G. Rich Andrus
of RIGBY, THATCHER, ANDRUS, BARTON
& WALTERS, Chartered
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for: Wahoo, Inc.

RECEIVED

APR 2 1979

Department of Water Resources
Eastern District Office

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

IN THE MATTER OF THE APPLICATION)
FOR TRANSFER NO. 32-0014/32-0015/)
32-0016/32-2049/32-2071/32-2079.) BRIEF OF APPLICANTS, WAHOO
) INC. & BHA, INC.
IN THE NAME OF: WAHOO & BHA, INC.)

Following the hearing of the re-hearing of the above entitled application on February 8, 1979, the Department granted the applicants permission to file a brief. This brief is submitted pursuant to that authority.

By way of review, this matter was initiated when the applicants filed an application for change of point of diversion for water rights of applicant including three decreed rights and three licensed rights. The Department after an informal investigation, granted the application as to the decreed rights but refused to grant the application as to the licensed rights and concluded that "the water rights evidenced by licenses 32-2049 32-2071, and 32-2079 have been forfeited through non-use." [See Page 3 of the memorandum decision and order dated February 9, 1977.]

The Department was without jurisdiction to refuse to grant the application for the change of point of diversion and went beyond its jurisdiction in making a conclusion of law to the effect that a water right had been forfeited through non-use. The law is clear that the Department simply does not have jurisdiction to adjudicate the existence, the forfeiture or abandonment

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of water rights in administrative hearing based upon an application for the mere transfer of the point of diversion.

The section of the Idaho Code authorizing the Department of Water Resources to consider application for change of point of diversion provides in relevant part as follows:

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

It is clear from the above statute that the Director of the Department of Water Resources has a statutory mandatory obligation to approve a request for change in point of diversion so long as other water rights are not injured and the change does not constitute an enlargement of the use of the "original right." In the instant case, the applicants have not requested enlargement in the use of the original right, they have merely requested a change in the point of diversion of the original rights. There is no evidence that any other rights would be injured by the grant of the change of the diversion. According to the records of the Department of Water Resources, the applicants have the decreed right as well as the licensed rights. The use of those rights, which are a matter of record, could not result in an injury to other existing water rights. The statute above cited no where grants the Department of Water Resources the right to determine whether a validly existing right has lost its legal efficacy by abandonment or forfeiture. It is clear from the statute above cited that the main criteria is whether there would be an enlargement in the use of the "original right." The term "original right", clearly refers to the licensed and decreed rights, with respect to which the applicants herein sought a transfer of point of diversion. There is no question posited that the applicants own the decreed and licensed rights. The applicants do own the decreed and licensed rights and the jurisdiction that the Department of Water Resources has is to determine that the application does not seek to enlarge

those rights, and that to allow the change of point of diversion would not injure other existing rights. In this respect, it is clear from the statute, that the jurisdiction of the Department is to determine whether the physical change of point of diversion would result in derogation of other water rights in the nature of increased losses in the stream bed by percolation or evaporation because of the change in the physical point of diversion, or whether the point of diversion in such physical way would result in a reduction of the amount of water available to fill other water rights.

Chapter 14 of Title 42 of the Idaho Code makes it clear that questions regarding the adjudication of water rights are questions that are within the jurisdiction of the district court to determine. The role of the Department of Water Resources with respect to questions involving the adjudication of water rights is that of an advisory investigatory agency which may be called upon by the court to conduct surveys and investigations of the respective water rights. This appears clearly from the following sections of the Idaho Code. Section 42-1401, Idaho Code provides in relevant part as follows:

"Whenever suit shall be filed in the district court by private parties for the purpose of adjudicating the priority of rights to the use of water from any water system, including streams, lakes, ground waters or any other body of water, ... the judge of such court may request the Department of Water Resources to make an examination of such water system ..."

Section 42-1402, Idaho Code, provides:

"In allotting the waters of any stream by the district court according to the rights and priorities of those using such waters, such allotment shall be made to the use to which such water is beneficially applied ..."

In the above two sections, it is clear that the power to adjudicate water rights is expressly vested in the district court and not in the Department of Water Resources.

In the same spirit of the above quoted sections of the Idaho Code, Section 42-1405, Idaho Code, specifically states that:

"Where the priority rights upon any stream, canal, or reservoir in this State, shall have been determined by the decree of any court of competent jurisdiction, and thereafter it shall appear that any person or corporation having the right to the use of any part of said water was not included in said decree as a party thereto, and said right was not determined thereby or that any person who subsequent thereto has acquired any right to the use of such waters, any such person or corporation may have such right adjudicated in the following manner: He may bring an action in the district court of the county wherein such decree was entered against the water master having charge of the distribution of the water of said stream, canal or reservoir in which said party claims an interest ..."

From the above statute, it is clear that the adjudication of water rights has been vested in the district court and not in the Department of Water Resources.

In the same tenor is Section 42-1406, Idaho Code, that provides that the Director of the Department of Water Resources may upon his own initiative commence an action in the district court for the adjudication of water rights. This section makes it clear that the Director himself must resort to the district court to determine water right.

A determination by the Department of Water Resources that there has been an abandonment of a water right is tantamount to an adjudication of a water right which question as above demonstrated has expressly been vested in the district court and not in the Department of Water Resources. A number of decisions have held this to be true. In Lockwood vs. Freeman, et al, 15 Idaho 395, 98 Pac. 295 (1908), the court stated and held:

The state engineer has no authority to deprive a prior appropriator of water from any streams in this state, and give it to any other person. Vested rights cannot thus be taken away. For decisions holding similarly see Nielson vs. Parker, 19 Idaho 727, 115 Pac. 488 and Gard vs. Thompson, 21 Idaho 485, 123 Pac. 497."

It is thus clear that the Department of Water Resources does not have the power to adjudicate water rights, including questions of abandonment. There is no statute that expressly gives the Department that right. The only statute dealing with the Department's duties with respect to questions involving change in

point of diversion states that the Department shall grant the change unless the change would constitute an enlargement of the original right and would impair other existing rights. No where in the statute does it give the Department the power to determine the rights. Also, by express statute the power to adjudicate water rights is expressly vested in the district court.

There is a further reason why the decision of the Department refusing to allow the applicants to change the point of diversion with respect to the licensed rights is improper. Even if the Department had jurisdiction to adjudicate an abandonment of a water right, there is no competent evidence establishing abandonment of licensed rights by the applicants in the instant case. In fact, the best evidence adduced at the hearing, both through the testimony of Grant Ashcraft and through Mr. Eddies, was that Eddies, the predecessor in interest to the applicants, had used the water over the years.

Apparently, the Department was relying upon the stipulation and agreement signed by the water users in or about July, 1953, to support the prior determination that there had been abandonment of the licensed rights by Mr. Eddies. Upon reading that stipulation and agreement, it is clear that it only pertains to decreed rights. The stipulation and agreements specifically refers to a decree in the case of Robsen vs. Coleson, et al, dated June 13, 1901, and states that "whereas, all of the lands described in said decree and the water rights that were therein set forth are herein set out by name, description, amount of water in second feet and dates of priority and use." At another place the agreement stated "that the ownership of lands described in the allocation of water from said Medicine Lodge Creek and tributaries as set forth in said decree in the case or Robsen vs. Coleson, et al, hereinbefore referred to, are at variance with the use and practices of the present owners of land and users of water from said Medicine Lodge Creek and its tributaries, aforesaid." Here again, the agreement deals only with decreed

rights and makes no mention of licensed rights. It is clear from the agreement itself, that it dealt only with the decreed rights and did not purport to constitute a settlement as to licensed rights. It is clear from Mr. Eddies' testimony that in practice the licensed rights had not been precluded by the agreement, and that Mr. Eddies was using his licensed rights.

In conclusion, it was inappropriate for the Department to refuse to allow the request for change of point of diversion with respect to the three licensed rights of applicants for two reasons. First, the determination of the Department was based upon a conclusion that there had been an abandonment of the licensed rights. The Department does not have power nor jurisdiction to adjudicate rights in water and a finding and conclusion that there has been abandonment of a water right is an adjudication of a water right. The law is clear that power and jurisdiction to determine water rights is vested in the district court. Second, even if the Department had jurisdiction and power to adjudicate water rights, and determine abandonments, the evidence in this case shows that there has not been an abandonment of the licensed rights. The affirmative proof of applicants demonstrates that Mr. Eddies, the predecessor in interest to the applicant, used the licensed rights, in any event, the protestors have failed to prove affirmatively that there has been an abandonment and they bear the burden of proof on such issue.

SUBMITTED this 30th day of March, 1979.


G. Rich Andrus
of RIGBY, THATCHER, ANDRUS, BARTON
& WALTERS, Chartered
Attorneys for Wahoo, Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of March, 1979, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Don Shenton
Dubois, Idaho 83423


G. Rich Andrus

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REPORTING

ROSTER OF ATTENDANCE

T.32-0014/0015/0016/2049/2071/2079 - WHAOO & BHA

Courtroom, Clark County Courthouse, Dubois, Idaho - February 8, 1979 - 3:00 p.m.

NAME	ADDRESS	REPRESENTING
------	---------	--------------

<i>St. Rich Ashman</i>	<i>25 North 2nd East Rexburg, Idaho</i>	<i>St. Rich Ashman WAOO Inc. A.B.H.A. Inc.</i>
------------------------	---	---

GRANT ASHCRAFT	ATTN: Sugar, ID.	Pres. of WAOO Inc. agent for BHA.
----------------	------------------	--------------------------------------

Walter Shento	Dubois, Idaho	Water user	32C
Hugh R. Webster	Dubois, Ida	-	32C
Edman T. Woodfield	Dubois Idaho	"	32C
Leonard Amel	Dubois Ida	"	32C
George W. Hittaker	Dubois, Ida	"	32C
Max C. Hoggan	Dubois Ida	"	32C
Holmes Bros. by Harold Holmes	Dubois, Idaho	"	"
Allen May	" " "	"	32C
Hoggen Brothers by Fynn & Hoggan	Dubois Ida	"	32C
John C. Denny	Dubois Ida	"	32C
Jack J. McHenry	Dubois, Ida.	"	32C

Bob Flee nor
Ron Carlson - IDWR

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Certified Mail, Return Receipt

T.32-0014 etc.

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✓ Ben Fayle	Dubois ✓
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✓ Bennie D. Foyle	Dubois
✓ Elmer T. Woodfield	Dubois ✓
✓ Mr. & Mrs. Hollis Shenton	Dubois -
✓ George Whittaker	Dubois
✓ Leland Small	Dubois
✓ Ned Gneiting	Dubois
✓ Thomas Steltzer	Dubois
✓ Dave Stelzer	Dubois
✓ Allyn K. May	Dubois ✓
✓ Lynn Hoggan	Dubois
✓ Grant Ashcraft	Route 1 Sugar City

✓ G. Ruth Andrews Rhyly Tholker Andrews 25 N Second Rensselaer

✓ Jack & Port McGary - not certified

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✓ 3 1191	Blain Grover, Atty, 102 N. Clark, Ripley					USPO		
✓ 4 1192	Kent Foster, Atty, P.O. Box 129, Dubuque Falls							
✓ 5 1193	Blaine Smith, Dubuque, Dubuque 83423							
✓ 6 1194	Harold S. Siderman, Tiffin City, Dubuque 83451							
✓ 7 1195	Stone & Gladys Becklund, Box 120, Mena							
✓ 8 1196	Jack R. Hamilton, Zanesville Hwy, Dubuque Falls							
✓ 9 1197	Sharon Halverson, Kilyon, Dubuque 83423							
✓ 10 1198	Donald W. Shinton, Water District 32-C, Dubuque							32-7089
✓ 11 1199	Kenneth Rowland, Dubuque							
✓ 12 1200	Arthur Z. Smith, Dubuque							
✓ 13 1201	Blaine Z. Zaneson, P.O. Box 2349, Dubuque Falls							
✓ 14 1202	Simon S. Martin, Atty, P.O. Box 428, Dubuque Falls							
✓ 15 1203	Jack J. McCarty, Dubuque							
✓ 16 1204	Elmer T. Woodfield, Dubuque					7.31-0014, etc		
✓ 17 1205	George Whittaker, Dubuque							
✓ 18 1206	Hellie Sheaton, Dubuque							
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In The Matter of Transfer No's. 32-0014/)
32-0015/32-0016/32-2049/32-2071/32-2079)
in the Name of WHAOO & BHA, INC.)

NOTICE OF REHEARING

WHEREAS, on May 10, 1976, WHAOO & BHA, Inc. applied to the Department of Water Resources for a change in the point of diversion of water rights nos. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079; and,

WHEREAS, a conference was held on August 12, 1976, in Dubois, Idaho, at which the protestants and the applicant agreed to allow the Director of the Department of Water Resources to reach a decision based upon the information obtained during the conference; and,

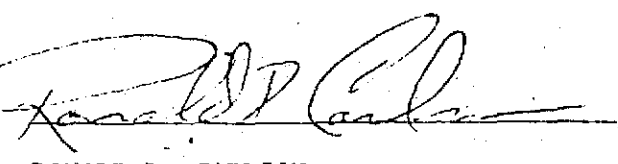
WHEREAS, on March 7, 1977 a petition for rehearing was received from WHAOO & BHA, Inc., which set forth sufficient grounds for rehearing, and said petition for rehearing was granted;

IT IS, THEREFORE, HEREBY ORDERED that the Department has set the matter for rehearing for Thursday, February 8, 1978, at 3:00 p.m., in the Courtroom of the Clark County Courthouse, Dubois, Idaho. Any rehearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any rehearing, that the oral proceedings thereof be taken in the form of stenographic notes. 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.

Failure to appear at the time and place set for rehearing by the applicant or protestants may allow the Department without prejudice to dismiss the protests or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 8th day of January, 1979.


RONALD D. CARLSON
Supervisor, Eastern Region

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RECORDED

INTER-DEPARTMENT MEMO — 1

FROM

Bosse

MAR 31 1977

DATE

3/30/77

TO

Eastern

Department of Water Resources
Eastern District Office

McNellie

SUBJECT

Rehearing on 32-0014/0015/0016/2049/2071/2079

This folder contains the letters & orders
concerning the rehearing on these ^{transfer} ~~permits~~.
A hearing will need to be scheduled.
Call me if you have questions.

Janice

SIGNATURE



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 28, 1977

Dear Protestants:

Enclosed is a copy of the Order granting a rehearing on Transfer no's. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079 in the name of WHA00 & BHA, Inc.

A hearing will be held in the near future on this matter, and you will be notified.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Encls.

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 28, 1977

Grant Ashcraft
WHA00 & BHA, Inc.
Route 1
Sugar City, Idaho 83448

Dear Mr. Ashcraft:

Enclosed is a copy of the Order granting a rehearing on Transfer No's.
32-0014/32-0015/32-0016/32-2049/32-2071/32-2079 in the name of WHA00 &
BHA, Inc.

A hearing will be held in the near future and you will be notified.

Sincerely,

BOBBY D. FLEE00R
Chief, Water Rights

BDF:jfr

Encl.

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 28, 1977

G. Rich Andrus
RIGBY, THATCHER & ANDRUS
25 North Second East
Rexburg, Idaho 83440

Dear Mr. Andrus:

Enclosed is a copy of the Order granting a rehearing on Transfer No's.
32-0014/32-0015/32-0016/32-2049/32-2071/32-2079 in the name of WHA00
& BHA, Inc.

A hearing will be held in the near future on this matter and you will be notified.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Encl.

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 9, 1977

Dear Protestant:

Enclosed is a copy of a petition for rehearing in the name of WAHOO & BHA, Inc.

If you have any comments on this matter, you have ten (10) days from the date of this letter to send those comments to the Department.

Sincerely,


BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Enclosure

MICROFILMED

G. Rich Andrus
of RIGBY, THATCHER & ANDRUS, P.A.
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 32-0014/32-0015/32-)
0016/32-2049/32-2071/32-2079 IN THE) REQUEST FOR REHEARING
NAME OF WAHOO & BHA, INC.,)

Applicants, WAHOO, INC. and BHA, INC., hereby request
a rehearing on the subject matter of the memorandum decision and
order entered in the above entitled case dated February 9, 1977,
and request the opportunity to submit evidence and call witnesses.

This request for rehearing is made on the grounds that
the memorandum decision and order is in error insofar as it finds
and concludes that the water rights evidenced by licenses 32-2049,
32-2071 and 32-2079 have been forfeited through non-use and insofar
as it orders that that portion of application for transfer involving
rights No. 32-2049, 32-2071 and 32-2079 is denied.

Claimants respectfully request that the Director of
Water Resources establish a date for a rehearing on the matter
and allow evidence to be received at said hearing.

DATED This 1st day of March, 1977.


G. Rich Andrus
of RIGBY, THATCHER & ANDRUS, P.A.
Attorneys for Claimants

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

28 February, 1977

Mr. G. Rich Andrus
Rigby, Thatcher and Andrus, P.A.
P.O. Box 250
Rexburg, Idaho 83440

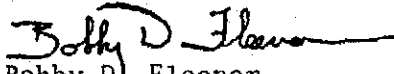
Dear Mr. Andrus,

Here is most of the information on the Whao & BHA, Inc. application for transfer, requested by your February 16 letter.

Ron Carlson also has a memorandum on his field examination of the project, which I will send to you shortly.

If you need copies of any additional material, please let us know. You may remit the copying charge of \$3.50 to this office at your convenience.

Sincerely,


Bobby D. Fleenor
Chief, Water Rights

Encl.

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LAW OFFICES

RIGBY, THATCHER & ANDRUS, P. A.

RECEIVED

FEB 17 1977

Department of Water Resources

25 NORTH SECOND EAST - P. O. BOX 250 REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RICH ANDRUS
TELEPHONE (208) 356-3633

February 16, 1977

Bobby D. Fleenor
Department of Water Resources
373 West Franklin Street
Boise, Idaho 83720

Re: Application for Transfer of Wahoo, Inc. - Application No. 320014

Dear Mr. Fleenor:

We represent Wahoo, Inc., a corporation, in connection with the above entitled application for transfer of point of diversion.

Today we received a copy of the Memorandum Decision and Order pertaining to the application, dated February 9, 1977.

We are considering asking for a re-hearing before the Director of the Department of Water Resources as to a portion of the decision. Prior to making that decision, we desire to obtain copies of all documents in the Department's file concerning this application including, but not limited to, the following items:

1. Copies of all applicable decrees, including the decree in the case entitled "Thomas A. Robison, et al vs. James Colson, et al", and the stipulated agreement entered in that action dated September 14, 1953.
2. Copies of all applicable licenses including License No. 32-2049, 32-2071 and 32-2079.
3. All reports of field investigations upon which the Memorandum Decision and Order was based.
4. Any other information available to the Department of Water Resources used in arriving at the Memorandum Decision and the Order dated February 9, 1977.

Also, if the Department of Water Resources has adopted Rules of Practice and Procedure that expatiate upon any statutory rules including the Administrative Procedure Act, we would appreciate receiving a copy of such rules of Practice and Procedure.

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Bobby D. Fleenor
February 16, 1977
Page 2

Your earliest convenient response to these inquiries would be greatly appreciated.

If there is any charge for reproducing the items herein requested, please bill our office and we will remit payment.

Thank you very much.

Sincerely,



G. Rich Andrus

csp

MICROFILMED

DATE February 16, 1977

FROM Ron

TO Bob Fleenor

SUBJECT Transfer No. 32-0014/etc. (1987) WHA00 & BHA

We have been contacted by Rich Andrus, attorney for the applicant, who indicated his client wishes to appeal the Department's decision and requests a rehearing.

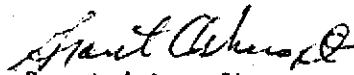
He ask that we supply him with all of the information in the files the Department considered in making this decision. I told him I would forward his request to you.

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SIGNATURE

the transfer in the near future.

Very truly yours,



Grant Ashcraft
Wahoo & BHA Inc.

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February 10, 1977

Re: Application for Transfer #1987 (32-0014/32-0015/32-0016/32-2049/32-2071/32-2079)

Whao & BHA, Inc.
Rt. #1
Sugar City, ID 83448

Gentlemen:

Enclosed is a copy of your Application for Transfer #1987. Please notice that the transfer of decreed right nos. 32-0014/32-0015/32-0016 were approved by the Director and the transfer of license nos. 32-2049/32-2071/32-2079 were denied. Also enclosed is a copy of the Memorandum Decision and Order.

You should be aware that any person who does not agree with the decision may request a re-hearing before the Director of the Department of Water Resources within 20 days or may appeal directly to the District Court within 60 days of the date of the decision.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:mef

Enc: Copy of transfer w/memorandum decision and order

cc: Protestants

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