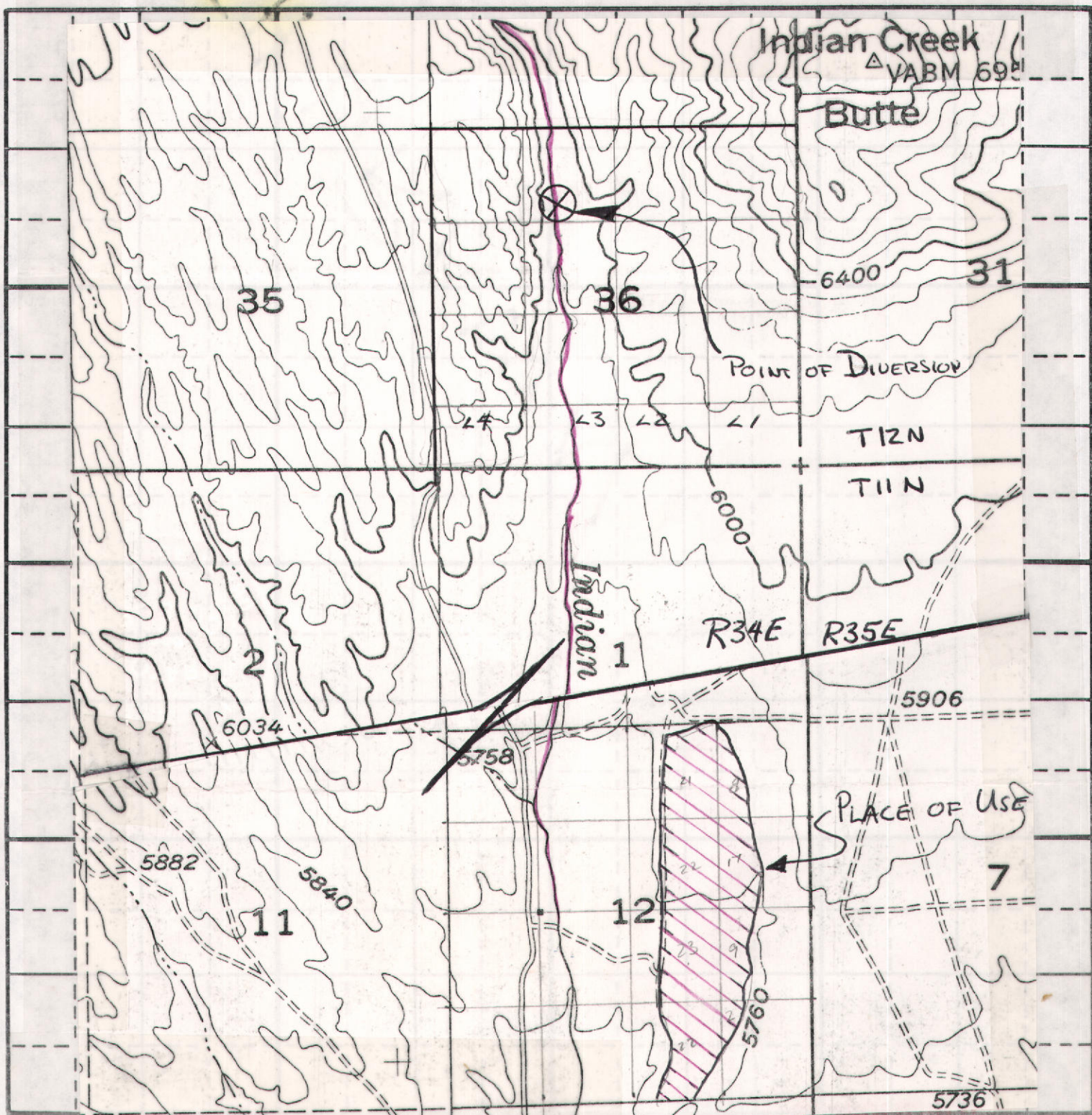


c. Describe the lands or place of use to which the right will be transferred:

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.

MICROFILMED

Proof of Publication
The Post-Register

RECEIVED
JUN 18 1985
Department of Water Resources
Indian District Office

State of Idaho, }
County of Bonneville } ss.

I, J. Robb Brady, first being duly sworn, depose and say: That I am the Principal Clerk of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers having been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eighty (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 6th day of June, 1985, last publication having been made on the 13th day of June, 1985, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 14th day of June, 1985.

Notary Public

My commission expires September 30, 1985.

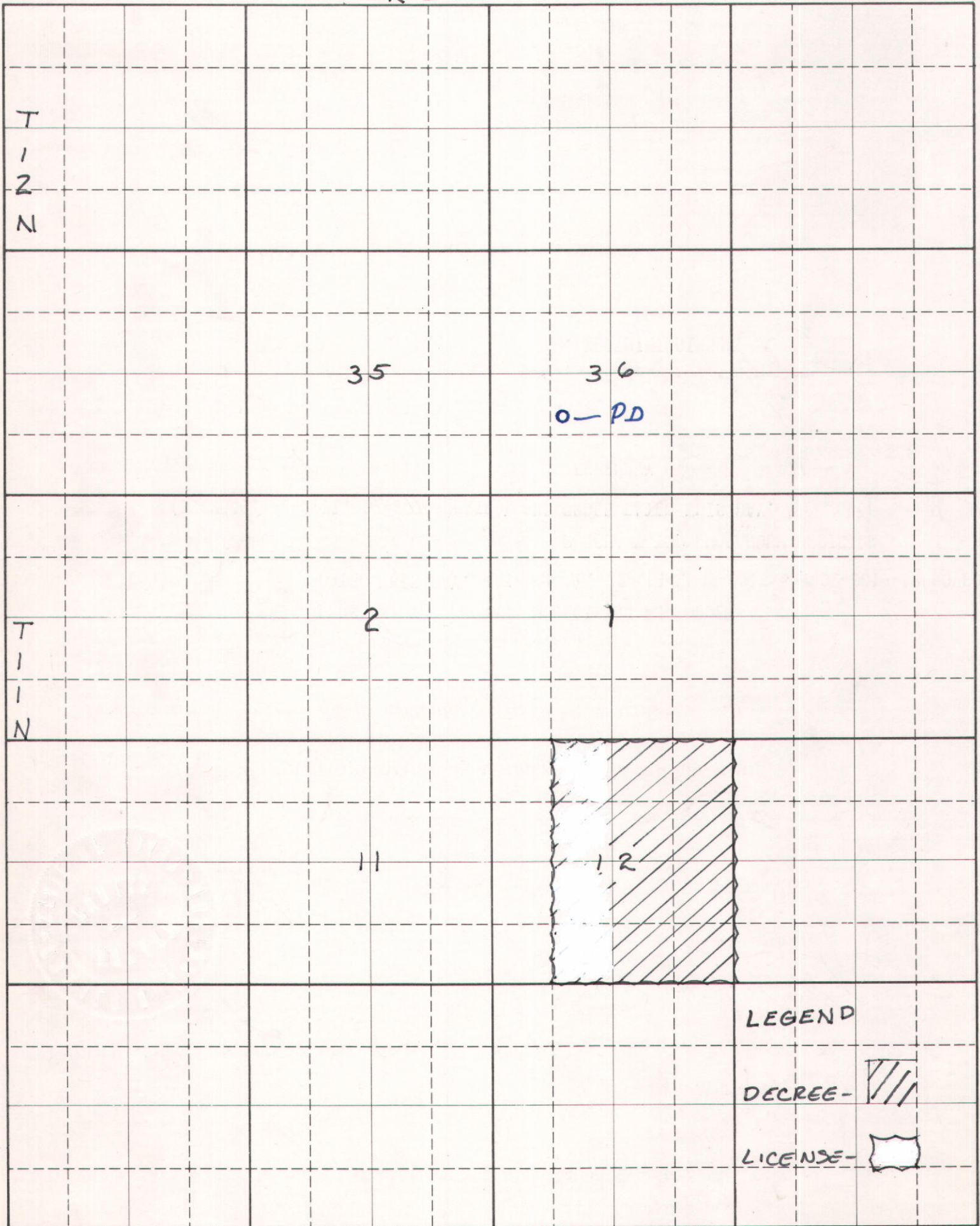
B10, 1M,

**NOTICE OF PROPOSED CHANGE
OF WATER RIGHT
32-0014/0015/0016**
Notice is hereby given that WAHOO or BHA, Inc. Sugar City, Idaho have applied to the Department of Water Resources for a change in the point of diversion of the waters of Indian Creek tributary to Medicine Lodge Creek. The right sought to be changed is evidenced by decree to No. 32-0014/0015/0016 (T1987) and is recorded as follows:
32-0014
AMOUNT: 0.50 cfs PRIORITY: 6-15-1883
POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E, B.M., Clark County.
32-0015
AMOUNT: 1.32 cfs PRIORITY: 5-1-1884
POINT OF DIVERSION: Same as 32-0014.
32-0016
AMOUNT: 3.00 cfs. PRIORITY: Not specified
POINT OF DIVERSION: Same as 32-0014.
The water is used to irrigate 124 acres within the E $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E, B.M.
TO BE CHANGED AS FOLLOWS
The water will be diverted within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E, B.M.
Any protest against the approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup Avenue, Suite 15, Idaho Falls, ID. 83402 on or before June 24, 1985.
A. KENNETH DUNN
Director
Published: June 6, 13, 1985

MICROFILMED

- 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.

W $\frac{1}{2}$ E $\frac{1}{2}$ SEC 12

10.1
20.9
19.1
19.7
15.4
23.8
6.9
7.6

Proof of Publication

RE

JUN 1 1976

Department of Water Resources
Eastern District Office

STATE OF IDAHO }
County of Clark } ss.

Terry Weatherston being
first duly sworn, deposes and says that he is the

Printer of THE CLARK COUNTY
ENTERPRISE, a weekly newspaper published in
Dubois, Clark County, in the State of Idaho. That

Notice of Proposed Change of Water
the Rights,
a true copy of which is hereto attached was pub-
lished in THE CLARK COUNTY ENTERPRISE for

two consecutive weeks, first publication

having been made on the 20th day of

May, 1976 and the last

publication having been made on the 27th

day of May, 1976.

That said paper has been continuously and
uninterruptedly published in said county during
a period of seventy-eight consecutive weeks
prior to the first publication of said notice or
advertisement, and is a newspaper within the
meaning of the laws of Idaho.

Terry Weatherston

SUBSCRIBED AND SWORN TO before me
this 28th day of May, A. D., 1976

Notary Public

My commission expires Aug. 5, 1977

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 32-0014/0015/
0016/2049/2071/2079**

Notice is hereby given that WHAOO
& BHA, Inc., Sugar City, Idaho, has
applied to the Department of Water
Resources for a change in the point of
diversion of the waters of Indian
Creek tributary to Medicine Lodge
Creek. The rights sought to be
changed are evidenced by decree to
A. G. Edie in case of Thomas A.
Robson, et al -vs- James Colson et al,
dated Sept. 15, 1953 in Ninth Judicial
Court, County of Clark, and by
License No. 32-2049, 32-2071 and
32-2079 and are recorded as follows:

PRIORITY: No. 32-0014 — 6-
14-83, No. 32-0015 — 5-01-84, No.
32-0016 — Not listed, No. 32-2049
— 1-10-14, No. 32-2071 — 7-26-17,
No. 32-2079 — 10-04-30.

AMOUNT: 16.92 cfs.

POINTS OF DIVERSION:
SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, T.
11N, R. 34E, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, T. 12N, R.
34E, B.M., Clark County.

The water under the decreed rights
is used to irrigate 320 acres within the
E $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E, B.M. The
water under the licensed rights is
used to irrigate 424 acres within the
E $\frac{1}{2}$, E $\frac{1}{4}$ W $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E,
B.M. The total amount of acres irrigat-
ed under these rights is 450.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the
NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E,
B.M., Clark County.

Any protest against approval of the
above proposed change of water right
must be filed with the Idaho Depart-
ment of Water Resources, 1515 Lin-
coln Road, Idaho Falls, Idaho, 83401,
on or before June 7, 1976.

R. KEITH HIGGINSON
Director

Published in the Enterprise Citizen,
Rexburg, Idaho, on May 20 and May
27, 1976.

MICROFILMED

CHARLES S. STEWARD
C-104 (1646)

ARLON L. THOMAS
B-2 (1265)

ARTHUR G. EDIE
B-14 (1276)

DISCRAFT

SMALL
-90 (165C)

DALE RANDALL
B-16 (1285)

WAYNE RICH
B-65 (1298)

MICROFILMED

NOT TO SCALE

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED

JAN 22 1986

Department of Water Resources
Eastern District Office

IN THE MATTER OF APPROVED TRANSFER NO. 1987)

32-0014/0015/0016 IN THE NAME OF GRANT) WITHDRAWAL

ASHCRAFT)
_____)

I hereby withdraw my transfer of water right No.
32-0014/0015/0016 and request that it be voided from the records
of the Department of Water Resources.

Signed at Boise City this 17 day of January,
1986.


GRANT ASHCRAFT

Attest: Marie Davis

MICROFILMED

Transfer No. 3154Water Right No. 32-0014
32-0015 (T1987)
32-0016STATE 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 356-3178Post 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 Creek4. Date of priority 32-0014 (6/15/1863) 32-0016 (Not specified)

5. Water is used for the following purposes:

32-0014 amount 0.50 cfs for Irrigation purposes from _____ to _____ *Not specified
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 annum7. Location of original point of diversion is NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 36Township 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 1249. Describe any other water rights used for the same purpose as described above 32-0057

MICROFILMED

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.

omit part B).

cubic feet per second
8/or

acre feet per annum

Township

County

ស្រាប់តែ

Place of use:

[illegible]

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	4.87	c.f.s. &/or	acre feet

b. Description of diverting works ~~Headgate to pipeline for gravity sprinkler~~

system.

and specify acres irrigated.

2. Change in point of diversion

Point of diversion	NE	1/4	NW	1/4	Section	36	Township	12N
Range	34E			B.M., Clark		County		
Additional points								

Additional points:

3. Change in place of use No Change

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

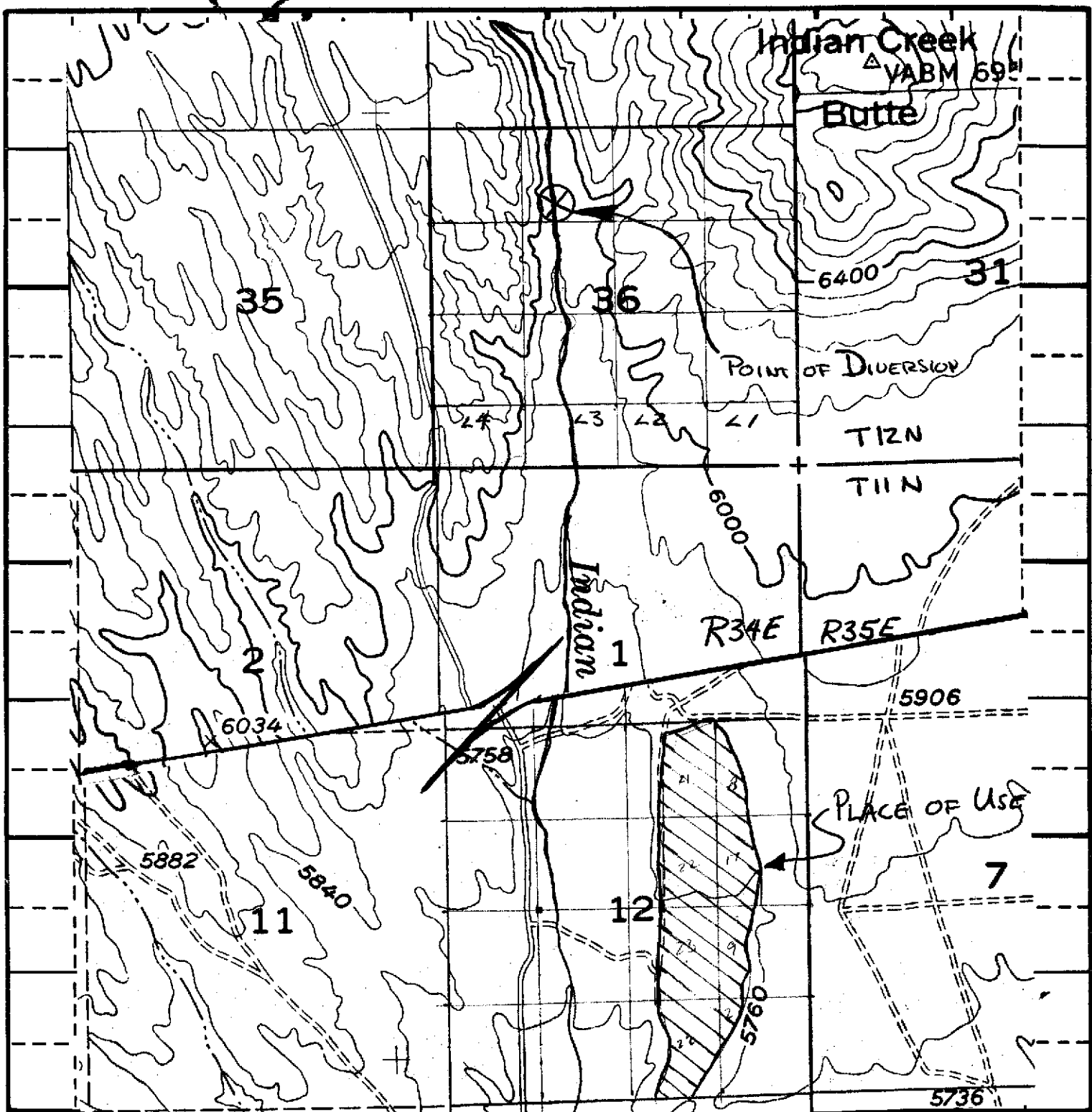
~~None~~

c. 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	
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.

MICROFILMED

D. REMARKS

MICROFILM

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 Ashcraft
(Signature of Applicant)

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

Mario 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 372.0 acre feet/annum.

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

A. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by AW Date 5-22-85 Protest filed by _____
Prelim. check by _____ Fee 50.00 # 33294 _____
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

CONSOLIDATED TAX NOTICE AND RECEIPT

CLARK COUNTY TAX COLLECTOR 1984
PROPERTY TAX

CLARK CO. COURTHOUSE REAL PROPERTY
MARKET VALUE TAX CODE AREA PARCEL NUMBER BILL NUMBER
76,980 3-00HP11N34E120010A 897
46,250L

8,640I SEC 12 TWP 11 RGE 34
22,090P E2, E2W2

MAC 4.000
AC 480.000

EDIE, A G
% ASHCRAFT, GRANT
RT 1
SUGAR CITY, ID 83448

DELINQUENT CERT.

TAXING DISTRICT	RATE	AMOUNT	RECEIPT
STATE	.000005	.38	FULL PAYMENT
COUNTY	.006095	469.20	TAX 760.4
SCHOOL #161	.003448	265.44	PEN.
CEMETERY	.000187	14.40	SUB TOT.
LIBRARY	.000143	11.02	INT.
			TOT.
			1ST INSTALLMENT
			TAX 380.2
			PEN.
			SUB TOT.
			INT.
			TOT.
			2ND INSTALLMENT
			TAX 380.2
			PEN.
			SUB TOT.
			INT.
			TOT.
TOTAL	.009878	760.44	

MICROFILMED

Department of Health and Human Services
 Division of Health Care Policy and Regulation
 Center for Medicare and Medicaid Services

I, J. Robb Brady, first being duly sworn, depose and say: That I am the Principal Clerk of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers having been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eighty (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

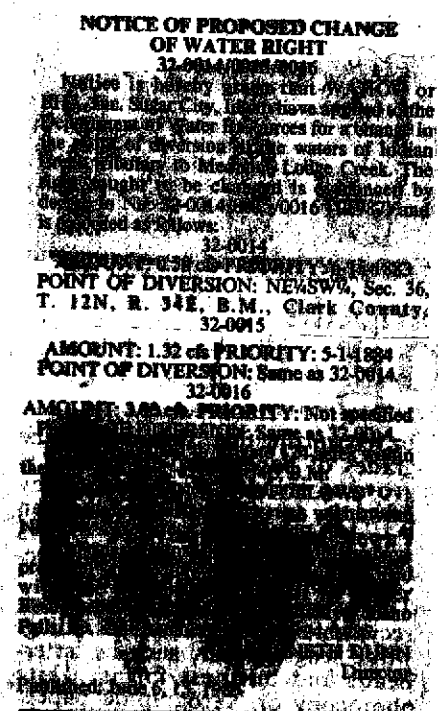
That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 6th day of June, 1985, last publication having been made on the 13th day of June, 1985, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 14th day of June, 1985

Notary Public

My commission expires September 30, 1985

B10, 1M,



MICROFILMED

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)	ORDER ISSUING
NAME OF WHAOO & BHA, INC.)	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

MICROFILMED

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, 1980



C. STEPHEN ALLRED
Director
Department of Water Resources

RECEIVED
MAY 20 1980

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)	)	PROPOSED
WHAOO & BHA, INC.	)	MEMORANDUM DECISION AND
	)	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

UNRECORDED

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.

RECEIVED
JAN 10 1980
FREMONT CO. CLERK

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 WHAQO & 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

MICROFILMED

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 WHAOO & 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

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 Steltzer
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 A. FLECK

RECEIVED

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 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

RECEIVED

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

Transfer No. 1987Application No. 32-0014/32-0015
32-0016/32-2049/32-2071/32-2079STATE 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 356-3178Post 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 appurtenantThrough purchase of land.

3. Source of water Indian Creek tributary to Medicine Lodge Creek
4. Date of priority (32-0014) - 6-14-83 32-0015 5-01-84
32-0016 - 32-2049 1-10-14 32-2079 10-04-30
5. Water is used for the following purposes: 32-2071 7-26-17
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**MICROFILMED**

1.	Amount of water:	a.	cubic feet per second	b.	acre feet per annum				
2.	Point of diversion	%	%	Section	Township	County	Range	B.M.,	Additional points

2. Point of diversion _____
 _____, B.M., _____ County
 Additional points _____

3. Place of use: _____

TWP.	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

[illegible]

Point(s) of diversion	NE	1/4	SW	1/4, Section	36	Township	12N
Amount of water to be diverted	16.92			c.f.s. &/or			acre feet
Range	34E						
Additional points							

d. Describe the reasons for applying for a change in the point(s) of diversion more efficient use of water

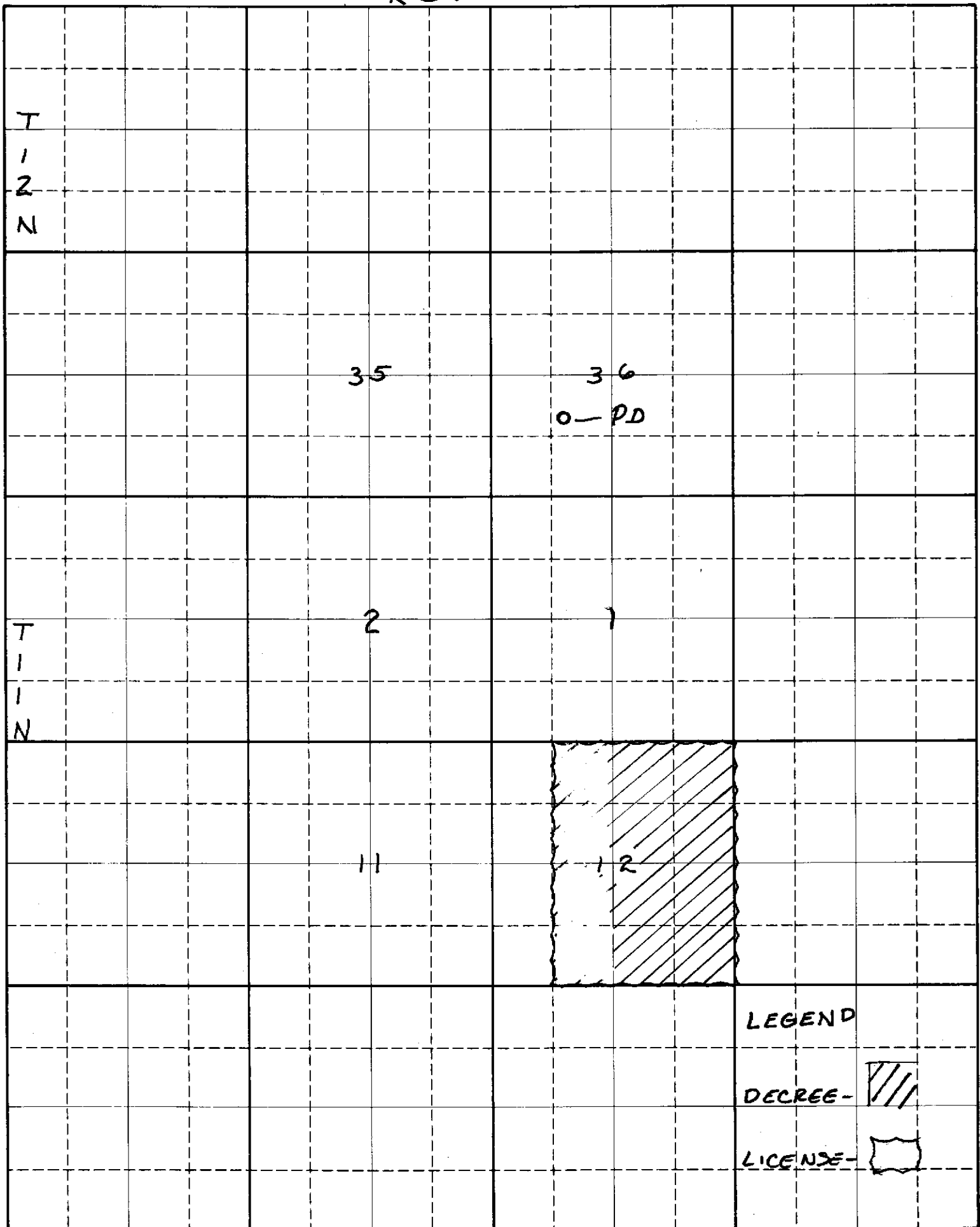
a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	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	TOTALS
			NE 1/4				NW 1/4				SW 1/4				SE 1/4				

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.

W 1/2 E 1/2 SEC 12

10.1
20.9
19.1
19.7
15.4
23.8
6.9
7.6

their late priority and are not available most years.

in use of the original right. The information contained in this application is true to the best of my knowledge.

(Signature of applicant) 2440

day of

[Signature]
(Notary public)

84/61/2

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

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

PURSUANT TO MEMORANDUM DECISION

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

day of

1977


R. KEITH HIGGINSON

FOR DEPARTMENT USE ONLY

Received by Date 3-18-76

Prelim. check by the Fee 30-

Received by (u) Date 5-10-76

Published in *Entrepreneur* Vol. 15, # 15, 1999

Pub. dates May 20 & 21, 1976

Watermaster recommendation requested on 5-13-76

Don Simpson
rec'd. 5-20-76

7-25

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:

<u>No.</u>	<u>Amount</u>	<u>Priority</u>	<u>Point of Diversion</u>
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.

MICROFILMED

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.

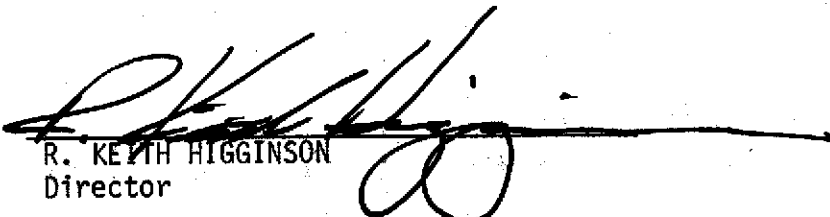
ORDER

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

RECEIVED

MAY 14 1976

Department of Water Resources
Eastern District Office

REAL ESTATE SALES AGREEMENT

THIS AGREEMENT, executed in triplicate this 31ST day of December, 1975, by and between ARTHUR G. EDIE, a widower and single man of Dubois, Clark County, Idaho, hereinafter referred to as "Seller", as Party of the First Part, and WAHOO, INC. and B. H. A., INC., both Idaho corporations with their principal places of business at Rexburg, County of Madison, Idaho, hereinafter referred to as "Purchasers", as Parties of the Second Part.

WITNESSETH:

1. Sale.

The Seller, in consideration of the covenants hereinafter contained on the part of the Purchasers, does hereby sell and agree to convey unto the Purchasers by Warranty Deed, conveying a good and clear title to the same in fee simple, free and clear of all encumbrances, excepting any that may have attached by reason of any act or acts of the Purchasers and excepting any to which this agreement is expressly made subject, the following described property located in Clark County, State of Idaho, to-wit:

Tract One: East 1/2, East 1/2 West 1/2, Section 12, Township 11 North, Range 34 East, Boise Meridian.

Tract Two: All of Section 7, Township 11 North, Range 35 East, Boise Meridian.

Tract Three: South 1/2 Northeast 1/4, Southeast 1/4 Northwest 1/4, Northeast 1/4 Southwest 1/4, North 1/2 Southeast 1/4, Lots 1, 2 and 3, Section 36, Township 12 North, Range 34 East, Boise Meridian.

Subject to a certain lien and encumbrance thereon to the Federal Land Bank Association, Idaho Falls, Idaho, which the Seller shall pay, and agrees to pay, from the payments to be made by the Purchasers hereunder.

Together with all improvements, water, water rights, easements and appurtenances thereto, and subject to such rights, easements and covenants as appear of record or by use upon the premises.

Together with personal property consisting of 1/2 mile of 4" sprinkler pipe, a tractor power-take-off pump, and a dwelling home located upon the property.

MICROFILMED

2. Price and Payment.

The purchase price of said property is the sum of \$177,500.00 lawful money of the United States to be paid by the Purchasers to the Seller in manner as follows:

a) The sum of \$26,987.50 upon the execution of this agreement, the receipt whereof is hereby acknowledged. (The Seller shall pay interest on the amount received as down payment at the rate of 10% per annum from December 22, 1975, to May 1, 1976, and which interest may be deducted from the payment to be made by the Purchasers to the Seller on May 30, 1976.)

b) The sum of \$24,487.50 shall be paid by the Purchasers to the Seller on or before May 30, 1976.

c) The sum of \$53,225.00 shall accrue interest thereon at the rate of 7 1/2% per annum, commencing May 1, 1976, and the principal and interest shall be payable in twelve (12) equal annual installments with the first annual installment due on or before January 10, 1977, and with the subsequent annual installments being due and payable on or before January 10th of each succeeding year thereafter until the full amount of principal and interest thereon shall have been paid. The payments shall be computed as an annual amortized payment for the total of \$53,225.00, including principal and interest, over twelve (12) equal annual installments, commencing as of January 10, 1976, and upon the payment on January 10, 1977, the amount of interest attributed to such payment from January 10, 1976 to May 1, 1976 shall be deducted therefrom and the Purchasers shall have the obligation only to make such portion of the payment as would represent the principal and the interest accrued subsequent to May 1, 1976.

d) The sum of \$72,800.00 shall accrue interest thereon at the then prevailing rate established as the rate of interest charged by the Federal Land Bank Association, Idaho Falls, Idaho. The interest shall accrue upon the amount to be paid by the Purchasers herein as of May 1, 1976, and principal and interest shall be payable in thirty (30) equal annual installments, commencing January 10, 1977, and continuing on or before the 10th day of January of each and every year thereafter until the full amount of principal and interest shall have been paid. The Payments shall be computed as an annual amortized payment for the total of \$72,800.00, including principal and interest, over thirty (30) equal annual installments, commencing as of January 10, 1976, and upon the payment on January 10, 1977, the amount of interest attributed to such payment from January 10, 1976 to May 1, 1976, shall be deducted therefrom and the Purchasers

shall have the obligation only to make such portion of the payment as would represent the principal and the interest accrued subsequent to May 1, 1976.

e) Subsequent to January 1, 1977, the Purchasers shall have the privilege and option of prepaying any amount upon the contract balance at any time in multiples of \$100.00, and interest shall accrue on the prepayments made only to the date of payment. All prepayments made shall be first applied to the balance which has the then highest interest rate accruing thereon. The amounts so paid shall be applied to the last remaining payments due upon said contract and shall not alter or reduce subsequent installment payments.

3. Allocation of Payments.

That the price herein agreed to be paid shall be allocated to the property sold and purchased in the following amounts:

Dwelling home	\$20,000.00
Real property and sprinkling equipment	\$165,300.00

4. Possession Date.

The Purchasers shall have possession of the farming premises to perform all farm work necessary for the 1976 crop season and shall have possession of the dwelling home located thereon on or before May 1, 1976.

5. Taxes and Assessments.

The Seller shall pay all taxes and assessments for the year 1975 and prior thereto and the Purchasers shall pay all taxes and assessments for the year 1976 and subsequent thereto. The term "taxes" shall include all water district or canal stock company assessments, if any.

6. Deed or Title Insurance.

The Seller shall execute and deliver to the escrow agent hereinafter named, a good and sufficient Warranty Deed to the premises herein sold and agreed to be conveyed, conveying fee simple title to the Purchasers, free and clear of all encumbrances, excepting any to which this agreement is expressly made subject and excepting any that may have attached by reason of any act or acts of the Purchasers.

Concurrently with the delivery of said deed, the Seller shall cause to be delivered to the escrow agent a Purchaser's Policy of Title Insurance, at Seller's discretion, which policy shall show fee simple title in the Seller, free and clear of all encumbrances excepting any that may have attached by reason

of any act or acts of the Purchasers and excepting any to which this agreement is expressly made subject.

In the event any defect appears in the title of the Seller, the Seller shall have a reasonable time in which to clear such defect, and it shall be the Seller's obligation so to do.

7. Grazing Permits.

It is understood and agreed by and between the parties that all grazing permits held by the Seller, in connection with said premises herein sold and agreed to be conveyed, shall be assigned which shall be through the Bureau of Land Management and the United States Forest Service. The Purchasers shall place with the escrow agent hereinafter named a reassignment of all of such grazing rights and privileges, which shall be held by the escrow agent and redelivered to the Seller if a default should occur in the contract which requires the redeliverance of documents delivered to the escrow agent to the Seller.

8. Escrow Agreement.

The parties shall concurrently herewith enter into an escrow agreement with The Idaho First National Bank, Rexburg, Idaho, as escrow agent, and shall deliver to such escrow agent a copy of this contract, together with the Warranty Deed from the Seller to the Purchasers of the real property sold, Bill of Sale to the personal property, assignment of water stock, and the reassignment of grazing rights by the Purchasers to the Seller. The Seller shall further deliver as herein provided to the escrow agent a Purchasers' Policy of Title Insurance.

Such documents shall be delivered to the Purchasers upon the completion of the terms and conditions to be performed by the Purchasers under the terms of this contract. In the event of a default by the Purchasers in the performance of the terms and conditions herein provided and such default remaining for a period of time as hereinafter provided without being corrected, then upon request and demand of the Seller all such documents and instruments shall be returned by the escrow agent to the Seller.

9. Purchasers' Covenants.

The Purchasers covenant, represent and agree as follows:

- a) To make all payments of principal and interest and to pay all taxes as hereinabove provided.

b) To keep said premises insured for the full insurable value of the premises, or for the balance due on this contract, whichever is the lesser, for loss by fire or other unavoidable casualty, or loss by cause covered by extended coverage, and to make the loss payable clause to the parties as their interests may appear at the time of loss. That the Purchasers shall cause a duplicate copy or certificate of the insurance coverage to be furnished to the Seller as such insurance policy is issued and for any renewal thereof. That should the Purchasers desire to use the proceeds of insurance to replace or repair any damaged or destroyed property, that the same shall be available to the Purchasers for such use to the extent of such insurance, but should any portion of the insurance proceeds not be used in such manner, then all of such insurance proceeds not so used shall be paid to the Seller in reduction of the balance due on this contract.

c) That the Purchasers have examined the above described premises and accept the same in the condition as they are now in at the date of this agreement.

d) To keep the premises in good condition during the term of this agreement and to keep the same in as good repair and condition as the same now are or may be put by the Seller. That the Purchasers shall not commit waste upon the premises and shall do nothing which shall decrease the security of the Seller or be detrimental to the value of the premises.

e) To not assign or sell this contract or the property described herein or any part thereof, or any of the grazing permits appurtenant thereto, without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

f) That the Purchasers shall not abandon or leave unoccupied any buildings upon said premises sold.

g) That the Purchasers shall farm that portion of the premises cultivated and farmed in a good farmlike manner with a reasonable crop rotation to preserve the fertility of the soil and shall apply such fertilizers, insecticides and chemicals and shall supply such labor in the control of weeds as shall be reasonably withheld.

h) That the Purchasers shall take all steps required and necessary to have the transfer of the grazing permits with the

7-6-5

MICROFILMED

Bureau of Land Management and the United States Forest Service transferred for use by the Purchasers and shall maintain and keep the same in good standing and shall pay all assessments thereon and do all required to keep such grazing permits in full force and effect during the term of this contract and shall not remove such grazing permits from being appurtenant to or as connected with the property herein described as the baseland for said permits.

10. Seller's Covenants.

The Seller covenants, represents and agrees with the Purchasers as follows:

a) The Seller represents that there is a prior encumbrance upon said premises to the Federal Land Bank Association, Idaho Falls, Idaho, and the Seller shall cause all payments to be made thereon and to discharge all obligations to be performed thereunder from the payments to be received from the Purchasers under this contract. That should the Seller in any default or become delinquent in the performance of the terms and conditions thereunder that the Purchasers hereunder may make such payments or perform such conditions as may be required to protect their interests and all such payments made may be applied against the balance due under this contract.

b) That all water and water rights connected with said premises are appurtenant thereto and there is no stock or canal or ditch company rights, other than that appurtenant to the property which shall go with and follow the property.

c) That the Seller shall remove all items of personal property, to be taken by the Seller from the said premises, on or before May 1, 1976.

11. Default.

Provided, however, that this agreement is made upon the express condition that time and punctuality of payments and performance of conditions are of the essence and a material part of this contract, and if default should be made in the payment of the said several sums, or any of them, or any part thereof, for a period of sixty (60) days after notice in writing from the escrow agent at the request of the Seller, or if the Purchasers should abandon the said property or in any other way breach this agreement, or if the said property is seized

-A-6

MICROFILMED

or levied upon or attempted to be seized or levied upon, under any legal process issued against the Purchasers, or if the Purchasers file a voluntary, or has filed against the Purchasers, an involuntary petition under the Bankruptcy Act (it being understood that the default and grace period above provided shall not apply to such conditions), the Seller, at the Seller's option, may retain all payments made by the Purchasers theretofore as liquidated damages for the breach of this agreement by the Purchasers; and the Seller shall have the rights to re-enter and take possession of the premises and shall be revested with the title free from all rights and claims of the Purchasers. (The election of this remedy shall not preclude the Seller from recovering damages against the Purchasers for waste upon or destruction to the premises and improvements.

In the alternative, and in the event the Seller does not declare a forfeiture of this agreement as herein provided, the Seller shall, subject to the notice of default as above provided, have the right to declare the entire balance of the purchase price and interest owing under this agreement at the time of default as being immediately due and payable and may bring suit against the Purchasers for the unpaid principal and interest, including costs and fees.

As a further alternative, the Seller shall have the right, at the Seller's option, to declare the entire balance as immediately due and payable upon any such default as aforesaid, and may treat this contract as a note and purchase money mortgage on said real property and a security agreement on any personal property and pass title to the Purchasers subject to such mortgage and security agreement and proceed immediately to foreclose the same in accordance with the laws of the State of Idaho; to have the property sold and the proceeds applied to the payment of the balance due including accrued interest, any advancements made upon taxes, assessments, to protect Seller's security, costs and attorney's fees and the Seller shall have a deficiency judgment for any balance which may remain.

12. Default in Insurance, Taxes and Assessments.

Should the Purchasers fail to make any payments of insurance, taxes or assessments or other payments as required under this contract, the Seller may pay the same, and the same shall be

immediately due from the Purchasers to the Seller and the amount thereof may be added to the balance due under this contract or collected by other action from the Purchasers.

13. Fees and Costs.

That the initial fees and the periodic charges of the escrow agent, and the costs of the preparation of this contract, escrow agreement and transaction, shall be paid by the parties in equal shares.

Should there be a default in the provisions of this contract in the performance thereof by the Purchasers, and should the Seller employ an attorney to assist in the enforcement of any of the provisions hereof, the Purchasers agree to pay a reasonable amount for such attorney's fees. In the event an action is brought to enforce any of the terms of this agreement, the successful party to such action shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

14. Benefits.

The terms and conditions of this contract shall inure to the benefit of and be binding upon the heirs, executors, administrators and assigns of the parties hereto.

15. Written Agreement.

This contract shall contain the entire agreement between the parties hereto and there are no oral representations or warranties not herein contained.

16. Interpretation.

The term "Seller" and "Purchaser" and the language of this agreement, where there is more than one seller or purchaser, shall be construed as plural and if any of the parties are feminine, or are firms or corporations, the masculine shall include the feminine and the neuter.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Arthur G. Eddie
Arthur G. Eddie

WAHOO, INC.

By: Grant Ashcraft

B. H. A., INC.

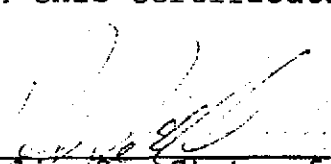
By: David B. Ashcraft

MICROFILMED

STATE OF IDAHO)
) ss.
County of)

On this 31 day of December, 1975, before me the undersigned, a Notary Public in and for said State, personally appeared ARTHUR G. EDIE, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and the year in this certificate first above written.

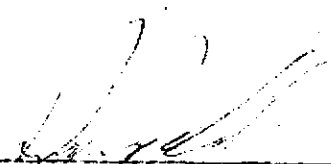


Notary Public for State of Idaho
Residing at

State of Idaho)
) ss.
County of Fremont)

Personally appeared before me this 31 day of December, 1975, Grant Ashcraft and David S. Ashcraft, known to me to be the Principal Owners and Corporate Officers of Ashcraft, Inc., and D.S.A., Inc., respectively, and who duly acknowledged to me that they executed the above instrument pursuant to Corporate Authority.

Witness my hand and seal the day and year first above written.



Notary Public for State of Idaho
Residing at St. Anthony, Idaho
My term expires: 5-1-78

MICROFILMED

GUARANTY

The undersigned, being a principal stockholder, officer and agent of one of the corporations that is the Purchaser under the above contract of sale does hereby personally guaranty the performance by said corporation of the terms and conditions required by the Purchasers to be performed under said contract of sale.

DATED this 31 day of December, 1975.

By: Ant. Chupat

RECEIVED

MAY 14 1976

Department of Water Resources
Eastern District Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

POWER OF ATTORNEY

32-0014 32-2071
32-0015 32-2079
32-0016
32-2099

Decree Right

The undersigned holder(s) of Permit/Application No. _____ of the
Department of Water Resources of the State of Idaho hereby nominates Grant Ashcroft
_____, whose address is RT # 1 Sugar, Idaho 83446

as attorney-in-fact, with full authority to act for and on behalf of the undersigned in all
matters pertaining to the above numbered permit or application. Such acts shall include,
but not be limited to, the filing of application, receiving of all notices, the signing and
filing of applications for extension of time and for amendments of said permits, and the
submission of proofs of completion of works and beneficial use of water.

B. H. A. Inc.

Dated this 14 day of May, 1976.

By Boyd B. Ashcroft
President

Pres. B.H.A. Inc.

STATE OF IDAHO)
County of Madison) ss.

On this 14th day of May, 1976, personally
Boyd B. Ashcroft known to me to be the President of B.H.A. Inc.
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
Such corporation
that he ~~(she)~~ ~~(they)~~ executed the same.

seal

James S. Thoms
Notary Public
Residing at Bozeman

My Commission expires:

hfs

MICROFILMED

Proof of Publication

RE

JUN 1 1976

Department of Water Resources
Eastern District Office

STATE OF IDAHO }
County of Clark }

ss.

Terry Weatherston being
first duly sworn, deposes and says that he is the

Printer of THE CLARK COUNTY
ENTERPRISE, a weekly newspaper published in
Dubois, Clark County, in the State of Idaho. That

Notice of Proposed Change of Water
the Rights a true copy of which is hereto attached was pub-
lished in THE CLARK COUNTY ENTERPRISE for

two consecutive weeks, first publication

having been made on the 20th day of

May, 1976 and the last

publication having been made on the 27th

day of May, 1976.

That said paper has been continuously and
uninterruptedly published in said county during
a period of seventy-eight consecutive weeks
prior to the first publication of said notice or
advertisement, and is a newspaper within the
meaning of the laws of Idaho.

Terry Weatherston

SUBSCRIBED AND SWORN TO before me

this 28th day of May, 1976.

Ray O. Porter
Notary Public.

My commission expires Aug. 5, 1977.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 32-0014/0015/ 0016/2049/2071/2079

Notice is hereby given that WHAOO
& BHA, Inc., Sugar City, Idaho, has
applied to the Department of Water
Resources for a change in the point of
diversion of the waters of Indian
Creek tributary to Medicine Lodge
Creek. The rights sought to be
changed are evidenced by decrees to
A. G. Edie in case of Thomas A.
Robson, et al vs James Colson et al,
dated Sept. 15, 1953 in Ninth Judicial
Court, County of Clark, and by
License No. 32-2049, 32-2071 and
32-2079 and are recited as follows:

PRIORITY: Nos. 22-0014 - 6-
14-63, No. 32-0014 - 5-5-61-64, No.
32-0018 - Not filed, Nos. 22-2049
- 1-10-14, No. 32-2071 - 7-28-17,
No. 32-2079 - 10-04-22.

AMOUNT: 1682 cfs.

POINTS OF DIVERSION:
SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, T.
11N, R. 34E, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, T. 12N, R.
34E, B.M., Clark County.

The water under the ~~diverted~~ rights
is used to irrigate 320 acres within the
E $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E; B.M. The
water under the licensed rights is
used to irrigate 424 acres within the
E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E,
B.M. The total amount of acres irrigat-
ed under these rights is 450.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the
NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E,
B.M., Clark County.

Any protest against approval of the
above proposed change of water right
must be filed with the Idaho Depart-
ment of Water Resources, 1515 Lin-
coln Road, Idaho Falls, Idaho, 83401,
on or before June 7, 1976.

R. KEITH HIGGINSON
Director

Published in the Enterprise Citizen,
Rexburg, Idaho, on May 20 and May
27, 1976.

MICROFILMED

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)
County of Ada) ss.

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

MICROFILMED

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;

MICROFILMED

1. —
2. —
3. —

Rich Andrews

356-3633

Wahco v. State

Motion for
Dismissal

checked
status.
file with judge.

1-13-86

QJZ

- 1- Proposed Memorandum Decision & Order
Issued on Rehearing
- 2- Order Issuing Proposal for Decision
D.C. Section 67-5211
- 3- Request for Rehearing
- 4- Memorandum Decision & Order
- 5- Order Adopting Proposed Memorandum
Decision & Order - Final Decision
- 6- Notice & Petition for Appeal
- 7- Response to "Notice & Petition for
Appeal (Kent Factor)"
- 8- Response to "Notice & Petition for
Appeal (Water Resources)"

file
RECEIVED

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

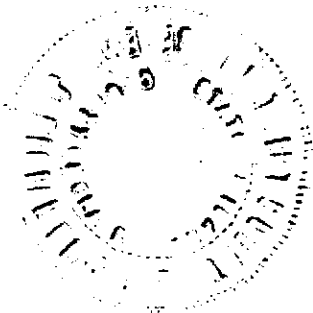
Case No. 2-345

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 *[Signature]* DEPUTY

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 *Judy Long*
Deputy



RECEIVED
DEC 11 1985

Department of Water Resources

JIM JONES
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 334-2400

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER
KENNETH R. ARMENT
Deputy Attorneys General
Department of Water Resources
450 West State Street
Boise, ID 83720
Telephone: (208) 334-4448

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.)

Case No. 2-345

RESPONSE TO ORDER
TO SHOW CAUSE

WAHOO AND BHA, INC.)

Applicant-Appellant,)

vs.)

STATE OF IDAHO, DEPT. OF WATER)
RESOURCES: Dean Shenton, Elman)
T. Woodfield, George Whittaker,)
Ned Gneiting, Lynn Hoggan, Hugh)
Webster, Holmes Brothers, Mr. &)
Mrs. Hollis Shenton, Leland Small,)
Thomas Steltzer, Allyn K. May,)
Jack and Pat McGarry, and)
Kenneth Rowland, (as successor)
in interest to Gene Cook),)

Protestants-Respondents.)

FILED THIS 9 DAY OF Dec 1985
JO ANN S. TAVENNER, Clerk Dist. Court, Clark County, Idaho
BY *[Signature]* DEPUTY

COMES NOW the Respondent, Idaho Department of Water Resources

(Department), by and through its attorney, Kenneth R. Arment, Deputy Attorney General, and responds to the Order to Show Cause why this matter should not be dismissed pursuant to Rule 40(c), I.R.C.P., for failure to prosecute the appeal.

The Department is content to trust the determination of this matter to the discretion of this Honorable Court. The Department does not object to either dismissal of the appeal for lack of prosecution or a finding that the appeal should not be dismissed. If the Court finds the latter, however, the Department asks that a time schedule be set for the request for preparation of transcript and briefing submittals. In addition, the Respondent believes that the primary issue on appeal, the Department's jurisdiction to determine questions of abandonment and forfeiture in a transfer proceeding, was determined in favor of the Department in Jenkins v. State, Dept. of Water Resources, 103 Idaho 384 (1982).

Respondent waives the right to present oral argument at the hearing on the Order to Show Cause.

DATED this 5th day of December, 1985.

JIM JONES
Attorney General


KENNETH R. ARMENT
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY certify that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of
RESPONSE TO ORDER TO SHOW CAUSE, Page 2

Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the attorney listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 5th day of December, 1985.

Document Served: RESPONSE TO ORDER TO SHOW CAUSE

Attorneys Served: G. Rich Andrus, Esq.
RIGBY, THATCHER, ANDRUS
BARTON & WALTERS
25 North 2nd East
Rexburg, Idaho 83440

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 129
Idaho Falls, Idaho 83401


KENNETH R. ARMENT
Deputy Attorney General



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES
STATEHOUSE, BOISE, IDAHO 83720
TELEPHONE: (208) 334-4448

December 5, 1985

Mr. R. Rhule Leonardson
Clerk of the District Court
P.O. Box 205
Dubois, ID 83423

RE: Wahoo and BHA, Inc., v. State of Idaho, Dept. of Water
Resources, Clark County Case No. 2-345

Dear Mr. Leonardson:

Enclosed is an original of the following document together
with a certificate of service:

RESPONSE TO ORDER TO SHOW CAUSE

Please file this document in the above-entitled matter. Also
enclosed is a copy of the document. Please conform this copy and
return it to me. An envelope is enclosed in accordance with the
requirements of I.R.C.P. 77(d) (Supp. 1984).

Very truly yours,

Peggy Bale
Legal Secretary
Department of Water Resources

encl.

JIM JONES
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 334-2400

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER
KENNETH R. ARMENT
Deputy Attorneys General
Department of Water Resources
450 West State Street
Boise, ID 83720
Telephone: (208) 334-4448

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. 2-345
FOR TRANSFER NO. 32-0014/	)	
0015/0016/2049/2071/2079	)	RESPONSE TO ORDER
IN THE NAME OF WAHOO and	)	TO SHOW CAUSE
BHA., INC.	)	
WAHOO AND BHA, INC.	)	
Applicant-Appellant,	)	
vs.	)	
STATE OF IDAHO, DEPT. OF WATER	)	
RESOURCES: Dean Shenton, Elman	)	
T. Woodfield, George Whittaker,	)	
Ned Gneiting, Lynn Hoggan, Hugh	)	
Webster, Holmes Brothers, Mr. &	)	
Mrs. Hollis Shenton, Leland Small,	)	
Thomas Steltzer, Allyn K. May,	)	
Jack and Pat McGarry, and	)	
Kenneth Rowland, (as successor	)	
in interest to Gene Cook),	)	
Protestants-Respondents.	)	

COMES NOW, the Respondent, Idaho Department of Water Resources

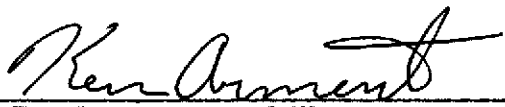
(Department), by and through its attorney, Kenneth R. Arment, Deputy Attorney General, and responds to the Order to Show Cause why this matter should not be dismissed pursuant to Rule 40(c), I.R.C.P., for failure to prosecute the appeal.

The Department is content to trust the determination of this matter to the discretion of this Honorable Court. The Department does not object to either dismissal of the appeal for lack of prosecution or a finding that the appeal should not be dismissed. If the Court finds the latter, however, the Department asks that a time schedule be set for the request for preparation of transcript and briefing submittals. In addition, the Respondent believes that the primary issue on appeal, the Department's jurisdiction to determine questions of abandonment and forfeiture in a transfer proceeding, was determined in favor of the Department in Jenkins v. State, Dept. of Water Resources, 103 Idaho 384 (1982).

Respondent waives the right to present oral argument at the hearing on the Order to Show Cause.

DATED this 5th day of December, 1985.

JIM JONES
Attorney General


KENNETH R. ARMENT
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY certify that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of

Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the attorney listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 5th day of December, 1985.

Document Served: RESPONSE TO ORDER TO SHOW CAUSE

Attorneys Served: G. Rich Andrus, Esq.
RIGBY, THATCHER, ANDRUS
BARTON & WALTERS
25 North 2nd East
Rexburg, Idaho 83440

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 129
Idaho Falls, Idaho 83401


KENNETH R. ARMENT
Deputy Attorney General

RECEIVED

NOV 26 1985

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/) O R D E R
0015/0016/2049/2071/2079)
IN THE NAME OF WAHOO and) Case No. 2-345
BHA., INC.)

In this matter it appearing from an examination of the file that the Order of Dismissal of said case was had without prior notice to all parties, particularly the State of Idaho, Department of Water Resources, and therefore the Order of Dismissal entered on November 9, 1985, herein, is ordered vacated and this matter reinstated for the purpose of further action by the Court, which, upon its own motion,

HEREBY ORDERS that the parties show cause before this Court on December 11, 1985, at 9:00 o'clock, a. m., at the Bonneville County Courthouse, Idaho Falls, Idaho, why this matter should not be dismissed pursuant to Rule 40(c), I.R.C.P., for failure to prosecute the appeal.

DATED this 22nd day of November, 1985.

FILED THIS 25 DAY OF Nov 19 85
JO ANN S. TAVENNER, Clerk Dist. Court, Clark County, Idaho

BY [Signature] DEPUTY

Boyd R. Thomas
Boyd R. Thomas
District Judge

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/	)	CASE NO. 2-345
0015/0016/2049/2071/2079	)	
IN THE NAME OF WAHOO and	)	CERTIFICATE OF MAILING
<u>BHA., INC.</u>	)	

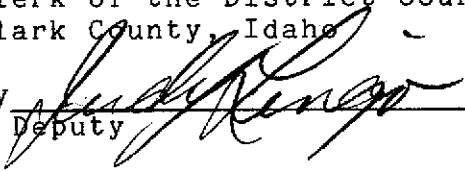
I hereby certify that a true and correct copy of the foregoing Order was mailed to the following, postage prepaid, on the 25th day of November, 1985:

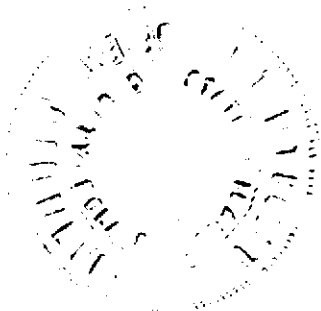
G. Rich Andrus, Esq.
25 North 2nd East
Rexburg, ID 83440

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
Clark County, Idaho

By 
Deputy



Joann S. Tavenner
Clark County
Auditor, Recorder &
Clerk of District Court
Box 205
Dubois, ID 83423



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

August 27, 1985

Kent W. Foster, Esq.
HOLDEN, KIDWELL, MAHN & CRAPO
P.O. Box 129
Idaho Falls, Idaho 83401

RE: Wahoo and BHA Inc. v. State of Idaho

Dear Kent:

Rich Andrus has forwarded my stipulation letter to his clients. Rich indicated that he'd be in contact with me after he has discussed the matter with his clients. I will continue to keep you informed of new developments.

Sincerely yours,

REN R. ARMENT
Deputy Attorney General
Department of Water Resources

KRA:plb

LAW OFFICES

RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES, *Chartered*

RECEIVED

AUG 26 1985

Department of Water Resources

25 NORTH SECOND EAST - P.O. BOX 250 - REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RICH ANDRUS
JERRY R. RIGBY - KENNETH L. PERKES
TELEPHONE (208) 356-3633 - TELEPHONE (208) 529-5531 I.F.

August 23, 1985

Kenneth R. Arment
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, ID 83701

Dear Mr. Arment:

Re: Wahoo and BHA Inc. v. State of Idaho

I have received your letter of August 19, 1985, I have forwarded a copy to my client with the request that they contact me to discuss the matter. As soon as I have had an opportunity to discuss the matter with them, I will be in touch with you.

Thank you,



G. Rich Andrus

GRA/sap

LAW OFFICES

RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS, *Chartered*

P.O. BOX 250

REXBURG, IDAHO 83440

Mr. Kenneth R. Arment
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, ID 83701



August 20, 1985

Kent W. Foster, Esq.
HOLDEN, KIDWELL, BARN AND CRAPO
P.O. Box 129
Idaho Falls, ID 83401

Dear Mr. Foster:

Thank you for returning my call regarding Wahoo & BHA v. IDWR, et al., Case No. 2-345, seventh district, Clark County. As I stated over the phone, I am sending a stipulation for dismissal to Rich Andrus with instructions to forward the document to you. Enclosed is a copy of the letter to Rich Andrus.

Assuming Mr. Andrus signs and forwards the stipulation, your timely aid in filing the document would dispose of the matter. If, however, the stipulation takes a detour in Rexburg into the circular file; is never heard from again; or is forwarded uncompleted, I will file a motion to dismiss with the court.

Thanks for your time and attention in this matter. I look forward to meeting you Kent, and working with you in the future.

Sincerely yours,

KENNETH R. ARMENT
Deputy Attorney General
Department of Water Resources

KRA:plb
Encl.

August 19, 1985

G. Rich Andrus, Esq.
RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS
25 North 2nd East
Rexburg, ID 83440

Dear Mr. Andrus:

I am a new Deputy Attorney General assigned to the Department of Water Resources. One of my responsibilities is to eliminate the "dead wood" in our active litigation files. One such case, Wahoo v. State of Idaho, Case No. 2-345 seventh district, Clark County, involves your notice and petition for appeal dated July 26, 1980.

Unfortunately, I have not been able to reach you by telephone, and my calls have not been returned. In realization that you have a busy schedule, I have taken some preliminary steps to dispose of the Wahoo case.

The most efficient method of dismissal is by stipulation. To this end I have drafted and enclosed a stipulation for dismissal and have included a postage paid envelope addressed to Kent W. Foster, Esq. of GOLDEN, KIDWELL, HAHN & CRAPO. Please forward the stipulation to Mr. Foster after you have signed it.

If, on the other hand, you still want to pursue an appeal in this case, please let me know. Your cooperation is greatly appreciated.

Sincerely,

KENNETH R. ARMENT
Deputy Attorney General
Department of Water Resources

KRA:plb
Encl.

1 **JIM JONES**

2 Attorney General

3 State of Idaho

4 Statehouse, Room 210

5 Boise, Idaho 83720

6 Telephone: (208) 334-2400

7 **CLIVE J. STRONG**

8 Deputy Attorney General

9 Chief, Natural Resources Division

10 **PHILLIP J. RASSIER**

11 **KENNETH R. ARMENT**

12 Deputy Attorneys General

13 Department of Water Resources

14 Statehouse

15 Boise, Idaho 83720

16 Telephone: (208) 334-4448

17 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

18 STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK

19 IN THE MATTER OF APPLICATION)
20 FOR TRANSFER NO. 32-0014/0015)
21 0016/2049/2071/2079 IN THE NAME)
22 OF WAHOO AND BHA, INC.)
23)

Case No. 2-345 .

24 WAHOO AND BHA, INC.)
25)

26 Applicant-Appellant,)
27)

28 vs.)
29)

STIPULATION FOR
DISMISSAL

30 STATE OF IDAHO, DEPT. OF WATER)
31 RESOURCES; Dean Shenton, Elman)
32 T. Woodfield, George Whittaker,)
33 Ned Gneiting, Lynn Hoggan, Hugh)
34 Webster, Holmes Brothers, Mr. &)
35 Mrs. Hollis Shenton, Leland Small,)
36 Thomas Steltzer, Allyn K. May,)
37 Jack and Pat McGarry, and)
38 Kenneth Rowland, (as successor in)
39 interest to Gene Cook),)
40)

41 Protestants-Respondents.)
42)

43 COMES NOW the parties hereto, by and through their
44 respective attorneys, and stipulate and agree that this action be
45 dismissed with prejudice for the reason that it is in the best

1 interests of all parties.

2 DATED this _____ day of _____, 1985.

3
4 JIM JONES
5 Attorney General

6
7 PHILLIP J. RASSIER
8 Deputy Attorney General
9 Department of Water Resources

10 ATTORNEYS FOR RESPONDENT

11 * * *

12 HOLDEN, KIDWELL, HAHN & CRAPO

13 KENT W. FOSTER
14 Member of Firm

15 ATTORNEYS FOR RESPONDENT

16 * * *

17 RIGBY, THATCHER, ANDRUS,
18 BARTON & WALTERS

19 G. RICH ANDRUS
20 Member of Firm

21 ATTORNEYS FOR APPELLANT

22 ORDER

23 IT IS HEREBY ORDERED that the above case be dismissed.
24 DATED this _____ day of _____, 1985.

25 _____
26 DISTRICT JUDGE



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

August 19, 1985

DEPARTMENT OF WATER RESOURCES
STATEHOUSE, BOISE, IDAHO 83720
TELEPHONE: (208) 334-4448

G. Rich Andrus, Esq.
RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS
25 North 2nd East
Rexburg, ID 83440

Dear Mr. Andrus:

I am a new Deputy Attorney General assigned to the Department of Water Resources. One of my responsibilities is to eliminate the "dead wood" in our active litigation files. One such case, Wahoo v. State of Idaho, Case No. 2-345 seventh district, Clark County, involves your notice and petition for appeal dated July 28, 1980.

Unfortunately, I have not been able to reach you by telephone, and my calls have not been returned. In realization that you have a busy schedule, I have taken some preliminary steps to dispose of the Wahoo case.

The most efficient method of dismissal is by stipulation. To this end I have drafted and enclosed a stipulation for dismissal and have included a postage paid envelope addressed to Kent W. Foster, Esq. of HOLDEN, KIDWELL, HAHN & CRAPO. Please forward the stipulation to Mr. Foster after you have signed it.

If, on the other hand, you still want to pursue an appeal in this case, please let me know. Your cooperation is greatly appreciated.

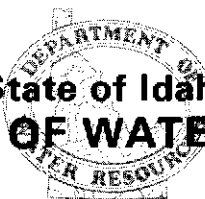
Sincerely,

A handwritten signature in cursive script, reading "Kenn Arment".

KENNETH R. ARMENT
Deputy Attorney General
Department of Water Resources

KRA:plb
Encl.

State of Idaho
DEPARTMENT OF WATER RESOURCES



Office of the Director

To: File

From: Jan Weck

Date: June 14, 1982

RE: Wahoo - Case # 2-345

Called Clerk of Ct & was
informed nothing more
was done on this case
since Response of F DWR
in Sept., 1980.

September 4, 1980

Mr. R. Rhule Leonardson
Clerk of the District Court
Box 205
Dubois, Idaho 83423

RE: Matter of Application for Transfer No. 32-0014/0015/
0016/2049/2071/2079 in the Name of Wahoo and BHA, Inc.,
Case No. 2-345.

Dear Mr. Leonardson:

Enclosed is the following item for filing in Case No. 2-345.

RESPONSE TO "NOTICE OF AND PETITION FOR APPEAL"

Please conform the enclosed copy of the document and return
it to me for our files.

Thank you for your cooperation and assistance.

Sincerely,

PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

PJR:jh

Enclosures

Rec'd
FPWR
9/11/80

1 **DAVID H. LEROY**
2 Attorney General
3 State of Idaho
4 Statehouse, Room 210
5 Boise, Idaho 83720
6 Telephone: (208) 384-2400

7 **JOSEPHINE P. BEEMAN**
8 **PHILLIP J. RASSIER**
9 Deputy Attorneys General
10 Department of Water Resources
11 Statehouse
12 Boise, Idaho 83720
13 Telephone: (208) 334-4448

FILED WITH 8 DAY OF SEPT 19 80
R. RHULE LEONARDSON, Clerk Dist. Court, Clark County, Ida.
BY Judy Loring DEPUTY

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

16 IN THE MATTER OF APPLICATION)
17 FOR TRANSFER NO. 32-0014/0015/)
18 0016/2049/2071/2079 IN THE NAME)
19 OF WAHOO AND BHA, INC.)
20 _____
21 WAHOO AND BHA, INC.,)
22)
23 Applicant-Appellant,)
24)
25 vs.)
26)
27 STATE OF IDAHO, DEPT. OF WATER)
28 RESOURCES; Dean Shenton, Elman)
29 T. Woodfield, George Whittaker,)
30 Ned Gneiting, Lynn Hoggan, Hugh)
31 Webster, Holmes Brothers, Mr. &)
32 Mrs. Hollis Shenton, Leland Small,)
33 Thomas Steltzer, Allyn K. May,)
34 Jack and Pat McGarry, and)
35 Kenneth Rowland, (as successor in)
36 interest to Gene Cook),)
37)
38 Protestants-Respondents.)
39 _____
40)

Case No. 2-345

RESPONSE TO "NOTICE OF
AND PETITION FOR APPEAL"

41 COMES NOW respondent C. Stephen Allred, Director of the
42 Department of Water Resources, by and through the undersigned
43 deputy attorney general, and in response to the "Notice of and
44 Petition for Appeal" filed herein by Wahoo, Inc. and BHA, Inc.,
45 applicant-appellant, hereby admits, denies and alleges as
46 follows:

47 I.

48 Respondent denies generally and specifically each and every
49 RESPONSE TO "NOTICE OF AND PETITION FOR APPEAL", Page 1

8

1 allegation contained in said Notice of and Petition for Appeal
2 not herein specifically admitted.

3 II.

4 Respondent admits the allegations contained in paragraphs I,
5 II, III, IV, V and VI appearing on pages 1 and 3 of the notice
6 and petition.

7 III.

8 Respondent denies the allegations contained in paragraph V
9 appearing on page 3 of the notice and petition.

10 AFFIRMATIVE DEFENSE

11 IV.

12 Respondent specifically alleges as an affirmative defense
13 that the water rights numbered 32-2049, 32-2071, and 32-2079,
14 sought to be transferred by the application of the applicant-
15 appellant, have long since been abandoned or lost and forfeited;
16 that the water rights of the protestant-respondents and others
17 would be injured by the proposed transfer of said rights; and
18 that said proposed transfer would constitute an enlargement in
19 use of the original rights numbered 32-2049, 32-2071, 32-2079.

20 V.

21 Respondent further alleges that this appeal should properly
22 have been filed pursuant to Idaho Code, Section 42-222(3), as
23 amended by Ch. 238, § 6, p. 526, 1980 Sess. Laws, and that such
24 appeal has therefore not been timely filed and should be
25 dismissed.

26 VI.

27 Respondent further alleges that if the appeal was not re-
28 quired to have been filed pursuant to I.C. § 42-222(3), as
29 amended in 1980, the appeal should be perfected pursuant to I.C.
30 § 42-222(3), as it existed prior to its amendment effective July
31 1, 1980, and that unless the appeal is further perfected with
32

Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

evidence of service of notice of appeal on the Department of Water Resources the appeal should be dismissed.

WHEREFORE, respondent prays:

1. That the appeal be dismissed for the reason that this Court lacks jurisdiction to hear the appeal because it has not been timely filed; or that the appeal be dismissed because it has not been properly perfected.

2. That if the appeal is not dismissed, the judgment, order and decree of this Court affirm the order of the Director of the Idaho Department of Water Resources denying the application of applicants to transfer said water rights.

DATED this 4th day of September, 1980.

Phillip J. Rassier
PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 4th day of September, 1980, served a true and correct copy of the foregoing RESPONSE TO "NOTICE OF AND PETITION FOR APPEAL" by depositing a copy thereof in the United States mail, postage prepaid and addressed to:

G. RICH ANDRUS, Esq.
RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS
25 North 2nd East
Rexburg, Idaho 83440

STATE OF IDAHO }
COUNTY OF CLARK } ss. KENT W. FOSTER, Esq.
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in the office of the undersigned Clerk of the District Court of the Seventh Judicial District of Idaho, for Clark County. HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 129
Idaho Falls, ID 83401

Given under my hand and seal at my office in Dubois, Idaho, this 8 day of SEPT, 1980.
R. RHULE LEONARDSON
CLERK, [Signature]
BY [Signature] DEPUTY CLERK

Phillip J. Rassier
PHILLIP J. RASSIER

RECEIVED

AUG 28 1980

Department of Water Resources

WILLIAM S. HOLDEN
R. YERN KIDWELL
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO
JAMES D. HOLMAN

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 129
IDAHO FALLS, IDAHO 83401
TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

August 26, 1980

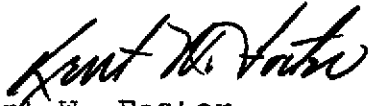
State of Idaho
Director, Department of Water Resources
Statehouse
373 West Franklin Street
Boise, Idaho 83702

Re: Matter of Application for Transfer No. 32-0014/
0015/0016/2049/2071/2079 in the Name of Wahoo and
BHA, Inc.

Gentlemen:

We are enclosing a copy of a Response to "Notice of and
Petition for Appeal" which has now been filed in the above matter.

Yours very truly,


Kent W. Foster

KWF:jt

Encl.

RECEIVED

AUG 28 1980

Department of Water Resources

Kent W. Foster of
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83401
Telephone: 208-523-0620

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

filed
8/27/80

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

Case No.

RESPONSE TO "NOTICE OF AND
PETITION FOR APPEAL".

Fee Category: C.1.b

Fee: \$20.00

COME NOW the respondent-protestants, Dean Shenton, Elman T. Woodfield, George Whittaker, Ned Gneiting, Lynn Hoggan, Hugh Webster, Holmes Brothers, Mr. and Mrs. Hollis Shenton, Leland Small, Thomas Steltzer, Allyn K. May, Jack and Pat McGarry and Kenneth Rowland, (as successor in interest to Gene Cook), and in response to the "Notice of and Petition for Appeal" filed herein by petitioners, Wahoo, Inc. and BHA, Inc., hereby admit, deny and allege as follows:

I

Respondents deny generally and specifically each and every allegation contained in said Notice of and Petition for Appeal not herein specifically admitted.

II

Respondents admit the allegations contained in paragraphs I, II, III, IV, V, and VI, of said Notice of and Petition for Appeal.

III

Respondents deny the allegations contained in paragraph V (sic) on page 3 of Notice of and Petition for Appeal.

IV

Respondents specifically allege as an affirmative defense that the water rights numbered 32-2049, 32-2071, and 32-2079, sought to be transferred by the application of the petitioners, have long since been abandoned or lost and forfeited; that the water rights of the respondents and others would be injured by the proposed transfer of said rights; and that said proposed transfer would constitute an enlargement in use of the original rights numbered 32-2049, 32-2071, and 32-2079.

WHEREFORE, respondents pray for the Judgment, Order and Decree of this Court affirming the order of said Director of the Idaho Department of Water Resources, and denying the application of said petitioners to transfer said water rights.

DATED this 26th day of August, 1980.

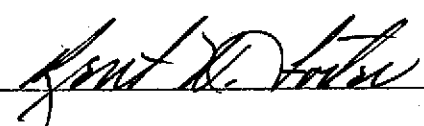
HOLDEN, KIDWELL, HAHN & CRAPO

By: 

Kent W. Foster
A Member of the Firm

CERTIFICATE OF MAILING

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the foregoing RESPONSE TO "NOTICE OF AND PETITION FOR APPEAL" by mailing a true and correct copy thereof to the following attorneys, prepaying the postage thereon this 26th day of August, 1980.



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

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

RECEIVED

AUG 14 1980

Department of Water Resources

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

Attorneys for Appellant.

*Filed Aug 14 1980
w/ HRCourt*

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.

Case No. 2-345
NOTICE OF AND PETITION FOR
APPEAL

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 transfer 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

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

SUBSCRIBED AND SWORN to before me this 27th day of July,
1980.

L. L. Peterson
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

G. Rich Andrus
G. Rich Andrus

2011 A

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,

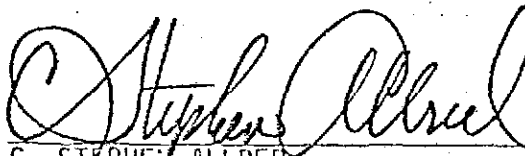
WHEREAS, more than fifteen (15) days have past since the service of the Proposed Memorandum Decision and Order Issued on Rehearing; and,

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.

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.
Signed this 25th day of July, 1980


C. STEPHEN ALLRED

Director

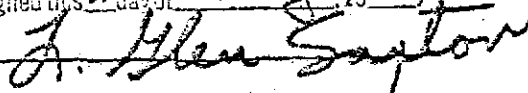


Exhibit B

Transfer No. 1987Application No. 32-0014/32-00
32-0016/32-2049/32-2071/32-207STATE 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 WHAOO & BHA, INC.Phone 356-3178Post 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 aldated Sept. 15, 1953 in Ninth Judicial Court county of Clark32-2049,

(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 Creek4. Date of priority (32-0014) - 6-14-8332-0015 5-01-8432-2049 1-10-1432-2079 10-04-30

5. Water is used for the following purposes:

32-2071 7-26-17amount 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 secondb. _____ &/or
acre feet per annum7. Location of original point of diversion is SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 1Township 11N Range 34E, B.M., in Clark CountyAdditional 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

MICROFILMED

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

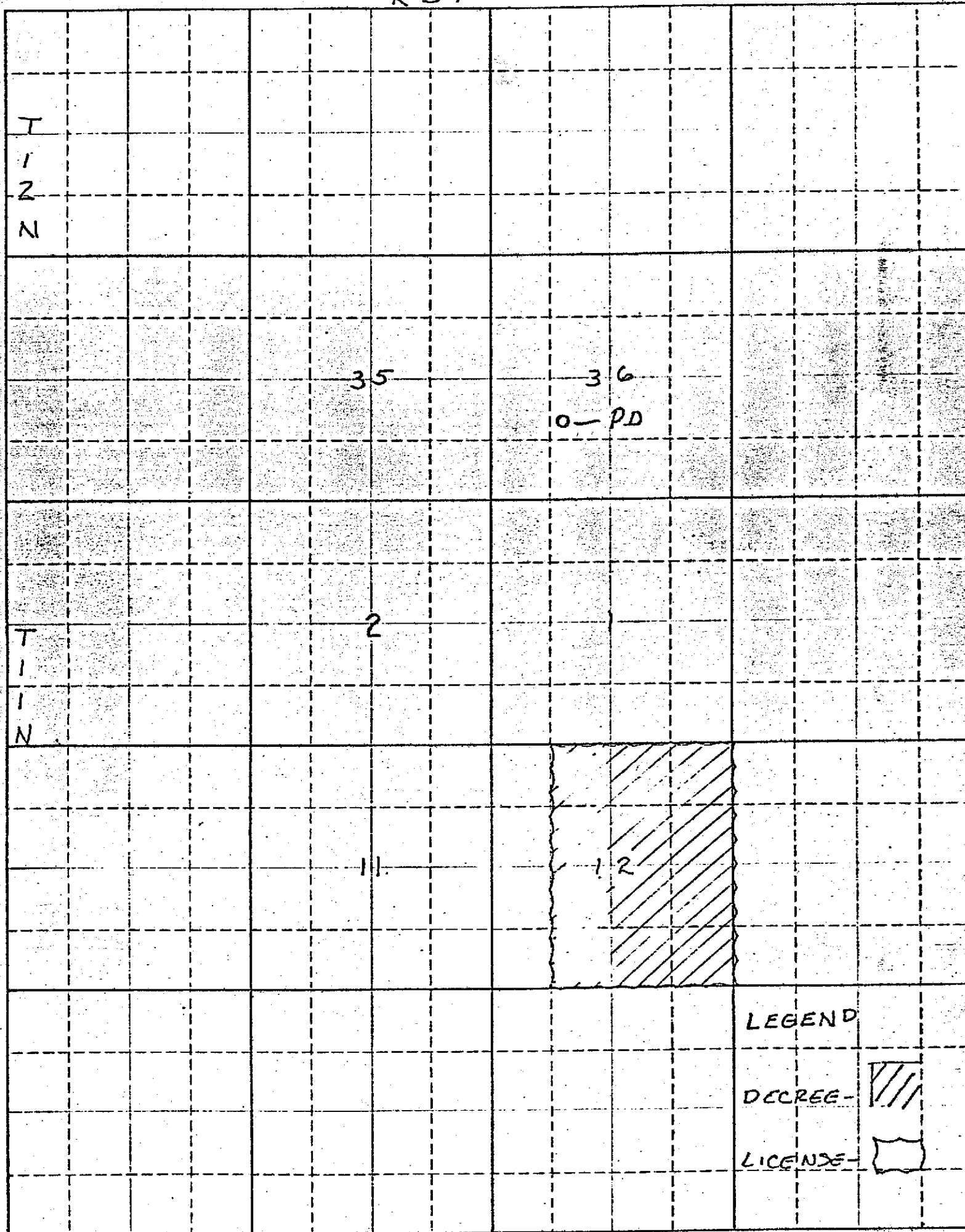
2. Change in place of use NO CHANGE

- 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	

- 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.

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 Chereff Pres. Newham
and power (Signature of applicant) CRABO

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

Donald 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

The foregoing is a true and certified copy of the document on file at the Department of Water Resources.

Signed this 18th day of July 1980 FOR DEPARTMENT USE ONLY

A. Glen Sayton

Received by CW Date 5-10-76

Prelim. check by *xtc* Fee 30⁰⁰

Received by OW. Date 5-10-76.

Published in *Cataglyphis* - # 15744

Pub. dates: May 20 & 22, 1976

Watermaster recommendation requested on 5-13-76.

Don Shepherd rec'd. 5-26-76

32-C

High Altitude, Hesse Park
 Protest filed by Lynard Higgins, Allene Mayne
Marque Stedger, Thomas Stedger, Fred
Amertin, Lela and Sam, George
Whittaker, Mrs. Mrs. Maple Skenton,
Edman T. Woodfield, Vera Skenton
Helmer Cro, Bonnie Doyle, Ben Doyle.
 Copies of protest forwarded by CW 6-11-76

Hearing held by _____ Date _____

Recommended for approval denial

by _____

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 WHAQQ & 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
32-2071	6.60 cfs	7/26/1917	SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, 12N, 34E
32-2079	2.00 cfs	10/04/1930	NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, 11N, 34E
			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 WHAQQ & 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.

RECORDED

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.

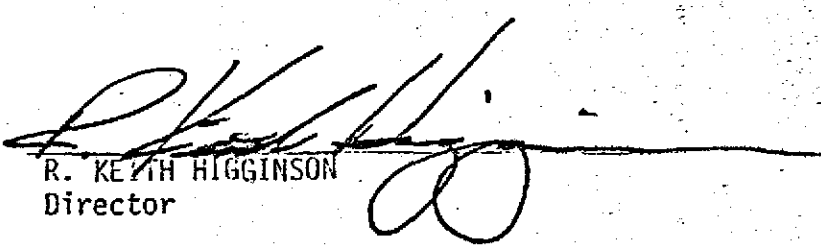
ORDER

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.

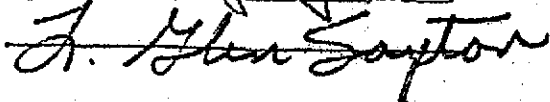
IT IS, FURTHER ORDERED and that portion of Application for Transfer involving rights No. 32-2049, 32-2071 and 32-2079 is hereby DENIED pursuant to Section 42-222, Idaho Code.

Dated this 9 day of February, 1977.


R. KEITH HIGGINSON
Director

The foregoing is a true and certified copy of the document on file in the Department of Water Resources.

Signed this 18th day of July, 1980


J. Glen Saylor

MICROFILMED

Exhibit 5 27-48
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

52-00
4/11/79

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 32-9014/0015/)
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, 1979, 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

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

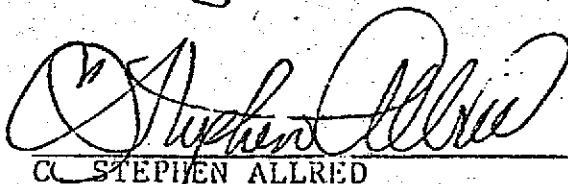
A. All exceptions, briefs, requests for oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

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.



CC 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/)
0016/2049/2071/2079 IN THE NAME OF)
WHAOO & BHA, INC.)

PROPOSED
MEMORANDUM DECISION AND
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 NE1/4SW1/4, 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.

The foregoing is a true and certified copy of
the original or the Department of
the State of Idaho

Witness my hand and seal this 25th day of July 1980

J. Glen Saylor

Bobby P. Fleenor
BOBBY P. FLEENOR
Hearing Officer

RECORDED
INDEXED



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

May 31, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Portia Jenkins
RIGBY, THATCHER, ANDRUS, et. al.
PO Box 250
25 North Second East
Rexburg, ID 83440

**RE: REQUEST FOR COPY OF HEARING TAPE - T3154 FOR WATER RIGHT
NOS. 32-00014/00015/00016**

Dear Ms. Jenkins:

I have reviewed your letter dated May 26, 2000 in which you request a copy of an audio tape or stenographic notes that may have been kept in connection with a hearing held in 1976 for the above referenced water rights. I was unable to locate such a tape or stenographic notes but did determine that there is correspondence and some miscellaneous notes regarding the matter in the department's water right files. In order to review this information to determine if it meets your needs, I suggest you visit the department's Idaho Falls office and ask to review the microfilm records for water right no. 32-00014.

If you have further questions, please feel free to contact the department.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - Region

RECEIVED

MAY 30 2000

Department of Water Resources

Law Offices

***RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered***

*Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller*

*P.O. Box 250
25 North Second East
Rexburg, ID 83440*

*Telephone:
Rexburg: (208) 356-3633
Fax: (208) 356-0768
E-Mail: Rexlaw@srv.net*

May 26, 2000

Glenn Saxton
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706-2237

RE: GRANT ASHCRAFT - TAPE RECORDING OF HEARING

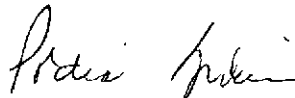
Dear Mr. Saxton,

Ray Rigby asked that I write this letter to request a copy of an audio tape or stenographic notes that may have been kept regarding a hearing held on May 10, 1976.

Enclosed is a copy of the "Memorandum Decision and Order" which should provide you with the details necessary to conduct your search. It is our understanding a taped record is usually kept or stenographic notes taken during hearings on applications to transfer water rights. It is also my understanding that this particular case may be too old and the tapes and notes may have been destroyed. Please see what you can do.

Thank you for your assistance in this matter.

Sincerely,



Portia Jenkins
Legal Assistant

9 Feb 77

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
32-2071	6.60 cfs	7/26/1917	SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, 12N, 34E
32-2079	2.00 cfs	10/04/1930	NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, 11N, 34E 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.

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 E½ 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.

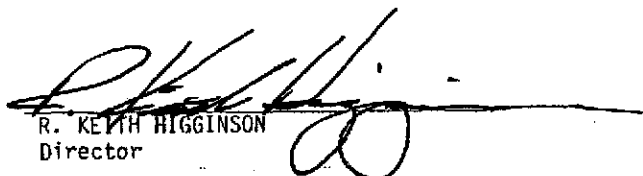
ORDER

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.

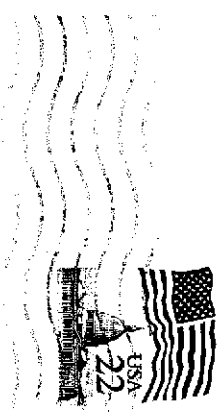
IT IS, FURTHER ORDERED and that portion of Application for Transfer involving rights No. 32-2049, 32-2071 and 32-2079 is hereby DENIED pursuant to Section 42-222, Idaho Code.

Dated this 9 day of February, 1977.


R. KEITH HIGGINSON
Director

Genet ASACRENET
RTE,
Sugar, ID 83448

STATE OF IDAHO
Department of Center Resources.
150 Sharp
IDAHO Falls, IDAHO 83402





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

March 4, 1986

RE: Transfer No. 3154

WAHOO or BHA, Inc.
Attn: Grant Ashcraft
Sugar Rt. 1
Sugar City, ID 83448

Dear Mr. Ashcraft:

This office acknowledges receipt of the withdrawal of the above referenced transfer of water right Nos. 32-0014/0015/0016. The effect of the transfer has been removed from the description of said water rights.

Enclosed for your records is a copy of the transfer application form showing that said transfer is withdrawn.

If you have any questions regarding this matter, please contact our office.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure
cc: Eastern Region

MICROFILMED

RECEIVED

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 Judy Lingo DEPUTY

MICROFILMED

CERTIFICATE OF MAILING

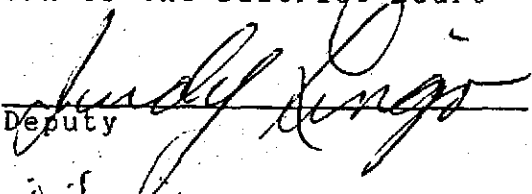
I hereby certify that a true and correct copy of the foregoing Order was mailed to the following, postage prepaid, on the 24th day of February, 1986:

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 
Deputy



MICROFILMED

RECEIVED

FEB 13 1986

1/2
INTER-DEPARTMENT MEMO — 1

FROM *Ewert*

DATE *10 Feb, 1986.*

TO *Bob Flemer.* ^{DF} Department of Water Resources

SUBJECT

Transfer No. 1987: In a discussion I had with Mr. Abbott after we had ~~not~~ considered a tentative hearing date, he stated the point of diversion charge was proposed was no longer practical and that charge would not happen. Rather than pursuing his objection to the approval, he wanted to simply ~~drop~~ the matter. Since it didn't seem logical to keep the transfer on record nor suggest that he file a second application without ~~the first~~

SIGNATURE

DATE 10 Feb 86

FROM

TO

SUBJECT

transfer 1987, at the cost of an additional \$50⁰⁰
I recommended he submit a withdrawal.

Though it is irregular to remove a transfer in this
manner, hopefully its not impossible.

Ernest.

SIGNATURE

January 14, 1986

RE: Transfer No. T 1987 32-0014/0015/0016

Mr. Grant Ashcraft
Rt. 1
Sugar City, ID 83448

Dear Mr. Ashcraft:

To withdraw the above captioned transfer of water right No. 32-0014/0015/0016, sign the enclosed form and return it to this office.

Based on the understanding that you are not going to pursue the transfer, this office will not schedule the administrative hearing proposed for January 29, 1986.

Feel free to contact this office if you have questions concerning the above items.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

WICOMED

December 27, 1985

RE: Transfer No. 3154/32-0014/0015/0016

Mr. Grant Ashcraft
Rt. 1
Sugar City, ID 83448

Dear Mr. Ashcraft:

To recommend action on the above-captioned approved transfer, an administrative hearing must be held to examine the issues of your protest against the conditions of approval set by the Department. January 29, 1986 has initially been selected as the date for conducting this meeting which will be held in Dubois.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the hearing.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

UNCLASSIFIED



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 ✓

MICROFILMED

Sept. 18 1985

RE: Request hearing for purpose of contest, Transfer No. 3157

Department of Water Resources
150 Shoup
ID. Falls ID. 83402

RECEIVED
SEP 30 1985

RECEIVED
SEP 23 1985
Department of Water Resources
Eastern District Office

Department of Water Resources

Gentlemen:

In reviewing the approval of rights No. 32-0014/32-0015/32-0016, I note that limitation #4, limiting the maximum volume of water to be diverted to 372.0 acft/annum constitutes an UNWARRANTED change in the decreed rights, which grants continuous flow of the rights from 1 apr. to 1 Nov of each year.

Parties involved have been using these rights continuous for the PAST SCORES of years, and a denial of the continuous flow right would greatly damage the people involved.

I therefore Request a hearing to be scheduled with the department in the near future.

Sincerely,

BHA : watto

Paul Ashcraft.

RT #1 Sugar City ID. 83448

MICROFILMED

September 16, 1985

RE: Transfer of Water Rights 32-0014/32-0015/32-0016/

Mr. Grant Ashcraft
Rt. 1
Sugar City, ID 83448

Dear Mr. Ashcraft:

Subsequent to our telephone conversation, I located those sections of the Idaho Code that describe the proper procedure for appealing a decision of the Department's Director or his designated agent.

§42-222, which requires the filing of an application for transfer to change the point of diversion for a water right, states "an applicant may request a hearing for the purpose of contesting the action of the director. A written petition stating the grounds for contesting the Director's action and requesting the hearing must be sent to the Department within fifteen (15) days after receiving the conditional approval."

To protect your rights under the Idaho Code, I strongly recommend you submit your written appeal immediately.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

NOT RECORDED

September 4, 1985

RE: Transfer of Water Right Nos. 32-0014/0015/0016

WAHOO or BHA, Inc.
Attn: Grant Ashcraft
Sugar Rt. 1
Sugar City, ID 83448

Gentlemen:

Enclosed is a copy of your approved Application for Transfer of the above referenced water rights (Transfer No. 3154). Be sure to note the conditions of approval as listed on the final page.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MICROFILMED

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 32-0014/0015/0016

JUL 8 1985

Department of Water Resources
Eastern District Office

WATER DISTRICT 32-C

WATERMASTER Donald W. Shenton

DATE: July 1-1985

COMMENTS: _____

☒ I do endorse approval of this change.

☐ I do not endorse approval of this change.

I recommend the following conditions of approval:

a measuring device that is
approved by the water master.

There is some talk by engineers
of keeping this in a closed pipe
which will not be taken out

Donald W. Shenton
Watermaster

✓

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF LANDS

Eastern Idaho Area Office
Route 1, Box 400 (Beeches Corner)
Idaho Falls, Idaho 83401

June 19, 1985

Mr. Ernest Carlsen
Assistant Regional Supervisor
Idaho Department of Water Resources
150 Shoup Ave, Suite 15
Idaho Falls, Idaho 83403

RECEIVED

JUN 25 1985

Department of Water Resources
Eastern District Office

Dear Mr. Carlsen:

Thank you for providing a copy of "Application for Transfer for No. 32-0014/0015/0016" for our review.

We have met with Mr. Grant Ashcraft and other interested parties regarding the proposed changes to the diversion on Indian Creek. Our Department will have no objections to the proposed diversion provided that the applicant obtain an easement from this Department as required prior to beginning any construction activities.

Sincerely yours,

James B. Wood
Assistant Area Supervisor, Range Management

JBW/jk

cc: Mr. Grant Ashcraft
Route 1,
Sugar City, Idaho 83448

Mr. Bob Lehman
Soil Conservation Service
50 North 2nd East
Rexburg, Idaho 83440



May 10, 1985

Grant Ashcraft
C/O WAHOO or BHA, Inc.
Sugar Route 1
Sugar City, ID 83448

Re: Transfer 32-0014 / 32-0015 / 32-0016

Dear Mr. Ashcraft:

Enclosed is a typed application for transfer that you need to review, sign in front of a notary and return to this office with the \$50.00 filing fee. As we discussed we will need a copy of last year's tax notice and a letter of permit from the Dept. of Lands allowing you to have your point of diversion on State lands.

Your prompt response will be appreciated.

Sincerely,

KEITH C. WILSON
Senior Resource Agent

KCW/ct

Enclosure

MICROFILMED

June 4, 1985

RE: Application for Transfer No. 32-0014/0015/0016 WAHOO & BMA

Mr. Don Shenton, Watermaster
Water District 32-C
Box 33
Dubois, ID 83423

Dear Don:

Please find enclosed a copy of the above referenced application(s) and water recommendation form(s). Please review the application(s) and complete the form(s), returning it to this office on or before June 24, 1985.

Thank you for your cooperation in this matter.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:CW

Enclosure

MICROFILMED

June 4, 1985

RE: Application for Transfer No. 32-0014/0015/0016 WHHOO & BHA

Mr. Jim Wood
State Department of Lands
Rt. #1, Box 400
Beaches Corner,
Idaho Falls, ID 83401

Dear Mr. Wood:

We are enclosing a copy of an application that may be of interest to your agency. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is June 24, 1985, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEETINITIAL REVIEW BY: MAY 24 1985

1. Right number 32-0014
32-0015 Applicant WATCO OR BHA INC
32-0016
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Other SPECIFY LAND LIST

4. Check:

- a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use SPECIFIED IN TRANSFER #1987
- 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. *There is a question as to ownership of new P/D - possibly IDAHO DEPT OF LANDS*
- h. ☒ Check for expansion in use of right. Comments Memo Decision
shows 124 acres - no expansion
- i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) no land change other rights 32-0057
- j. ☐ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 32C

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on 6-04-85 Received on 7-08-85
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☐ Yes ☒ No

RECOMMENDED ACTION 1. OIE 2. OS(32C, Medicine Lodge Creek)

1. ☒ Approve 3. Approval of this transfer does not grant a right of way across land owned by another.
2. ☐ Deny 4. The rights identified herein when combined shall not exceed 372 acre feet per annum.
3. Conditions* Watermaster (32C) Control head gates and measuring devices of a type approved by department

4. By JRC Date 7/23/85
Jim 8-29-85 USE ABOVE CONDITIONS

* All uses within Watermaster Districts require special conditions.

Department of Water Resources

MICROFILMED

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

32-0014/0015/0016

Notice is hereby given that WAHOO or BHA, Inc. Sugar City, Idaho have applied to the Department of Water Resources for a change in the point of diversion of the waters of Indian Creek ✓ tributary to Medicine Lodge Creek. The rights sought to be changed is evidenced by decree to No. 32-0014/0015/0016 (T1987) and is recorded as follows:

32-0014

AMOUNT: 0.50 cfs PRIORITY: 6-15-1883

POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E, ✓
B.M., Clark County.

32-0015

AMOUNT: 1.32 cfs PRIORITY: 5-1-1884 ✓

POINT OF DIVERSION: Same as 32-0014.

32-0016

AMOUNT: 3.00 cfs PRIORITY: Not specified 1 ?

POINT OF DIVERSION: Same as 32-0014.

The water is used to irrigate 124 acres within the E $\frac{1}{2}$, ✓
Sec. 12, T. 11N, R. 34E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, ✓
T. 12N, R. 34E, B.M.

Any protest against the approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, ID 83402 on or before June 24, 1985.

MICROFILMED

A. KENNETH DUNN

Director

Published in the Post Register, Idaho Falls, ID 6/6 & 6/13/85.

MICROFILMED

Notice ✓

Jan. 16 29
RECEIVED

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
Partnership.

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

MICROFILM

²
You need to. . .

Thank you

Sincerely Bennie

M. Bennie D. Fagle
788 S. E. Yonderosa Dr.
Hamilton,
Montana
59840

M. Ben T. Fagle
312 Horse Drive
Hamilton,
Montana
59840

RECEIVED
JAN 15 1961

RECEIVED

APR 18 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

RECEIVED

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.)

MICROFILMED

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 protesters feel there is an injury to all existing water licenses and permits which is quite clearly defined by the following pretest, which was filed by the protesters June 3, 1976.

We the undersigned do hereby pretest the transfer of water right and change of point of diversion in the name of WHA00 AND BHA INC. The reasons for pretest 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 dependant 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 pretest 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)

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.

RECEIVED

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.

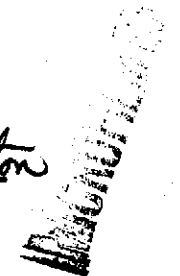
The record books turned in by the watermaster at the end of the season, indicate Mr. Eddie's last recorded delivery to be in the amount of 4.82 c.f.s., on Sept. 30, 1975. The watermaster and his deputy terminated their services that year on October 1, 1975, the reason being no demand for any further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

In conclusion, it should be pointed out that there is not one definite piece of evidence that Eddie 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 applicant's 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 protesters agree to the findings 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



RECEIVED

APR 2 1979

Department of Water Resources
Eastern District Office

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.

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

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 nowhere 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. Nowhere 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 of 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.

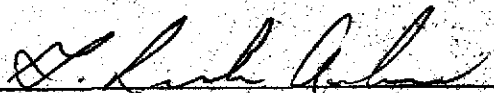
SUBMITTED this 30th day of March, 1979.


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

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

LAW OFFICES

RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS, *Chartered*

P. O. BOX 250

REXBURG, IDAHO 83440

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



RE HEARING
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>J. Rich Arthur</i>	<i>25 North 2nd East Rexby, Idaho</i>	<i>Grant Ashcraft</i> <i>Wahoo Inc.</i> <i>& B.H.A. Inc.</i>
<i>GRANT ASHCRAFT</i>	<i>Attⁿ 1, Sugar, ID.</i>	<i>Pres. of Wahoo Inc.</i> <i>agent for BHA.</i>
<i>Wear Shenton</i>	<i>Dubois, Idaho</i>	<i>Water user 32C</i>
<i>Hugh R Webster</i>	<i>Dubois Ida</i>	<i>32C</i>
<i>Edman T. Woodfield</i>	<i>Dubois Idaho</i>	<i>" 32C</i>
<i>Leonard Amel</i>	<i>Dubois Ida</i>	<i>" 32C</i>
<i>George W Kittaker</i>	<i>Dubois, Ida</i>	<i>" 32C</i>
<i>Max C Hoggan</i>	<i>Dubois Ida</i>	<i>" 32C</i>
<i>Holmes Bros, by Herald Holmes</i>	<i>Dubois, Idaho</i>	<i>" " "</i>
<i>Allyn May</i>	<i>" " "</i>	<i>32C</i>
<i>Hoggan Brothers by</i> <i>Fynn & Hoggan</i>	<i>Dubois Ida</i>	<i>" 32C</i>
<i>Don & Danny</i> <i>Jack J McHenry</i>	<i>Dubois Ida</i>	<i>" 32C</i>

Bob Fleenor
Ron Carlson - IDWR

MICROFILMED

RECEIVED

JAN 19 1979

Department of Water Resources
Eastern District Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
4545 Fair Road • Idaho Falls, Idaho
83401

CLAIM CHECK NO.

871877

☐ HOLD

DATE

1-13-79

1ST NOTICE

2ND NOTICE

RETURN

Described from
PS Form 3840-A
FEB. 1976

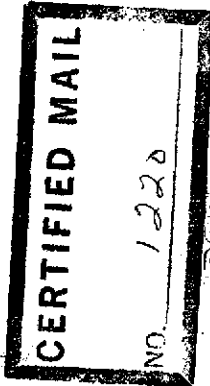


Mr. Ben T. Fayle

Dubois, ID 83423

312 Moss Drive

Hamilton, Mont. 59840



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Eastern District Office

1715 E. 1st Road • Idaho Falls, Idaho
83401

CLAIM CHECK NO.

871876

☐ HOLD

DATE

1-13-79
1ST NOTICE

2ND NOTICE

CERTIFIED MAIL

RETURN

NO.

1217

Registered from
PS Form 3840-A
Feb. 1978



JAN 13 1979

Department of Water Resources

Mr. Bennie D. Foyle Eastern District Office

Dubois, ID 83423

*788 S. East Ponderosa
Hamilton, Mont.
59840*



Rehearing issue, forfeiture of
Licenses 32-2049, 32-2071, 32-2079

Rich Andrus -
Grant Ashcraft

Direct Grant Ashcraft -
President of WHAOC inc
is purchasing property from

Applicant's EXHIBITS

- ✓ 1. Contract w/ A.G E die
- ✓ 2. LICENSE
- ✓ 3. LICENSE
- ✓ 4. LICENSE - 32-2079
- ✓ 5. Decree - Indian Creek
- ✓ 6. STIPULATION & AGREEMENT - 1953

Prior to purchase went over land
w/ Edie.

241 INCHES Decreed

Claims to have seen at least
600 inches in ditch at time of
purchase.

Applicant's EXHIBITS

- ✓ 7.
- ✓ 8. Letter from Richard Edie

MICROFILMED

X

Don Shanton

Delivers Licenses & those
under Stipulation

Memo decision on 32-6014/0015/etc
has always delivered all water
Edie requested.

May 1 - Nov 1 - normal regulation
Season

Watermaster runs weirs every
day after start of regulation
Season

Elmer Woodfield -

activated
Licensed rights on Medicine Lodge
would be injured if licenses re-
32-2076 - 1928 right

Rich Andros

42-222 -

Argument Dept. does not
have authority to decide
abandonment

Evidence that right has been
used

Quote. Gilbert vs. Smith.

DISCONTINUED

3.5
6.6
2
12.1

Call from Edie

Direct Richard Edie - Son of A. E. Edie
44 years old.

X Don SHENTON -
Do you know of any watermaster
who has delivered water - no
always used water before watermaster
came on

Direct ASHCRAFT ESTIMATES 600 inches
of water capacity of Edie
ditches Guess

X Don Shenton -

Don Shenton -
Protestants - Case -
Edie's ditch could have been full
without Edie even getting his
decreed rights
Indian Creek supplies a lot
of water to Medicine Lodge
There are many rights
on Medicine Lodge that
are later than these
Licensed rights

MICROFILM

32-0014

2-8-79

Rich Andrus -

Grant ~~Andrus~~ Ashcraft

~~R~~

(Take Notice of the Transfer Application)

Applicants Exhibit #1 - admitted - Contract

Appl Exhibit #2- ^{license} 32-2049 } Admitted
#3- ^{license} 32-2071 }
#4- ^{license} 32-2079 }

Appl Exhibit #5 - Copy of Court Decree -

" " #6 - Stipulation & Agreement - Sept 15, 1953

Exam

Grant Ashcraft - 1975

Mr Eddy ^{showed} water system - running 600 inches for irr. ~~for~~ ^{of} pasture
Has flood irrigated for 6 years

Mr Eddy claimed he had all water he needed. ^{hearsay}

Stipulated agreement only pertained to decreed ~~rights~~ rights
not the licensed and permitted

Appl. Ex #7 - letter ~~received~~ from Mr Eddy 1/26/79

Appl Ex #8 letter from Mr Richard Eddy 8-8-76

Continued after call to Mr ^{Richard} Eddy

Exam of Richard Eddy 44 years old
Farmed with his father until he left
Agreement ~~fixed~~ decree to the land

X-exam

licenses used most years
watermaster didn't deliver because he was not on

Cont. - Grant Ashcraft

Exhibit #7 resulted from our denial of license transfer

Conversation with neighbors - Thomas Bros - Claim ditches were full and
running over - hearsay -

Licensed -

X-exam by Don Shenton

- Water not measured -
-

Don Shenton

~~Statement that in the~~

Rules and To the watermaster - take notice

No ^{license} water has been delivered to this place -

Many later rights may be damaged -

Later rights = have been delivered for many
Mr. Eddy diverted his water last and the diversion

MICROFILMED

X-exam - ~~by~~ by Andrus

Records =

No reason to deny delivery -

Dispute between testimony of Shenton and Eddy on
use of high water -

Agreement pertains only to decreed rights -

Elman T. Woodfield

Possible damage - 32-2076 Garrison

No points of diversion existed for delivery by the watermaster -

X-exam

All the people including Mr Eddy used high water =

Final Statement by Mr. Andrus

No adjudication

~~by~~ No evidence of injury

Licensed rights used as high water

Finding of abandonment is improper - 42-242

No injury

No enlargement

} language mandatory

Allow transfer of all rights that existed whatever

Gilbert vs Smith

97 id 735

MICROFILMED

RETURN RECEIPTS

T. 32-0014

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered. 45¢
☐ Show to whom, date, and address of delivery. ¢
☐ RESTRICTED DELIVERY
☐ Show to whom and date delivered. ¢
☐ RESTRICTED DELIVERY
☐ Show to whom, date, and address of delivery. ¢
☐ RESTRICTED DELIVERY
☐ Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Dave Steltzer

Dubois,

ID 83423

3. ARTICLE DESCRIPTION:

REGISTERED NO. CERTIFIED NO. INSURED NO.

1214

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent

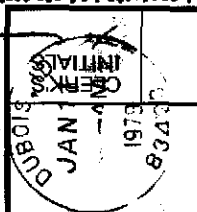
DATE OF DELIVERY

JAN 17 1979

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK



☆GPO 1977-0-219-196

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and 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 TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN
TO

RECEIVED

JAN 7 8 1979

DEPARTMENT OF WATER RESOURCES
(NAME of sender)

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

Department of Water Resources
Eastern District Office

(Street or P.O. Box) SAH0 83401

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 45 ¢
☐ Show to whom, date, and address of delivery..... ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered..... ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: T.32-0014, etc.
Bennie D. Foyle
Dubois, ID 83423

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<u>1217</u>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

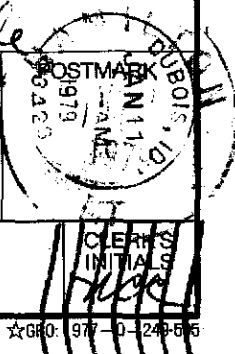
4. Bennie D. Foyle

DATE OF DELIVERY

1-15-79

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and 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 TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN
TO

RECEIVED

DEPARTMENT OF WATER RESOURCES

JAN 17 1979

(NORTHERN DISTRICT OFFICE)

1515 LINCOLN ROAD

Department of Water Resources

Eastern District Office

IDAHO FALLS, IDAHO 83401

(Street or P.O. Box)

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered **45** ¢
☐ Show to whom, date, and address of delivery ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: **32-0014, etc.**

Ned Gneiting
Dubois, ID 83423

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1216	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Barbara Gneiting*
 DATE OF DELIVERY
JAN 12 1979

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RECEIVED

JAN 15 1979

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES

(New Eastern District Office)

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401
(Street or P.O. Box)

(City, State, and ZIP Code)

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered.....45¢
☐ Show to whom, date, and address of delivery.....¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....¢
☐ RESTRICTED DELIVERY
 Show to whom, date, and address of delivery. \$____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Ben F. Fayle
 Dubois,
 ID 83423

T.32-0014, etc.

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

1220

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee☐ Authorized agent

4.

Bennie P. Fayle

DATE OF DELIVERY

1-15-79

POSTMARK

 1979
 JAN 11
 9 34 AM
 DUBOIS, ID

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and 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 TO AVOID PAYMENT
OF POSTAGE, \$300

RETURN
TO

RECEIVED

JAN 17 1979

DEPARTMENT OF WATER RESOURCES

(Name of Sender)

1515 LINCOLN ROAD

Department of Water Resources
Eastern District Office

(Street or P.O. Box)

(City, State, and ZIP Code)

PS Form 3811, Apr. 1977
RETURN RECEIPT, REGISTERED, REGISTERED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

☒ Show to whom and date delivered..... 45 ¢

☐ Show to whom, date, and address of delivery..... ¢

☐ RESTRICTED DELIVERY

Show to whom and date delivered..... ¢

☐ RESTRICTED DELIVERY

Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: T.32-0014, etc.

Thomas Steltzer

Dubois,

ID 83423

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

1215

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

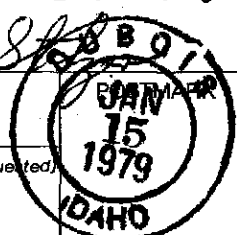
☐ Addressee

☐ Authorized agent

Thomas Steltzer

4. DATE OF DELIVERY

JAN 15 1979



5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

[Signature]

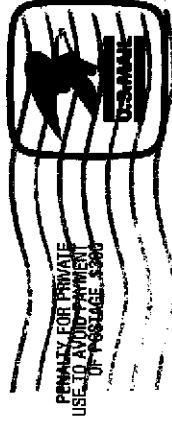
UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
RECEIVED



JAN 16 1918

DEPARTMENT OF WATER RESOURCES

(NEWSPAPER DISTRICT OFFICE)

Department of Water Resources
Eastern District Office

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401
(Street or P.O. Box)

(City, State, and ZIP Code)

- **SENDER:** Complete Items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☒ Show to whom and date delivered 45 ¢
☐ Show to whom, date, and address of delivery ¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered. ||||| ¢
☐ RESTRICTED DELIVERY
 Show to whom, date, and address of delivery. \$1
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 T. 32-0014, etc.
 Gene Cook
 Dubois, ID 83423
 |||||

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 1218

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Sally Cook*
 DATE OF DELIVERY
JAN 12 1979

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS

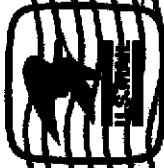
UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and 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 TO AVOID PAYMENT
OF POSTAGE \$300



RETURN
TO

RECEIVED

JAN 15 1979

DEPARTMENT OF WATER RESOURCES
(Name of Sender) DISTRICT OFFICE
1515 LINCOLN ROAD

Department of Water Resources
Eastern District Office

IDAHO FALLS, IDAHO 83401
(Street or P.O. Box)

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered 45 ¢
☐ Show to whom, date, and address of delivery ¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered ¢
☐ RESTRICTED DELIVERY
 Show to whom, date, and address of delivery . \$ ____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Grant Ashcraft T.32-0014, etc.
 WHAOO & BHA, Inc.
 Route 1 Sugar City, ID 83448

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1219	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☒ Addressee ☐ Authorized agent

4.

DATE OF DELIVERY

1-12-79

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS JAN 12 1979

Print your name, address, and ZIP CODE in the space below. - A M
• Complete items 1, 2, and 3 on the reverse
• Moistened gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.

RETURN

RECEIVED

JAN 15 1979

DEPARTMENT OF WATER RESOURCES

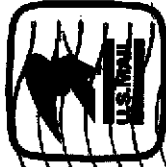
(Name of Sender)
EASTERN DISTRICT OFFICE

Department of Water Resources
Eastern District Office

1515 LINCOLN ROAD

(Street or P.O. Box) D.C. 20001

(City, State, and ZIP Code)



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300.

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered. \$ 45
- ☒ Show to whom, date, and address of delivery. \$
- ☐ RESTRICTED DELIVERY
- ☐ Show to whom and date delivered. \$
- ☐ RESTRICTED DELIVERY
- ☐ Show to whom, date, and address of delivery. \$
- (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: T. 32-0014, etc.

G. Rich Andrus
 Rigby, Thatcher & Andrus
 25 N. Second East, Rexburg, ID 83440

3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO.

1213

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

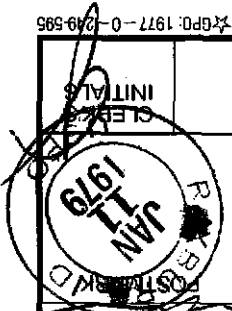
DATE OF DELIVERY

JAN 11 1979

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLEARANCE
 INITIALS



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

- Print your name, address, and ZIP CODE in the space below.
- Complete items 1, 2, and 3 on the reverse.
 - Moiston gummed ends and attach to front of article in space permits. Otherwise affix to back of article.
 - Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE
USE TO ADDITIONAL
OF POSTAGE \$300



RECEIVED

JAN 15 1979

DEPARTMENT OF WATER RESOURCES

Department of Water Resources
Earth Resources

(NEAREST POST OFFICE)

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

(Street or P.O. Box)

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☒ Show to whom and date delivered..... 45 ¢
☐ Show to whom, date, and address of delivery..... ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered..... ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery. \$____
 (CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**
 Dean Shenton 32-7089 &
 Dubois, T. 32-0014, etc.
 ID 83423

3. **ARTICLE DESCRIPTION:**
- | REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|----------------|---------------|-------------|
| | 1208 | |

(Always obtain signature of addressee or agent)

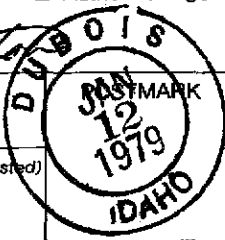
I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Dean Shenton*

DATE OF DELIVERY

5. **ADDRESS** (Complete only if requested)



6. **UNABLE TO DELIVER BECAUSE:**

CLERK'S
INITIALS

lk

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moistened gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt requested" adjacent to number.

RETURN

RECEIVED

JAN 15 1979

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

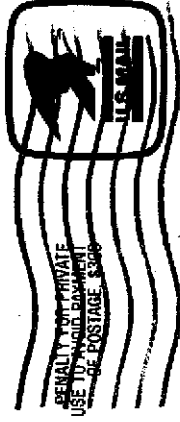
Department of Water Resources

Eastern District Office

1515 LINCOLN ROAD

INDIANAPOLIS, INDIANA 46201

(City, State, and ZIP Code)



● SENDER: Complete items 1, 2, and 3.

Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

☒ Show to whom and date delivered 45¢☐ Show to whom, date, and address of delivery ¢☐ RESTRICTED DELIVERY

Show to whom and date delivered ¢

☐ RESTRICTED DELIVERY

Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

32-7089 &
 Hollis Shenton T.32-0014, etc.
 Dubois, ID 83401

3. ARTICLE DESCRIPTION:

REGISTERED NO. | CERTIFIED NO. | INSURED NO.

1206

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee☐ Authorized agent

4.

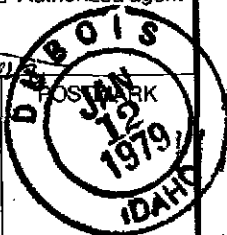
DATE OF DELIVERY

Hollis Shenton

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moisten gummed ends and 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 TO AVOID PAYMENT
OF POSTAGE, \$300



**RETURN
TO**

RECEIVED

JAN 15 1979

DEPARTMENT OF WATER RESOURCES
(Name of Sender) DISTRICT OFFICE

1515 LINCOLN ROAD

Department of Water Resources
Eastern District Office

IDAHO FALLS, IDAHO 83401
(Street or P.O. Box)

(City, State, and ZIP Code)

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered. 45¢
☐ Show to whom, date, and address of delivery. ¢
☐ RESTRICTED DELIVERY
☐ Show to whom and date delivered. ¢
☐ RESTRICTED DELIVERY
☐ Show to whom, date, and address of delivery. ¢
 Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Lynn H. Hogan
 Dubois,
 ID 83423
 32-7089 &
 T.32-0014, etc

3. ARTICLE DESCRIPTION:

REGISTERED NO. CERTIFIED NO. INSURED NO.
 1212

(Always obtain signature of addressee or agent)

I have received the article described above.

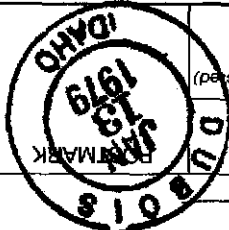
SIGNATURE ☐ Addressee ☒ Authorized agent

DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
 INITIALS



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS 12 JAN 83

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moistened gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO

RECEIVED

JAN 15 1979

Department of Water Resources
Eastern District Office

PENALTY FOR RETURN
USE TO AVOID RETURN
OF POSTAGE: \$300



DEPARTMENT OF WATER RESOURCES

(Name of Sender)
EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

(Street Address) IDAHO 83401

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered 45 ¢
☐ Show to whom, date, and address of delivery ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery . \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**

Hugh R. Webster 32-7089 &
 Dubois, T.32-0014, etc.
 ID 83423

3. **ARTICLE DESCRIPTION:**

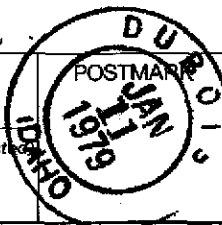
REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	7209	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Hugh R. Webster*
 DATE OF DELIVERY
JAN 11 1979



5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

CLERK'S
INITIALS

OK

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moistens gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO

RECEIVED

JAN 12 1979

Department of Water Resources
Eastern District Office

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



DEPARTMENT OF WATER RESOURCES
(Name of Sender)
EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

(Street Address) BOIDS, IDAHO 83401

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☒ Show to whom and date delivered 45 ¢
☐ Show to whom, date, and address of delivery ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:** 32-7089 &
 Elman T. Woodfield T. 32-0014, etc.
 Dubois,
 ID 83423

3. **ARTICLE DESCRIPTION:**

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1204	

(Always obtain signature of addressee or agent)

I have received the article described above.

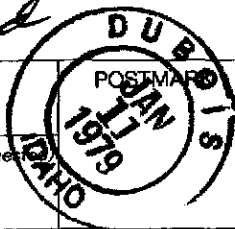
SIGNATURE ☐ Addressee ☐ Authorized agent

E. T. Woodfield

4. DATE OF DELIVERY

JAN 11 1979

5. ADDRESS (Complete only if requested)



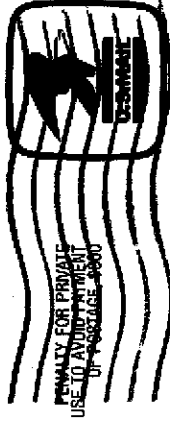
6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS JAN 11 1979

- Print your name, address, and ZIP CODE in the space below.
- Complete items 1, 2, and 3 on the reverse.
 - Moisten gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
 - Endorse article "Return Receipt Requested" adjacent to number.



RETURN
TO



RECEIVED

JAN 12 1979

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES

(Name of Eastern District Office)
EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

(Street or P.O. Box)

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered 45¢
☐ Show to whom, date, and address of delivery ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:** 32-7089 &
Holmes Brothers
Gerald Holmes T.32-0014, etc.
Dubois, ID 83423

3. **ARTICLE DESCRIPTION:**

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<u>1207</u>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. Mrs. Gerald Holmes

DATE OF DELIVERY

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

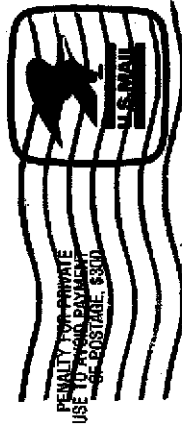
CLERK'S
INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Moistened gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



RETURN

RECEIVED

JAN 12 1979

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE
(Name of Sender)

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

(Street or P.O. Box)

Department of Water Resources

Eastern District Office

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered 45 ¢
☐ Show to whom, date, and address of delivery ¢
☐ **RESTRICTED DELIVERY**
 Show to whom and date delivered ¢
☐ **RESTRICTED DELIVERY**
 Show to whom, date, and address of delivery . \$ ____
 (CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**

Leland Small 32-7089 &
 Dubois,
 ID 83423 T.32-0014, etc.

3. **ARTICLE DESCRIPTION:**

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1210	

(Always obtain signature of addressee or agent)

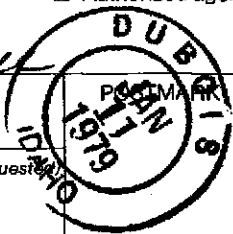
I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4.

DATE OF DELIVERY

JAN 11 1979



5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

CLERK'S
INITIALS

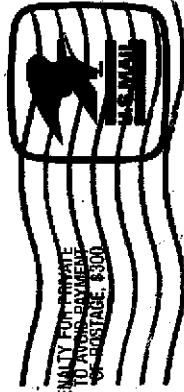
[Signature]

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below. JAN 11

- Complete items 1, 2, and 3 on the reverse.
- Moistened gummed ends and attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



RETURN
TO

RECEIVED

JAN 12 1979

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

(Name of Sender)
1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

Department of Water Resources
Eastern District Office

(Street or P.O. Box)

(City, State, and ZIP Code)

Certified Mail, Return Receipt

T.32-0014 etc.

✓ Gene Cook	Dubois ✓
✓ Hugh Webster	Dubois ✓
✓ Ben Fayle	Dubois ✓
✓ Holmes Bros.	Dubois ✓
✓ Dean Shenton	Dubois ✓
✓ Bennie D. Føyle	Dubois
✓ ^{ELman} 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. Rich Andrews Rigby, Thatcher & Andrews 25 N Second E, Rexburg

✓ Jack & Pat Mc Gary - not certified

MICROFILMED

Name and
Address
of Sender

Indicate type of mail:
☐ REGISTERED ☐ REGISTERED
C.O.D. ☐ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional
copies of this bill:
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	REST. DEL. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
✓ 1	1189 Keith Ferris Jenkins, Rt 2, Box 153, Idaho Falls	15	80	45			T. 31-0246/0241	
✓ 2	1190 Glen W. Munn, Alvin Munn & Sons, Rt 3 Box 356, Rhyolite							
✓ 3	1191 Blaine Grover, Atty, 102 N. Clark, Rhyolite							
✓ 4	1192 Kent Foster, Atty, P.O. Box 129, Idaho Falls							
✓ 5	1193 Blaine Smith, Dubois, Idaho 83423							
✓ 6	1194 Harold Siddoway, Teton City, Idaho 83451							
✓ 7	1195 Steve & Gladys Blackland, Box 120, Menan							
✓ 8	1196 Jack R. Hamilton, Zionsville Hwy, Idaho Falls							
✓ 9	1197 Sherman Halverson, Kellogg, Idaho 83423							
✓ 10	1198 Donald W. Shenton, Water District 32-C, Dubois							32-7089
✓ 11	1199 Kenneth Rowland, Dubois							
✓ 12	1200 Arthur Z. Smith, Dubois							
✓ 13	1201 Blaine Z. Larson, P.O. Box 2349, Idaho Falls							
✓ 14	1202 Simon S. Martin, Atty, P.O. Box 428, Idaho Falls							
✓ 15	1203 Jack J. McGarry, Dubois							
✓ 16	1204 Elmer T. Woodfield, Dubois							
✓ 17	1205 George Whittaker, Dubois							
✓ 18	1206 Nellie Shenton, Dubois							
✓ 19	1207 Gerald Holmes, Holmes Bros, Dubois							
✓ 20	1208 Dean Shenton, Dubois							

TOTAL NO. OF PIECES
LISTED BY SENDER

20

TOTAL NO. OF
PIECES REC'D AT P.O.

20

POSTMASTER, BER (Name of receiving employee)

*Show under "Remarks" class postage paid if other than first or
if international

PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

* U. S. GOVERNMENT PRINTING OFFICE: 1972-5-225-125

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

Name and
Address
of Sender

Indicate type of mail:

☐ REGISTERED ☐ REGISTERED
☐ C.O.D. ☐ C.O.D.
☐ CERTIFIED ☐ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional
copies of this bill.
POSTMARK AND DATE OF RECEIPT

MICROFILM
FALLS
JAN
10
1979

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEZ	R.R. FEE	REPT. DEL. FEE	ACTUAL VALUE	1979 HANDLING CHARGE	REMARKS*
✓1 1209	Hugh R. Webster, Dubois		15	80	45	7.32	0014.25	32-7089
✓2 1210	Zeland Small, Dubois						"	"
3 1211	Allyn K. May, Dubois						"	"
✓4 1212	Zygon A. Noggan, Dubois						"	"
✓5 1213	G. Rich Andrews, Atty, 25 N. Second E. Rayburg						T. 3	0014.25
✓6 1214	Dave Steltzer, Dubois							"
✓7 1215	Thomas Steltzer, Dubois							"
✓8 1216	Med Greeting, Dubois							"
✓9 1217	Bennie D. Foyle, Dubois							"
✓10 1218	Gene Cook, Dubois							"
✓11 1219	Grant Ashcraft, WNA000 BNA, Rt 1, Sugar City							"
✓12 1220	Ben F. Foyle, Dubois							"
✓13 1221	Norman Miller, Fremont-Mohamling, Box 5, St. Anthony							22-7286
✓14 1222	Mary Smith, Atty, 305, Second East, Rayburg							"
✓15 1223	Brent Ricks, Star Route, Nevada							"
✓16 1224	Homer Jones, Covert Ck, Canal Co, Rt 2, Ashton							21-7157
✓17 1225	Fall River Inn, Rt 1, St. Anthony						21-7156	21-7157
✓18 1226	Martin L. Le. Farms, Rt 2, Ashton						"	"
✓19 1227	Keith F. Mayhew, Fish Lake Ranch, Ashton						"	"
20	Best not certified to Don Shenton, Watermaster - T.	31-0240/4	12			T. 32-0014.25	"	"

TOTAL NO. OF PIECES
LISTED BY SENDER

14

TOTAL NO. OF
PIECES REC'D AT P.O.

12

POSTMASTER, PER (Name of receiving employee)

*Show under "Remarks" class postage paid if other than first or
if international.

PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of Value is required on international registered mail)

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

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,

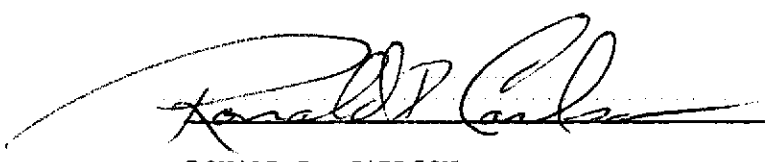
WHEREAS, on March 7, 1977 a petition for rehearing was received from WHAOO & BHA, Inc., which set forth sufficient grounds for rehearing, and said petition for rehearing was granted;

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



RECEIVED

INTER-DEPARTMENT MEMO — 1

FROM

Boase

MAR 31 1977

DATE

3/30/77

TO

Eastern

Department of Water Resources
Eastern District Office

SUBJECT

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

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

MICROFILMED

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

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.



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.



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.



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,

A handwritten signature in cursive script, reading "Bobby D. Fleenor", is written over the typed name.

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Enclosure

WEL...
Don...

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



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.

RECEIVED

LAW OFFICES

RIGBY, THATCHER & ANDRUS, P. A.

FEB 13 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.

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,

A handwritten signature in cursive script, appearing to read "G. Rich Andrus".

G. Rich Andrus

csp

Pull for Sub

INTER-DEPARTMENT MEMO — 1

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.



SIGNATURE

RECEIVED

FEB 11 1977

Department of Water Resources

February 9, 1977

Paul J. ...

R. Keith Higginson
Director of Water Resources
State House
Boise, Idaho 83720

Dear Mr. Higginson:

On August 12, 1976 the Department of Water Resources held a water hearing in Clark County Courthouse, Dubois, Idaho. It concerned the matter of protests against approval of application for Transfer No. 32-0014/0015/0016/2071/2079 in the name of Wahoo & BHA.

The 1977 irrigation season is almost here and time is needed to plan and implement water usage. Therefore, we hope you will be in a position to make a decision on the transfer in the near future.

Very truly yours,

Grant Ashcraft
Grant Ashcraft
Wahoo & BHA Inc.

MICROFILMED

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 30 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

MICROFILMED

DATE OF
PROPERTY 10/1/66

MICROFILMED

August 19, 1976

RE: Application for Transfer No. 32-0014/0015/0016/2049/2071/2079
WHAOO & BHA, INC.

Mr. G. Rich Andrus
Attorney at Law
25 North Second East
Rexburg, Idaho 83440

Dear Mr. Andrus:

Pursuant to your request, please find enclosed information concerning the above referenced application for transfer.

If you have further questions, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

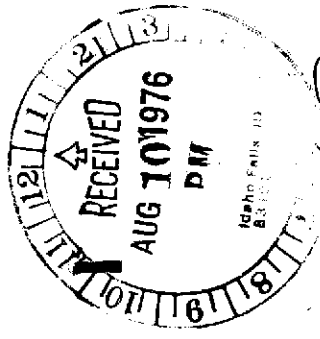
Enclosures

MICROFILMED

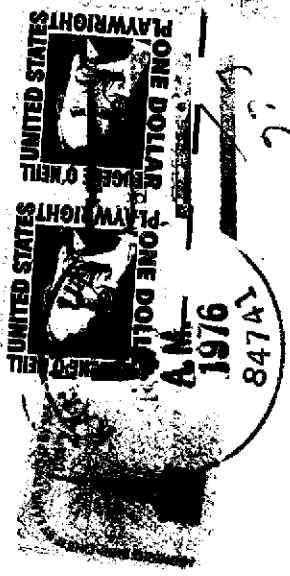
Edie, R. K.
P.O. Box 224
Payson,
Arizona
85541

**SPECIAL
DELIVERY
MICROFILMED**

**RETURN RECEIPT
REQUESTED**



Mr. RONALD D. CARLSON
Dept. of Labor Resources
1515 Lincoln Road
IDAHO FALLS,
IDAHO
83401



CERTIFIED
444347

No.

MAIL



Name and Address of Sender

Indicate type of mail:
☐ REGISTERED
☐ C.O.D.
☐ CERTIFIED

Attach stamp here if issued on certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	HEAT. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS
1	John Skirmers, Highgate, Box 18, Everett	13	40					29-2321
2	Wendell Lane, Box 52, Everett							"
3	Wendell Manning, P.O. Box 1301, Everett							15-7025
4	Williamson, Co. & Son, Metal							Combined 7026
5	Wendell, 2223 1st Ave, Everett, St.							7029
6	Wendell, Box 8, Everett							7030
7	Wendell, P.O. Box 1301, Everett							"
8	Wendell, P.O. Box 1301, Everett							"
9	Wendell, P.O. Box 1301, Everett							13-7031
10	Wendell, P.O. Box 1301, Everett							"
11	Wendell, P.O. Box 1301, Everett							"
12	Wendell, P.O. Box 1301, Everett							21-7033
13	Wendell, P.O. Box 1301, Everett							"
14	Wendell, P.O. Box 1301, Everett							22-7035
15	Wendell, P.O. Box 1301, Everett							"
16	Wendell, P.O. Box 1301, Everett							"
17	Wendell, P.O. Box 1301, Everett							32-7046
18	Wendell, P.O. Box 1301, Everett							"
19	Wendell, P.O. Box 1301, Everett							"
20	Wendell, P.O. Box 1301, Everett							"

PS Form 3877, Dec. 1973
Application for Registered, Registered C.O.D. and Certified Mail
Postmark - 21-7083 v 22-7025 v 23-7026
Postmark - 22-7014 v 23-7015
Postmark - 29-7027 v 30-7028
Postmark - 21-7029 v 22-7030
Postmark - 21-7031 v 22-7032
Postmark - 21-7033 v 22-7034
Postmark - 21-7035 v 22-7036
Postmark - 21-7037 v 22-7038
Postmark - 21-7039 v 22-7040
Postmark - 21-7041 v 22-7042
Postmark - 21-7043 v 22-7044
Postmark - 21-7045 v 22-7046
Postmark - 21-7047 v 22-7048
Postmark - 21-7049 v 22-7050
Postmark - 21-7051 v 22-7052
Postmark - 21-7053 v 22-7054
Postmark - 21-7055 v 22-7056
Postmark - 21-7057 v 22-7058
Postmark - 21-7059 v 22-7060
Postmark - 21-7061 v 22-7062
Postmark - 21-7063 v 22-7064
Postmark - 21-7065 v 22-7066
Postmark - 21-7067 v 22-7068
Postmark - 21-7069 v 22-7070
Postmark - 21-7071 v 22-7072
Postmark - 21-7073 v 22-7074
Postmark - 21-7075 v 22-7076
Postmark - 21-7077 v 22-7078
Postmark - 21-7079 v 22-7080
Postmark - 21-7081 v 22-7082
Postmark - 21-7083 v 22-7084
Postmark - 21-7085 v 22-7086
Postmark - 21-7087 v 22-7088
Postmark - 21-7089 v 22-7090
Postmark - 21-7091 v 22-7092
Postmark - 21-7093 v 22-7094
Postmark - 21-7095 v 22-7096
Postmark - 21-7097 v 22-7098
Postmark - 21-7099 v 22-7100
Postmark - 21-7101 v 22-7102
Postmark - 21-7103 v 22-7104
Postmark - 21-7105 v 22-7106
Postmark - 21-7107 v 22-7108
Postmark - 21-7109 v 22-7110
Postmark - 21-7111 v 22-7112
Postmark - 21-7113 v 22-7114
Postmark - 21-7115 v 22-7116
Postmark - 21-7117 v 22-7118
Postmark - 21-7119 v 22-7120
Postmark - 21-7121 v 22-7122
Postmark - 21-7123 v 22-7124
Postmark - 21-7125 v 22-7126
Postmark - 21-7127 v 22-7128
Postmark - 21-7129 v 22-7130
Postmark - 21-7131 v 22-7132
Postmark - 21-7133 v 22-7134
Postmark - 21-7135 v 22-7136
Postmark - 21-7137 v 22-7138
Postmark - 21-7139 v 22-7140
Postmark - 21-7141 v 22-7142
Postmark - 21-7143 v 22-7144
Postmark - 21-7145 v 22-7146
Postmark - 21-7147 v 22-7148
Postmark - 21-7149 v 22-7150
Postmark - 21-7151 v 22-7152
Postmark - 21-7153 v 22-7154
Postmark - 21-7155 v 22-7156
Postmark - 21-7157 v 22-7158
Postmark - 21-7159 v 22-7160
Postmark - 21-7161 v 22-7162
Postmark - 21-7163 v 22-7164
Postmark - 21-7165 v 22-7166
Postmark - 21-7167 v 22-7168
Postmark - 21-7169 v 22-7170
Postmark - 21-7171 v 22-7172
Postmark - 21-7173 v 22-7174
Postmark - 21-7175 v 22-7176
Postmark - 21-7177 v 22-7178
Postmark - 21-7179 v 22-7180
Postmark - 21-7181 v 22-7182
Postmark - 21-7183 v 22-7184
Postmark - 21-7185 v 22-7186
Postmark - 21-7187 v 22-7188
Postmark - 21-7189 v 22-7190
Postmark - 21-7191 v 22-7192
Postmark - 21-7193 v 22-7194
Postmark - 21-7195 v 22-7196
Postmark - 21-7197 v 22-7198
Postmark - 21-7199 v 22-7200
Postmark - 21-7201 v 22-7202
Postmark - 21-7203 v 22-7204
Postmark - 21-7205 v 22-7206
Postmark - 21-7207 v 22-7208
Postmark - 21-7209 v 22-7210
Postmark - 21-7211 v 22-7212
Postmark - 21-7213 v 22-7214
Postmark - 21-7215 v 22-7216
Postmark - 21-7217 v 22-7218
Postmark - 21-7219 v 22-7220
Postmark - 21-7221 v 22-7222
Postmark - 21-7223 v 22-7224
Postmark - 21-7225 v 22-7226
Postmark - 21-7227 v 22-7228
Postmark - 21-7229 v 22-7230
Postmark - 21-7231 v 22-7232
Postmark - 21-7233 v 22-7234
Postmark - 21-7235 v 22-7236
Postmark - 21-7237 v 22-7238
Postmark - 21-7239 v 22-7240
Postmark - 21-7241 v 22-7242
Postmark - 21-7243 v 22-7244
Postmark - 21-7245 v 22-7246
Postmark - 21-7247 v 22-7248
Postmark - 21-7249 v 22-7250
Postmark - 21-7251 v 22-7252
Postmark - 21-7253 v 22-7254
Postmark - 21-7255 v 22-7256
Postmark - 21-7257 v 22-7258
Postmark - 21-7259 v 22-7260
Postmark - 21-7261 v 22-7262
Postmark - 21-7263 v 22-7264
Postmark - 21-7265 v 22-7266
Postmark - 21-7267 v 22-7268
Postmark - 21-7269 v 22-7270
Postmark - 21-7271 v 22-7272
Postmark - 21-7273 v 22-7274
Postmark - 21-7275 v 22-7276
Postmark - 21-7277 v 22-7278
Postmark - 21-7279 v 22-7280
Postmark - 21-7281 v 22-7282
Postmark - 21-7283 v 22-7284
Postmark - 21-7285 v 22-7286
Postmark - 21-7287 v 22-7288
Postmark - 21-7289 v 22-7290
Postmark - 21-7291 v 22-7292
Postmark - 21-7293 v 22-7294
Postmark - 21-7295 v 22-7296
Postmark - 21-7297 v 22-7298
Postmark - 21-7299 v 22-7300
Postmark - 21-7301 v 22-7302
Postmark - 21-7303 v 22-7304
Postmark - 21-7305 v 22-7306
Postmark - 21-7307 v 22-7308
Postmark - 21-7309 v 22-7310
Postmark - 21-7311 v 22-7312
Postmark - 21-7313 v 22-7314
Postmark - 21-7315 v 22-7316
Postmark - 21-7317 v 22-7318
Postmark - 21-7319 v 22-7320
Postmark - 21-7321 v 22-7322
Postmark - 21-7323 v 22-7324
Postmark - 21-7325 v 22-7326
Postmark - 21-7327 v 22-7328
Postmark - 21-7329 v 22-7330
Postmark - 21-7331 v 22-7332
Postmark - 21-7333 v 22-7334
Postmark - 21-7335 v 22-7336
Postmark - 21-7337 v 22-7338
Postmark - 21-7339 v 22-7340
Postmark - 21-7341 v 22-7342
Postmark - 21-7343 v 22-7344
Postmark - 21-7345 v 22-7346
Postmark - 21-7347 v 22-7348
Postmark - 21-7349 v 22-7350
Postmark - 21-7351 v 22-7352
Postmark - 21-7353 v 22-7354
Postmark - 21-7355 v 22-7356
Postmark - 21-7357 v 22-7358
Postmark - 21-7359 v 22-7360
Postmark - 21-7361 v 22-7362
Postmark - 21-7363 v 22-7364
Postmark - 21-7365 v 22-7366
Postmark - 21-7367 v 22-7368
Postmark - 21-7369 v 22-7370
Postmark - 21-7371 v 22-7372
Postmark - 21-7373 v 22-7374
Postmark - 21-7375 v 22-7376
Postmark - 21-7377 v 22-7378
Postmark - 21-7379 v 22-7380
Postmark - 21-7381 v 22-7382
Postmark - 21-7383 v 22-7384
Postmark - 21-7385 v 22-7386
Postmark - 21-7387 v 22-7388
Postmark - 21-7389 v 22-7390
Postmark - 21-7391 v 22-7392
Postmark - 21-7393 v 22-7394
Postmark - 21-7395 v 22-7396
Postmark - 21-7397 v 22-7398
Postmark - 21-7399 v 22-7400
Postmark - 21-7401 v 22-7402
Postmark - 21-7403 v 22-7404
Postmark - 21-7405 v 22-7406
Postmark - 21-7407 v 22-7408
Postmark - 21-7409 v 22-7410
Postmark - 21-7411 v 22-7412
Postmark - 21-7413 v 22-7414
Postmark - 21-7415 v 22-7416
Postmark - 21-7417 v 22-7418
Postmark - 21-7419 v 22-7420
Postmark - 21-7421 v 22-7422
Postmark - 21-7423 v 22-7424
Postmark - 21-7425 v 22-7426
Postmark - 21-7427 v 22-7428
Postmark - 21-7429 v 22-7430
Postmark - 21-7431 v 22-7432
Postmark - 21-7433 v 22-7434
Postmark - 21-7435 v 22-7436
Postmark - 21-7437 v 22-7438
Postmark - 21-7439 v 22-7440
Postmark - 21-7441 v 22-7442
Postmark - 21-7443 v 22-7444
Postmark - 21-7445 v 22-7446
Postmark - 21-7447 v 22-7448
Postmark - 21-7449 v 22-7450
Postmark - 21-7451 v 22-7452
Postmark - 21-7453 v 22-7454
Postmark - 21-7455 v 22-7456
Postmark - 21-7457 v 22-7458
Postmark - 21-7459 v 22-7460
Postmark - 21-7461 v 22-7462
Postmark - 21-7463 v 22-7464
Postmark - 21-7465 v 22-7466
Postmark - 21-7467 v 22-7468
Postmark - 21-7469 v 22-7470
Postmark - 21-7471 v 22-7472
Postmark - 21-7473 v 22-7474
Postmark - 21-7475 v 22-7476
Postmark - 21-7477 v 22-7478
Postmark - 21-7479 v 22-7480
Postmark - 21-7481 v 22-7482
Postmark - 21-7483 v 22-7484
Postmark - 21-7485 v 22-7486
Postmark - 21-7487 v 22-7488
Postmark - 21-7489 v 22-7490
Postmark - 21-7491 v 22-7492
Postmark - 21-7493 v 22-7494
Postmark - 21-7495 v 22-7496
Postmark - 21-7497 v 22-7498
Postmark - 21-7499 v 22-7500
Postmark - 21-7501 v 22-7502
Postmark - 21-7503 v 22-7504
Postmark - 21-7505 v 22-7506
Postmark - 21-7507 v 22-7508
Postmark - 21-7509 v 22-7510
Postmark - 21-7511 v 22-7512
Postmark - 21-7513 v 22-7514
Postmark - 21-7515 v 22-7516
Postmark - 21-7517 v 22-7518
Postmark - 21-7519 v 22-7520
Postmark - 21-7521 v 22-7522
Postmark - 21-7523 v 22-7524
Postmark - 21-7525 v 22-7526
Postmark - 21-7527 v 22-7528
Postmark - 21-7529 v 22-7530
Postmark - 21-7531 v 22-7532
Postmark - 21-7533 v 22-7534
Postmark - 21-7535 v 22-7536
Postmark - 21-7537 v 22-7538
Postmark - 21-7539 v 22-7540
Postmark - 21-7541 v 22-7542
Postmark - 21-7543 v 22-7544
Postmark - 21-7545 v 22-7546
Postmark - 21-7547 v 22-7548
Postmark - 21-7549 v 22-7550
Postmark - 21-7551 v 22-7552
Postmark - 21-7553 v 22-7554
Postmark - 21-7555 v 22-7556
Postmark - 21-7557 v 22-7558
Postmark - 21-7559 v 22-7560
Postmark - 21-7561 v 22-7562
Postmark - 21-7563 v 22-7564
Postmark - 21-7565 v 22-7566
Postmark - 21-7567 v 22-7568
Postmark - 21-7569 v 22-7570
Postmark - 21-7571 v 22-7572
Postmark - 21-7573 v 22-7574
Postmark - 21-7575 v 22-7576
Postmark - 21-7577 v 22-7578
Postmark - 21-7579 v 22-7580
Postmark - 21-7581 v 22-7582
Postmark - 21-7583 v 22-7584
Postmark - 21-7585 v 22-7586
Postmark - 21-7587 v 22-7588
Postmark - 21-7589 v 22-7590
Postmark - 21-7591 v 22-7592
Postmark - 21-7593 v 22-7594
Postmark - 21-7595 v 22-7596
Postmark - 21-7597 v 22-7598
Postmark - 21-7599 v 22-7600
Postmark - 21-7601 v 22-7602
Postmark - 21-7603 v 22-7604
Postmark - 21-7605 v 22-7606
Postmark - 21-7607 v 22-7608
Postmark - 21-7609 v 22-7610
Postmark - 21-7611 v 22-7612
Postmark - 21-7613 v 22-7614
Postmark - 21-7615 v 22-7616
Postmark - 21-7617 v 22-7618
Postmark - 21-7619 v 22-7620
Postmark - 21-7621 v 22-7622
Postmark - 21-7623 v 22-7624
Postmark - 21-7625 v 22-7626
Postmark - 21-7627 v 22-7628
Postmark - 21-7629 v 22-7630
Postmark - 21-7631 v 22-7632
Postmark - 21-7633 v 22-7634
Postmark - 21-7635 v 22-7636
Postmark - 21-7637 v 22-7638
Postmark - 21-7639 v 22-7640
Postmark - 21-7641 v 22-7642
Postmark - 21-7643 v 22-7644
Postmark - 21-7645 v 22-7646
Postmark - 21-7647 v 22-7648
Postmark - 21-7649 v 22-7650
Postmark - 21-7651 v 22-7652
Postmark - 21-7653 v 22-7654
Postmark - 21-7655 v 22-7656
Postmark - 21-7657 v 22-7658
Postmark - 21-7659 v 22-7660
Postmark - 21-7661 v 22-7662
Postmark - 21-7663 v 22-7664
Postmark - 21-7665 v 22-7666
Postmark - 21-7667 v 22-7668
Postmark - 21-7669 v 22-7670
Postmark - 21-7671 v 22-7672
Postmark - 21-7673 v 22-7674
Postmark - 21-7675 v 22-7676
Postmark - 21-7677 v 22-7678
Postmark - 21-7679 v 22-7680
Postmark - 21-7681 v 22-7682
Postmark - 21-7683 v 22-7684
Postmark - 21-7685 v 22-7686
Postmark - 21-7687 v 22-7688
Postmark - 21-7689 v 22-7690
Postmark - 21-7691 v 22-7692
Postmark - 21-7693 v 22-7694
Postmark - 21-7695 v 22-7696
Postmark - 21-7697 v 22-7698
Postmark - 21-7699 v 22-7700
Postmark - 21-7701 v 22-7702
Postmark - 21-7703 v 22-7704
Postmark - 21-7705 v 22-7706
Postmark - 21-7707 v 22-7708
Postmark - 21-7709 v 22-7710
Postmark - 21-7711 v 22-7712
Postmark - 21-7713 v 22-7714
Postmark - 21-7715 v 22-7716
Postmark - 21-7717 v 22-7718
Postmark - 21-7719 v 22-7720
Postmark - 21-7721 v 22-7722
Postmark - 21-7723 v 22-7724
Postmark - 21-7725 v 22-7726
Postmark - 21-7727 v 22-7728
Postmark - 21-7729 v 22-7730
Postmark - 21-7731 v 22-7732
Postmark - 21-7733 v 22-7734
Postmark - 21-7735 v 22-7736
Postmark - 21-7737 v 22-7738
Postmark - 21-7739 v 22-7740
Postmark - 21-7741 v 22-7742
Postmark - 21-7743 v 22-7744
Postmark - 21-7745 v 22-7746
Postmark - 21-7747 v 22-7748
Postmark - 21-7749 v 22-7750
Postmark - 21-7751 v 22-7752
Postmark - 21-7753 v 22-7754
Postmark - 21-7755 v 22-7756
Postmark - 21-7757 v 22-7758
Postmark - 21-7759 v 22-7760
Postmark - 21-7761 v 22-7762
Postmark - 21-7763 v 22-7764
Postmark - 21-7765 v 22-7766
Postmark - 21-7767 v 22-7768
Postmark - 21-7769 v 22-7770
Postmark - 21-7771 v 22-7772
Postmark - 21-7773 v 22-7774
Postmark - 21-7775 v 22-7776
Postmark - 21-7777 v 22-7778
Postmark - 21-7779 v 22-7780
Postmark - 21-7781 v 22-7782
Postmark - 21-7783 v 22-7784
Postmark - 21-7785 v 22-7786
Postmark - 21-7787 v 22-7788
Postmark - 21-7789 v 22-7790
Postmark - 21-7791 v 22-7792
Postmark - 21-7793 v 22-7794
Postmark - 21-7795 v 22-7796
Postmark - 21-7797 v 22-7798
Postmark - 21-7799 v 22-7800
Postmark - 21-7801 v 22-7802
Postmark - 21-7803 v 22-7804
Postmark - 21-7805 v 22-7806
Postmark - 21-7807 v 22-7808
Postmark - 21-7809 v 22-7810
Postmark - 21-7811 v 22-7812
Postmark - 21-7813 v 22-7814
Postmark - 21-7815 v 22-7816
Postmark - 21-7817 v 22-7818
Postmark - 21-7819 v 22-7820
Postmark - 21-7821 v 22-7822
Postmark - 21-7823 v 22-7824
Postmark - 21-7825 v 22-7826
Postmark - 21-7827 v 22-7828
Postmark - 21-7829 v 22-7830
Postmark - 21-7831 v 22-7832
Postmark - 21-7833 v 22-7834
Postmark - 21-7835 v 22-7836
Postmark - 21-7837 v 22-7838
Postmark - 21-7839 v 22-7840
Postmark - 21-7841 v 22-7842
Postmark - 21-7843 v 22-7844
Postmark - 21-7845 v 22-7846
Postmark - 21-7847 v 22-7848
Postmark - 21-7849 v 22-7850
Postmark - 21-7851 v 22-7852
Postmark - 21-7853 v 22-7854
Postmark - 21-7855 v 22-7856
Postmark - 21-7857 v 22-7858
Postmark - 21-7859 v 22-7860
Postmark - 21-7861 v 22-7862
Postmark - 21-7863 v 22-7864
Postmark - 21-7865 v 22-7866
Postmark - 21-7867 v 22-7868
Postmark - 21-7869 v 22-7870
Postmark - 21-7871 v 22-7872
Postmark - 21-7873 v 22-7874
Postmark - 21-7875 v 22-7876
Postmark - 21-7877 v 22-7878
Postmark - 21-7879 v 22-7880
Postmark - 21-7881 v 22-7882
Postmark - 21-7883 v 22-7884
Postmark - 21-7885 v 22-7886
Postmark - 21-7887 v 22-7888
Postmark - 21-7889 v 22-7890
Postmark - 21-7891 v 22-7892
Postmark - 21-7893 v 22-7894
Postmark - 21-7895 v 22-7896
Postmark - 21-7897 v 22-7898
Postmark - 21-7899 v 22-7900
Postmark - 21-7901 v 22-7902
Postmark - 21-7903 v 22-7904
Postmark - 21-7905 v 22-7906
Postmark - 21-7907 v 22-7908
Postmark - 21-7909 v 22-7910
Postmark - 21-7911 v 22-7912
Postmark - 21-7913 v 22-7914
Postmark - 21-7915 v 22-7916
Postmark - 21-7917 v 22-7918
Postmark - 21-7919 v 22-7920
Postmark - 21-7921 v 22-7922
Postmark - 21-7923 v 22-7924
Postmark - 21-7925 v 22-7926
Postmark - 21-7927 v 22-7928
Postmark - 21-7929 v 22-7930
Postmark - 21-7931 v 22-7932
Postmark - 21-7933 v 22-7934
Postmark - 21-7935 v 22-7936
Postmark - 21-7937 v 22-7938
Postmark - 21-7939 v 22-7940
Postmark - 21-7941 v 22-7942
Postmark - 21-7943 v 22-7944
Postmark - 21-7945 v 22-7946
Postmark - 21-7947 v 22-7948
Postmark - 21-7949 v 22-7950
Postmark - 21-7951 v 22-7952
Postmark - 21-7953 v 22-7954
Postmark - 21-7955 v 22-7956
Postmark - 21-7957 v 22-7958
Postmark - 21-7959 v 22-7960
Postmark - 21-7961 v 22-7962
Postmark - 21-7963 v 22-7964
Postmark - 21-7965 v 22-7966
Postmark - 21-7967 v 22-7968
Postmark - 21-7969 v 22-7970
Postmark - 21-7971 v 22-7972
Postmark - 21-7973 v 22-7974
Postmark - 21-7975 v 22-7976
Postmark - 21-7977 v 22-7978
Postmark - 21-7979 v 22-7980
Postmark - 21-7981 v 22-7982
Postmark - 21-7983 v 22-7984
Postmark - 21-7985 v 22-7986
Postmark - 21-7987 v 22-7988
Postmark - 21-7989 v 22-7990
Postmark - 21-7991 v 22-7992
Postmark - 21-7993 v 22-7994
Postmark - 21-7995 v 22-7996
Postmark - 21-7997 v 22-7998
Postmark - 21-7999 v 22

CHARLES
C-104

STEWART
(1640)

ARLON L. THOMAS
B-1 (1265)

ARTHUR G. LIE
B-14 (1275)

B-1 aircraft

SMALL
(1650)

U.S.

DAY REND
B-16
(1210)

LARRY
B-16
(1210)

MICROFILMED

NOT TO SCALE

Courtroom, Clark County Courthouse, Dubois, Idaho

August 12, 1976 - 3:00 p.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
GRANT ASKRAAT	Rte 1 Sugar, ID.	Water User
S. R. Ambrose	of Rhy, Thelbert Andrews P.A.	Water User
Holli's Shenton	25 North 2nd East	B.H.A. Inc.
	Rexburg, Idaho	
	Dubois, Ida.	
Hean Shenton	Dubois Idaho	Water User
Bennie D. Kayle	Dubois, Idaho	
Leonard Inman	Dubois Ida	
Elmer T. Woodfield	Dubois, Idaho	Water Dist. #32-C
Dorothy Shenton	" "	" " "
Hugh R. Webster	" "	" " "
John M. Wolfe	Dubois Idaho	
Rep Ned Creeting		
Lynn Haggan	Dubois Ida	Water Dist. #32C

NOTED

IN THE MATTER OF)
PROTESTS AGAINST) AGREEMENT
APPROVAL OF)
APPLICATION FOR)
TRANSFER NO.)
32-0014/0015/0016)
IN THE NAME OF)
WHAOO & BHA INC)

WE HEREBY AGREE TO ALLOW
THE DEPARTMENT OF WATER
RESOURCES TO REACH A DECISION
IN THE MATTER OF APPROVAL OF
THE ABOVE REFERENCED APPLICATION
FOR TRANSFER, BASED UPON
THE INFORMATION PRESENTED AT
THE CONFERENCE HELD IN DUBOIS
IDAHO ON AUGUST 12, 1976, INFORMATION
HELD IN THE OFFICIAL FILES OF
THE DEPARTMENT AND A FIELD
INSPECTION.

DATED 8/12/1976

Richard L. Smith
Hugh R. Hobbs

Protestants

Helen Shurtown
John M. Hopie *Def. Continuing Representative*

J. Ruch *Attorney for Walco, Inc. & B.H.A., Inc.*
Grant Shreft

MICROFILMED

Aug 8, 1976

I do not understand the reason behind the protest in the first place. You want asking for the change in direction on all the water that you are entitled to, now are you asking for an increase that you should get from moving the direction point up the creek.

I will send a copy of the letter to Donald Cameron, supervisor of the Eastern Region.

Yours Truly

Richard A. Tucker

RECEIVED

AUG 10 1976

Department of Water Resources
Eastern District Office

Dear Great,
Please excuse the letter written in Longland but you will be able to see in a flash and I don't have to explain.

We have used the high water rights in the place of the water master's daily records do not show this it is probably because they have not bothered to go up and measure it. If they had have went up to the weir they would not have been able to measure it anyway because the water goes to the creek very high, see down the channel on the east side and into the ditch below the weir.

MICROFILMED

MICROFILMED

RE: APPLICATION FOR TRANSFER

No. 32-0014/0015/0016/2019/2071/2079

Grant Asistent.

RECEIVED



J.R. Simplot Company
Minerals and Chemical Division
Box 912
Pocatello, Idaho
Phone (208) 232-6620

MAX YIELD SAYS
"YOU'LL PROFIT
A LOT
WITH SIMPLOT"



*Edies used all the High
Water the ditch would hold
as long as there was high water.*

Bill Thorne

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval
of Application for Transfer No. 32-0014/0015/
0016/2071/2079 in the Name of WHA00 & BHA

NOTICE OF CONFERENCE
AND/OR HEARING

On May 10, 1976, Grant Ashcraft, President of WHA00 & BHA, filed with the Department of Water Resources an application for transfer of the waters of the State of Idaho. On June 7, 1976, the Department received a protest against said application for transfer from Lynn H. Hoggan, Allyn K. May, Dave Stelzer, Thomas Stelzer, Ned Gneiting, Leland Small, George Whittaker, Mr. & Mrs. Hollis Shenton, Elman T. Woodfield, Dean Shenton, Holmes Bros., Bennie D. Foyle, Ben T. Hayle, Hugh R. Webster, and Gene Cook.

The Department has set the matter of protest for conference and/or hearing for Thursday, August 12, 1976, at 3:30 p.m., in the Clark County Courthouse, Dubois, Idaho. Any hearing 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 hearing 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 hearing 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 29th day of July, 1976.


RONALD D. CARLSON
Supervisor, Eastern Region

MICROFILMED

August 2, 1976

Clark County Clerk
Clark County Courthouse
Dubois, Idaho 83423

Gentlemen:

This is to confirm the use of the Courtroom for a conference and/or hearing to be held by this office on Thursday, August 12, 1976, at 3:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Hugh R. Webster
Dubois,
Idaho 83423

Dear Mr. Webster:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Gene Cook
Dubois,
Idaho 83423

Dear Mr. Cook:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Ben T. Hayle
Dubois, Idaho 83423

Dear Mr. Hayle:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Bennie D. Foyle
Dubois, Idaho 83423

Dear Mr. Foyle:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Holmes Brothers
Dubois, Idaho 83423

Gentlemen:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

R. Keith Higginson
Director

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Dean Shenton
Dubois, Idaho 83423

Dear Mr. Shenton:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Elman T. Woodfield
Dubois,
Idaho 83423

Dear Mr. Woodfield:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. & Mrs. Hollis Shenton
Dubois, Idaho 83423

Dear Mr. & Mrs. Shenton:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No..32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. George Whittaker
Dubois, Idaho 83423

Dear Mr. Whittaker:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED

DDF

June 10, 1976

RE: Application for Transfer No. 32-0014/0015/0016/2049/2071/2079

Mr. Grant Ashcraft
WHAOO & BHA, Inc.
Rt. #1
Sugar City, Idaho 83448

Dear Mr. Ashcraft:

Enclosed please find a copy of the protest filed against the above referenced application for transfer. You should be aware that the following are the 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosure

cc: IDWR - State Office

MICROFILMED

RECEIVED

JUN 7 1976

Dubois, Idaho
June 3, 1976

Department of Water Resources
Eastern District Office

We the undersigned do hereby protest the transfer of water right and change of point of diversion in the name of WHA00 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 as 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.

NAME

ADDRESS

Lynn H. Hoogan	Dubois Idaho
Allys H. May	Dubois, Idaho
Dave Steyer	Dubois Idaho
Thomas Steyer	Dubois Idaho
Ned Greeting H.	Dubois Idaho
Robert Small	Dubois Idaho
George Whitaker	Dubois, Idaho
Mr & Mrs Halli Sherton	Dubois Idaho
Elman T. Woodfield	Dubois, Idaho
Hean Sherton	Dubois, Idaho
Holmes Broe.	Dubois, Idaho
Bennie D. Gayle	Dubois Idaho
Bert J. Hayle	Dubois Idaho
Hugh R. Webster	Dubois Idaho
Gene Cook	Dubois Idaho

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Leland Small
Dubois, Idaho 83423

Dear Mr. Small:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Ned Gneiting
Dubois, Idaho 83423

Dear Mr. Gneiting:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Thomas Stelzer
Dubois, Idaho 83423

Dear Mr. Stelzer:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Allyn K. May
Dubois, Idaho 83423

Dear Mr. May:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Dave Stelzer
Dubois, Idaho 83423

Dear Mr. Stelzer:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Lynn H. Hoggan
Dubois, Idaho 83423

Dear Mr. Hoggan:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Don Shenton, Watermaster
Dubois,
Idaho 83423

Dear Don:.

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED

June 10, 1976

RE: Application for Transfer No. 32-0014/0015/0016/2049/2071/2079

Mr. Grant Ashcraft
WHAOO & BHA, Inc.
Rt. #1
Sugar City, Idaho 83448

Dear Mr. Ashcraft:

Enclosed please find a copy of the protest filed against the above referenced application for transfer. You should be aware that the following are the 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosure

cc: IDWR - State Office

MICROFILM



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 10, 1976

COPY

(THIS LETTER ALSO SENT TO THE OTHER 14 PROTESTANTS)

RE: Application for Transfer No. 32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
WHAOO & BHA, INC.

Mr. Lynn H. Hoggan
Dubois, Idaho 83423

Dear Mr. Hoggan:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted. 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?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDR - State Office

MICROFILMED

RECEIVED
JUN 7 1976

Dubois, Idaho
June 3, 1976

Department of Water Resources
Eastern District Office

We the undersigned do hereby protest the transfer of water right and change of point of diversion in the name of WHADO 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 as 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 preceeding 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.

NAME

ADDRESS

- Lynn H. Hoggan	Dubois Idaho
- Allyn R. May	Dubois, Idaho
- Dewey Steher	Dubois Idaho
- Thomas Steher	Dubois Idaho
- Fred Gmüthig Jr.	Dubois Idaho
- Leland Small	Dubois Idaho
- George Whitaker	Dubois, Idaho
- Mr. & Mrs. Hallie Sheraton	Dubois, Idaho
- Elman T. Woodfield	Dubois, Idaho
- Dean Sheraton	Dubois, Idaho
- Holmes Brooz	Dubois, Idaho
- Bennie D. Layle	Dubois, Idaho
- Ben J. Hayle	Dubois Idaho
- Hugh R. Webster	Dubois Idaho
- Gene Cook	Dubois Idaho

MICROFILMED

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT

MAY 20 1976

NO. 32-0014/0015/0016/2049/2071/2079

Department of Water Resources
Eastern District Office

RECOMMENDATION OF WATERMASTER

I, Donald W. Shenton, watermaster of Medicine Lodge
of Water District No. 32-C, County of CLARK, State of Idaho,
whose address is Dubois, Idaho
have read the attached copy of the application for transfer of water right for WHA00
& BHA, Inc., and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: With exception of Water # 320016
be not delivered until conditions of MRS
SPECIAL COURT Decree be met so as to
maintain saving through a workable flow.
OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons:

Dated at Dubois Ida, Idaho, this 19 day of MAY 1976

Donald W. Shenton
(signature)

MICROFILMED

May 13, 1976

RE: Application for Transfer No. 32-0014/0015/0016/2049/2071/2079
WHA00 & BHA, Inc.

Mr. Donald W. Shenton, Watermaster
Water District 32-C
Dubois, Idaho 83423

Dear Don:

Please find enclosed a copy of the above referenced application and a watermaster recommendation form. Please review the application and complete the form, returning it to this office on or before June 7, 1976.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosures

MICROFILMED

Published in the Enterprise Citizen,
Rexburg, Idaho, on May 20 and May
27, 1976.

May 14, 1976

RE: Application for Transfer No. 31-0118 LAIRD
" " " " No. 32-0014 etc WHAOO & BHA, Inc.

Enterprise Citizen
Box 7
Rexburg, Idaho 83440

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enc: Legal Notice (2)

Bill submitted 6-01-76 by CW

MICROFILMED

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 32-0014/0015/0016/2049/2071/2079

Notice is hereby given that WHA00 & BHA, Inc., Sugar City, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Indian Creek tributary to Medicine Lodge Creek. The rights sought to be changed are evidenced by decree to A. G. Edie in case of Thomas A. Robson, et al -vs- James Colson et al, dated Sept. 15, 1953 in Ninth Judicial Court, County of Clark, and by License No. 32-2049, 32-2071 and 32-2079 and are recorded as follows:

PRIORITY: No. 32-0014 - 6-14-83
No. 32-0015 - 5-01-84
No. 32-0016 - Not listed
No. 32-2049 - 1-10-14
No. 32-2071 - 7-26-17
No. 32-2079 - 10-04-30

AMOUNT: 16.92 cfs

POINTS OF DIVERSION: SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, T. 11N, R. 34E,
SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E,
B.M., Clark County.

The water under the decreed rights is used to irrigate 320 acres within the E $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E, B.M. The water under the licensed rights is used to irrigate 424 acres within the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Sec. 12, T. 11N, R. 34E, B.M. The total amount of acres irrigated under these rights is 450.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E, B.M., Clark County.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before June 7, 1976.

R. KEITH HIGGINSON

Director

Published in the Enterprise Citizen, Rexburg, Idaho, on May 20 and May 27, 1976.

MICROFILMED

*me. h.
me. B.
me. Q.*

May 12, 1976

RE: Application for Transfer of Water Right filed with this office
on May 10, 1976

Mr. Grant Ashcraft
Rt. #1
Sugar City, Idaho 83448

Dear Mr. Ashcraft:

Before your application for transfer can be approved, we require that you submit the following to this office:

- (1) Proof of ownership to lands listed on the transfer
(see attachment.)
- (2) A copy of the document giving you power of attorney
for BHA, Inc.

Your prompt attention to this matter is requested. Thank you.

Very truly yours,

WILLIAM G. GRAHAM
Senior Water Resource Agent

WGG:cw

Attachment

MICROFILMED

DEPARTMENT OF WATER RESOURCES

TRANSFER ANALYSIS SHEET

1. Source Indian Cr Name WHA00 + BHA Inc
2. Right Being Transferred Right No. 32-0014, 32-0015, 32-0016
32-2049, 32-2071, 32-2079
Transfer No. _____
- a. ☒ Decree
____ License
____ Use
- b. ☒ Priority
- c. ☒ Location - Original P. D.
- d. ☒ " - Original P. U.
- e. ☒ " - New P.D.
- f. ☐ No " - New P.U.
- g. 16.92 Amount
☒ All
____ Part
3. _____ Proof of Ownership of Right
Comment _____
4. No Expansion of Right
Comment _____
5. ☒ Map
6. ☒ Signature
7. ☒ Fee
8. Watermaster's Comments _____
9. Comments Salvo agreement and power of attorney rec'd - 5/14/76
10. Initial Review by [Signature] Date 5/11/76
11. Recommended Action
☒ Approve
____ Deny
☒ Conditions SEE MEMO DECISION
- By RDC Date 12/7/76

MICROFILMED

Copy to
M.B.