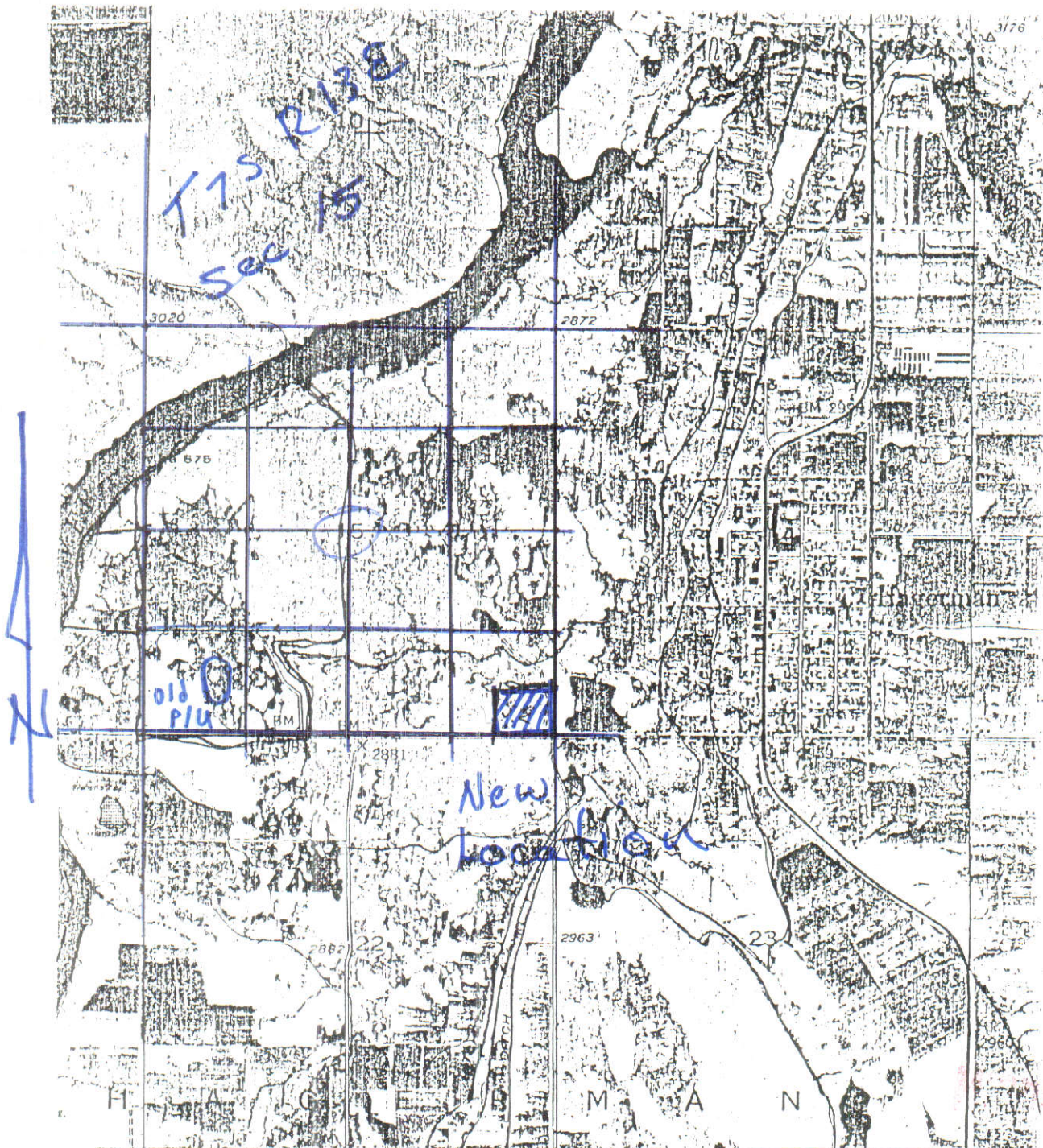


STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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



APR 08 1993

AFFIDAVIT of PUBLICATION

RECEIVED

State of Idaho }
County of Gooding } ss.

DEC 20 1991

Department of Water Resources
Southern Region Office

Patty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for

2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the

11th day of December, 1991,

and the date of the last publication was on the 18th day of

December, 1991.

Patty Nance

Subscribed and sworn to before me this 18th day of

December, 1991.

(SEAL)

Norma DeVoe
NOTARY PUBLIC

#10408
GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Picas per Line _____

Number of Lines in Notice _____

Number of Insertions 2X

Lines tabular at _____ 6¢/Pica

1,231.3 Lines straight at 101.57 5¢/Pica

Subsequent lines at 49.25 4¢/Pica

TOTAL COST 110.83

COPY OF NOTICE

(Paste Here)

Dist. of Proposed change
TITLE OF NOTICE
36-00133

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

A.D.W.A.-T.F.
BILL TO

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NOS. 36-00133, 36-00192

Notice is hereby given that BIG BEND IRRIGATION & MINING CO., c/o Richard L. Cook, of Hagerman, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to Section 42-222 of the IDAHO CODE.

WATER RIGHT AS RECORDED

Water right no. 36-00133

Basis of right: Decreed to Big Bend Irrigation & Mining Co. in case of New International Mortgage Bank vs. Idaho Power Company, Et al dated 3/22/1932 in U.S. District Court, Southern District.

Source: Upper Tucker Springs tributary to Riley Creek

Priority Date: 12/17/1903

Amount of water: 20.0 cfs

Use: irrigation

Point(s) of diversion: NW1/4SE1/4SE1/4, S36, T7S, R13E (Big Bend Ditch); Gooding County.

Historic place of use as determined by Snake River Basin

Adjudication: 434 acres within S1/2SW1/4, S15, T7S, R13E; Lot 3 (NE1/4SE1/4), SW1/4SE1/4, Lot 6 (SE1/4SE1/4), S16, T7S, R13E; Lot 5 (SE1/4NE1/4), S21, T7S, R13E; NE1/4, NE1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, NE1/4SE1/4, NW1/4SE1/4, SE1/4SE1/4, S22, T7S, R13E; SW1/4NW1/4, S23, T7S, R13E; W1/2NE1/4, NW1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4, S26, T7S, R13E; NE1/4, N1/2SE1/4, S27, T7S, R13E; Gooding County.

WATER RIGHT AS RECORDED

Water right no. 36-00192

Basis of right: Decreed to Big Bend Irrigation & Mining Co. in case of New International Mortgage Bank vs Idaho Power Company, Et. al dated 3/22/1932 in U.S. District Court, Southern Division.

Source: Lower Tucker Springs tributary to Riley Creek

Priority Date: 4/1/1906

Amount of water: 15.0 cfs

Use: irrigation

Point(s) of diversion as determined in Snake River Basin

Adjudication: SE1/4NW1/4SE1/4, S36, T7S, R13E (Big Bend Ditch); Gooding County.

Place of use: Same as described above for Water Right No. 36-00133.

WATER RIGHT NO. 36-00133 & ADJUDICATION CLAIM NO. A36-00133 TO BE CHANGED AS FOLLOWS;

Water right No.: 36-00133

Priority Date: 12/17/1903

Period of Use: 3/15 to 11/15

Water Use: irrigation*

Amount: 20.0 cfs*

WATER RIGHT NO. 36-00192 & ADJUDICATION CLAIM NO. A36-00192

TO BE CHANGED AS FOLLOWS;

Water right No.: 36-00192

Priority Date: 4/1/1906

Period of Use: 3/15 to 11/15

Water Use: irrigation

Amount: 15.0*

Total amount being transferred: 35.0*

*Or as determined by Snake River Basin Adjudication

Source: Upper & Lower Tucker Springs tributary to Riley Creek

Point of diversion: No Changes.

Place of use: 434 acres within SE1/4SW1/4, SE1/4SE1/4, S15, T7S, R13E; Lot 3 (NE1/4SE1/4), SW1/4SE1/4, Lot 6 (SE1/4SE1/4), S16, T7S, R13E; Lot 5 (SE1/4NE1/4), S21, T7S, R13E; NE1/4, NE1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, NE1/4SE1/4, NW1/4SE1/4, SE1/4SE1/4, S22, T7S, R13E; SW1/4NW1/4, S23, T7S, R13E; W1/2NE1/4, NW1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4, S26, T7S, R13E; NE1/4, N1/2SE1/4, S27, T7S, R13E; Gooding County.

Any protest against approval of the application for transfer must be filed with the Department of Water Resources, 222 Shoshone Street East, Twin Falls, ID 83301 on or before December 30, 1991.

R. Keith Higginson, Director
PUB: 12-11, 18

G10408

Page 1 of 12STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3880APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

APPROVED

Name of applicant Big Bend Mining & Irrigation Co. & Mining Co. Phone 837-6164
Post Office address c/o Richard L. Cook, Rt. 1 Box 22, Hagerman, ID 83332

A. PURPOSE OF TRANSFER

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

2. Describe the reason for the proposed changes Sale of water from one stockholder to another Change
P/U has occurred so that some formerly-dry ground can now be irrigated. Original
P/U for 10 acres was sold without water shares.
* On as determined by SRBA

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

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>36-00133</u>	<u>12-17-1903</u>	<u>20.0*</u>	<u>Irrigation*</u>	<u>3-15</u> to <u>11-15</u>
<u>36-00192</u>	<u>4-1-1906</u>	<u>15.0*</u>	<u>Irrigation</u>	<u>3-15</u> to <u>11-15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 35.0* cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Upper & Lower Tucker Springs tributary to Riley Creek

4. Point(s) of Diversion: No Change

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

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>7S</u>	<u>13E</u>	<u>15</u>												<u>10</u>				<u>10</u>	<u>20</u>
		<u>16</u>													<u>10</u>		<u>4</u>	<u>15</u>	<u>29</u>
		<u>21</u>				<u>175</u>													<u>15</u>
		<u>22</u>	<u>3</u>	<u>4</u>	<u>30</u>	<u>25</u>	<u>5</u>		<u>37</u>	<u>27</u>					<u>33</u>	<u>20</u>		<u>8</u>	<u>192</u>
		<u>23</u>							<u>25</u>										<u>25</u>
		<u>26</u>		<u>10</u>	<u>17</u>										<u>10</u>	<u>7</u>		<u>10</u>	<u>54</u>
		<u>27</u>	<u>18</u>	<u>7</u>	<u>25</u>	<u>23</u>									<u>12</u>	<u>12</u>	<u>15</u>		<u>99</u>

Total acres 434

PART 1**6. General Information:**

- a. Description of diversion system Existing diversions into Big Bend Ditch, re-diversion
from Ditch
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes ✓ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Land will no longer be irrigated
- d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 36-00133/00192

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

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL.

Witness my hand this 16th day of FEBRUARY, 19 93

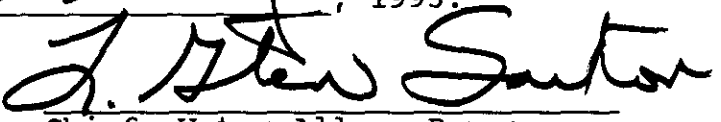
J. Glen Saylor
CHIEF, WATER ALLOCATION BUREAU

APR 08 1993

**CONDITIONS OF APPROVAL
Transfer of Water Rights
Nos. 36-00133/00192**

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
3. The change approved by this transfer is subject to the terms of the court's final decree of this right in the ongoing Snake River Basin Adjudication.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 36A.
5. This right when combined with all other rights shall provide no more than 4.0 afa per acre for the lands above.
6. The combined annual volume of water under these rights shall not exceed 1736.0 acre feet.

Dated this 16th day of February, 1993.


for Chief, Water Alloc. Bureau

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 36-00133 Decreed to Big Bend Irrigation & Mining Co.
in case of New International Mortgage Bank vs. Idaho Power Company, ET AL.
dated 3-22-1932 in U.S. District Court county of Southern District
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☐ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Upper Tucker Springs tributary to Riley Creek

4. Date or priority 12-17-1903

5. Water is used for the following purpose:

amount 20.0 cfs for Irrigation purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

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

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	SE	SE	36	7S	13E	Gooding	Big Bend Ditch

8. Lands irrigated or place of use: Historic P/U as determined by SRBA

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7S	13E	15											10	10					20
		16													17 1/2		4	17 1/2	27
		21				17 1/2													15
		22	3	4	30	25	5		37	27					23	20		8	192
		23							25										25
		26		10	17											10	7	10	54
		27	18	7	25	22													

APR 08 1993

12 15 Total acres 11 434

9. Describe any other water rights used for the same purpose as described above 36-00192

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

APR 08 1993

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 36-00192 Decreed to Big Bend Irrigation & Mining Co.
in case of New International Mortgage Bank vs. Idaho Power Company, Et AL
dated 3-22-1932 in U.S. District Court county of Southern Division
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☐ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Lower Tucker Springs tributary to Riley Creek
4. Date or priority 4-1-1906

5. Water is used for the following purpose:

amount 15.0 cfs for Irrig. purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 15.0 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: As determined in SRBA

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	NW	SE	36	7S	13E	Gooding	Big Bend Ditch

8. Lands irrigated or place of use: Historic PIU as determined in SRBA

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7S	13E	15											10	10					20
		16													17 3/4		4	15	29
		21				17 3/4													15
		22	3	4	20	25	5		37	27					33	20		8	192
		23							25										25
		26		10	17											10	7	10	54
		27	18	7	25	22									12	15			99 434

APR 08 1993

36-00133

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

APR 08 1993

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. R36-00/33 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Tupper Springs, Upper tributary to Riley Creek

4. Date or priority 12-17-1903

5. Water is used for the following purpose:

amount 8.68 cfs for Irrigation purposes from 3-15 to 11-15
(cfs/ac-ft) amount 0.06 cfs for Domestic purposes from 1-1 to 12-31
(cfs/ac-ft) amount 0.23 cfs for Stockwater purposes from 1-1 to 12-31
(cfs/ac-ft)

6. Total amount of water under right 8.68 cubic feet per second and/or 1736 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	SE	SE	36	7S	13E	Gooding	Big Bend Ditch

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7S	13E	15											10	10					20
		16													10		4	15	29
		21				15													15
		22	2	4	30	25	5		37	27					33	20		8	192
		23							25										25
		26		10	12						APR 08 1993					10	7	10	54
		27	18	7	25	22									12	15			79
Total acres																			424

9. Describe any other water rights used for the same purpose as described above R36-00/192

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

No

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

APR 08 1993

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. R36-00192 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Tucker Springs, Lower tributary to Riley Creek

4. Date or priority 4-1-1906

5. Water is used for the following purpose:

amount 8.68 cfs for Irrigation purposes from 3-15 to 11-15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 8.68 cubic feet per second and/or 1736 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	NW	SE	36	75	13E	Gooding	Big Bend Ditch

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals.
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
75	13E	15											10	10					20
		16													10		4	15	29
		21				15													15
		22	3	4	30	25	5		37	25					33	20		8	192
		23							25										25
		26		10	17											10	7	10	54
		27	18	7	25	22									12	15			99
																			434

APR 08 1993

Total acres

9. Describe any other water rights used for the same purpose as described above R36-00133

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

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

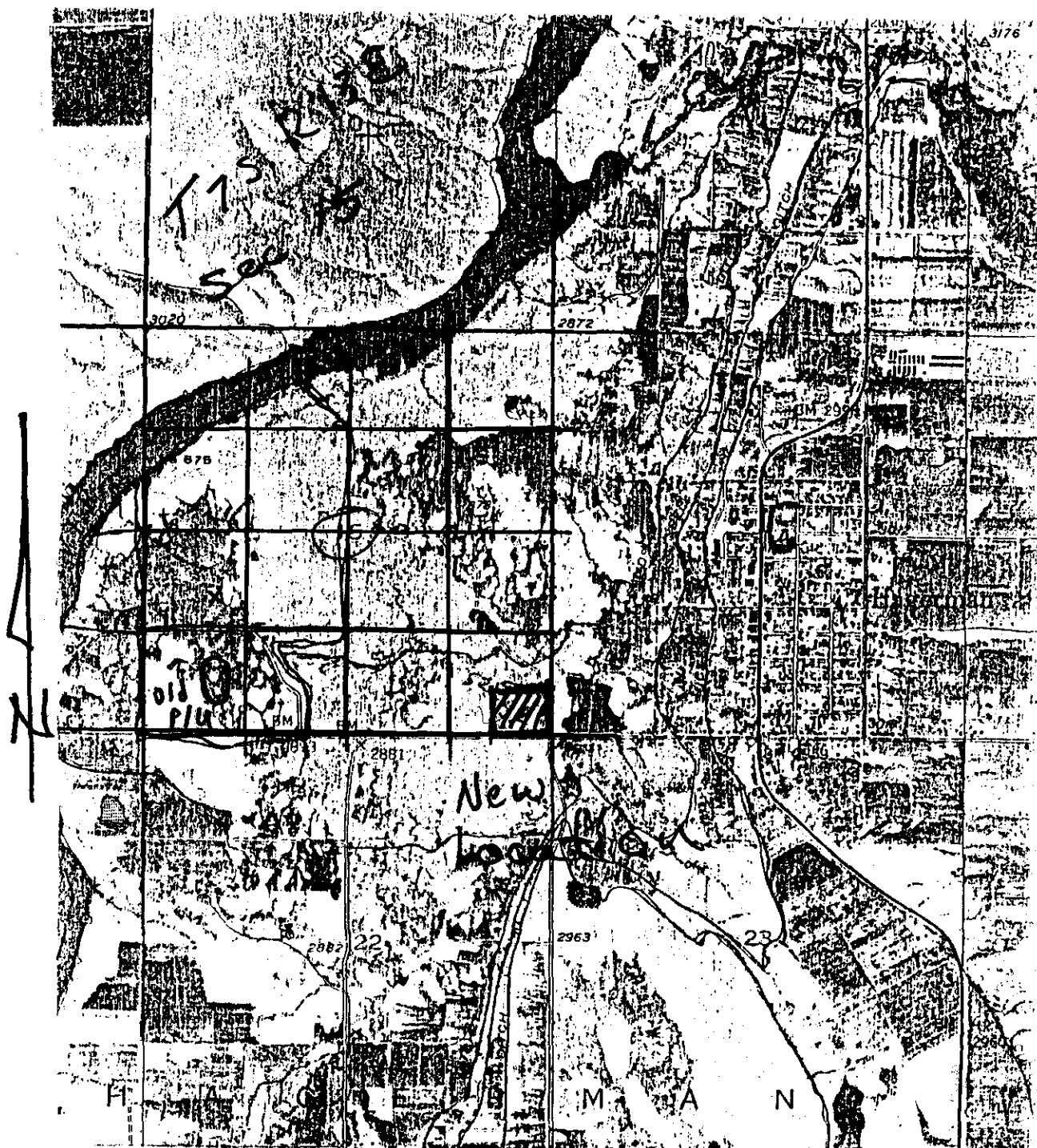
3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

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

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



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

MAR 9 8 1993

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

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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

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

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

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

Subscribed and sworn to before me this 15th day of April, 19 91.

(Signature of Applicant)

Mary A. Baldwin
(Notary Public)

My commission expires 10/16/1992**FOR DEPARTMENT USE ONLY**Transfer contains 12 pages and 0 attachmentsReceived by M. Baldwin Date 4-15-91

Protest filed by _____

Prelim. check by J. F. Smith Fee 50.00 5013232Receipted by M. Baldwin Date 4-15-91Published in Gooding Co. Leader

Copies of protest forwarded by _____

Pub. dates 12/11 & 12/18/91

Hearing held by _____ Date _____

Watermaster recommendation requested on 11-26-91Recommended for ☒ approval ☐ denial_____ rec'd. 12-10-91by LD

Copy of transfer sent to lien holder _____

APR 08 1993

AFFIDAVIT of PUBLICATION

RECEIVED

State of Idaho } ss.
County of Gooding }

DEC 20 1991

Department of Water Resources
Southern Region Office

Patty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 11th day of December, 1991, and the date of the last publication was on the 18th day of December, 1991.

Subscribed and sworn to before me this 18th day of December, 1991.
(SEAL)

NOTARY PUBLIC

#10408
GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 2X

Lines tabular at _____ 6¢/Pica
1,231.3 Lines straight at 41.57 5¢/Pica
Subsequent lines at 49.25 4¢/Pica
TOTAL COST 110.83

COPY OF NOTICE

(Paste Here)

Not. of Proposed change
TITLE OF NOTICE
36-00183

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

BILL TO

Notice is hereby given that BIG BEND IRRIGATION & MINING CO., c/o Richard E. Cook, of Gooding, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to Section 43-222 of the IDAHO CODE.

WATER RIGHT AS DESCRIBED
Water right no. 36-00183
Basis of right: Decreed to Big Bend Irrigation & Mining Co. in case of New International Mortgage Bank in Idaho Power Company, Et Al dated 3/22/1992 in U.S. District Court, Southern District.

Source: Upper Tucker Springs tributary to Riley Creek
Priority Date: 12/17/1995
Amount of water: 20.0 cfs
Use: Irrigation

Point(s) of diversion: NW1/4SE1/4, SE1/4, S36, T7S, R13E, Big Bend Ditch; Gooding County.

Map(s) of same as submitted by Snake River Basin

Adjudication: 434 acres within S1/4NW1/4, S1/4, T7S, R13E; Lot 3 (NE1/4SE1/4), SW1/4SE1/4, Lot 6 (SE1/4SE1/4), S1/4, T7S, R13E; Lot 5 (SE1/4NE1/4), S21, T7S, R13E; NE1/4, NE1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, SE1/4SE1/4, NW1/4SE1/4, SW1/4SE1/4, SE1/4NE1/4, S22, T7S, R13E; SW1/4NW1/4, S22, T7S, R13E; S1/4SE1/4, NW1/4SE1/4, SE1/4SE1/4, SE1/4NE1/4, S22, T7S, R13E; NE1/4, N1/2SE1/4, S22, T7S, R13E; Gooding County.

WATER RIGHT AS DESCRIBED

Water right no. 36-00183
Basis of right: Decreed to Big Bend Irrigation & Mining Co. in case of New International Mortgage Bank in Idaho Power Company, Et Al dated 3/22/1992 in U.S. District Court, Southern District.

Source: Lower Tucker Springs tributary to Riley Creek

Priority Date: 3/1/1996
Amount of water: 15.0 cfs
Use: Irrigation

Point(s) of diversion as described in Snake River Basin

Adjudication: SE1/4NW1/4SE1/4, S36, T7S, R13E (Big Bend Ditch); Gooding County.

Place of use: Same as described above for Water Right No. 36-00183.

WATER RIGHT NO. 36-00183 & ADJUDICATION CLAIM NO. 36-00183 TO BE CHANGED AS FOLLOWS:

Water right No. 36-00183

Priority Date: 12/17/1995

Period of Use: 3/15 to 11/15

Water Use: Irrigation

Amount: 20.0 cfs

WATER RIGHT NO. 36-00192 & ADJUDICATION CLAIM NO. A36-00192

TO BE CHANGED AS FOLLOWS:

Water right No. 36-00192

Priority Date: 4/1/1996

Period of Use: 3/15 to 11/15

Water Use: Irrigation

Amount: 15.0

Total amount being transferred: 35.0

Or as determined by Snake River Basin Adjudication

Source: Upper & Lower Tucker Springs tributary to Riley Creek

Point of diversion: No Change

Place of use: 434 acres within SE1/4SW1/4, SE1/4SE1/4, S1/4, T7S, R13E; Lot 3 (NE1/4SE1/4), SW1/4SE1/4, Lot 6 (SE1/4SE1/4), S1/4, T7S, R13E; Lot 5 (SE1/4NE1/4), S21, T7S, R13E; NE1/4, NE1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, NE1/4SE1/4, NW1/4SE1/4, SE1/4SE1/4, S22, T7S, R13E; SW1/4NW1/4, S22, T7S, R13E; W1/2NE1/4, NW1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4, S22, T7S, R13E; NE1/4, N1/2SE1/4, S22, T7S, R13E; Gooding County.

Any protest against approval of the application for transfer must be filed with the Department of Water Resources before

before

before

before

before

before

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE
BANK, a corporation,

Plaintiff,

-vs-

IDAHO POWER COMPANY, a
corporation, et al,

Defendants.

In Equity No. 1602

D E C R E E

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIA- TION	DIVERSION POINT
------	---	-----------------------------------	--------------------

36-0057	HAGERMAN	5	Spring	April 7, 1906	Spring No. 1;
36-0058	WATER USERS	11.2	Spring	April 7, 1906	Spring No. 2;
36-0059	ASSOCIATION	20	Springs	April 7, 1906	Numerous small springs;

(Said Spring No. 1 is located about the center of the north side of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B.M.; Spring No. 2 is located about the center of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 18, Twp. 7 S. R. 14 E.B.M. Said numerous small springs are located about 100 yards north of the "Big Springs", the source of the water supply of the Big Spring Water Users Association.)

RECORDED
APR 08 1993

*
BIG BEND IRRIGATION AND MINING COMPANY

It is hereby ordered, adjudged and decreed, and this does order, adjudge and decree, that the defendant and cross complainant, Big Bend Irrigation and Mining Company, a corporation, is the owner of, and entitled to the use of, and the right to use for irrigation and domestic purposes the following amounts of water, to-wit:

36-6133 Twenty (20) second feet of the waters of what is commonly known as the large Thompson, or Tucker, spring, being situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, Twp. 7 South, Range 13 East, B. M. in Gooding County, Idaho, the place of diversion being at said spring and by means of a tunnel, flume and ditch and other necessary diversion works built and constructed at said spring and conveying the same through such ditch to and upon the lands hereinafter described for the irrigation of the same and for the watering of stock and other domestic use. The priority of said water right to be, and is, fixed as the 17th day of December, 1903. Also all of the waters of what is known as the smaller Thompson, or Tucker, Spring, situate in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, Twp. 7 South, Range 13 East, B. M. in Gooding County, Idaho, and estimated to flow 15 second feet, with a priority of April 1, 1906. That said water is diverted at said spring by means of a dam and ditch directly into said ditch, being the same ditch diverting and carrying the waters from the large Thompson, or Tucker, spring hereinbefore described and conveying the same to the hereinafter described lands of the stockholders of the defendant and cross complainant, Big Bend Irrigation and Mining Company, and used for the irrigation thereof and for domestic purposes.

36-0192

Said water of said two water rights is hereby made appurtenant to and to be used upon and in the irrigation of the follow-

pany's further and separate answer and counterclaim filed herein, and the underground flow and sources supplying said water rights, are neither concerned in nor affected by this action or by this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the plaintiff, defendants, cross-complainants, counter-claimants, and interveners and their attorneys, agents, servants, and employees and any and all persons acting in aid of or for any of said parties, and any persons in privity with or claiming under any of said parties and each and every of them are hereby forever enjoined and restrained from in any manner interfering with or diverting or using the waters of said Billingsley Creek, and/or said Riley Creek, and/or the Springs, adjudication of which has been made herein, excepting in accordance with the terms of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That each party to this action shall pay his own costs.

Made in open Court this 22nd day of March, 1932.

Charles C. Cavanah

District Judge.

APR 8 1933



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

RECEIVED

NOV 18 1998

Department of Water Resources

November 17, 1998

Terrence A. Dolan
Special Master
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Re: Subcase Nos. 36-00133 and 36-00192

Dear Special Master Dolan:

The above referenced subcases are set for trial December 10, 1998. The Idaho Department of Fish and Game is an objector in these subcases. However, as you may recall from the pretrial conference held in these subcases on May 12, 1998, Fish and Game's concerns have been addressed and are no longer at issue. As I recall, the dispute at this point involves the place of use and will not affect Fish and Game's interests.

As Fish and Game no longer has any issues remaining in these subcases, at this time Fish and Game does not intend to participate in the trial.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. J. Ampe".

PETER J. AMPE
Deputy Attorney General
Natural Resources Division

PJA/kvj
cc: Lloyd J. Webb
IDF&G
IDWR

L8321nab.doc



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 17, 1993

BIG BEND IRRIGATION & MINING CO
% RICHARD L COOK
RT 1 BOX 22
HAGERMAN ID 83332

RE: Transfer of Water Right Nos. 36-00133/00192

Dear Water Right Holder(s):

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 3880). Be sure to note any conditions of approval as listed on the second page.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:cz

Enclosure

TRANSFER ON 36-00133
When approved
Send copy to:

TOM FREW

RT. 1

Hagerman Hatchery

Hagerman

83332

RECORDED

APR 08 1993

MEMORANDUM

TO: File 36-00133/00192

FROM: Sharla

DATE: January 28, 1993

RE: Transfer Review (No. 3880)

The above referenced transfer proposes to change the place of use of 10 ares under this right. There has been an objection to the recommendations of the SRBA by Vay and Jean Cook (Richard Cook's brother and sister-in-law). Vay and Jean own land within the NENW, Sec. 22. They receive 37" of water and claim it has been used on approximately 37 acres. The SRBA recommended only 5 acres, however. While this objection will have to be handled by the adjudication staff, there is no reason to hold processing of the transfer to allow Richard Cook to move his 10 acres.

Advertising was completed correctly. The transfer can be approved with the following conditions:

- T07 The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
- T08 Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
- T16 The change approved by this transfer is subject to the terms of the court's final decree of this right in the ongoing Snake River Basin Adjudication.
- R04 Use of water under this water right will be regulated by the watermaster of State Water District No. 36A.
- R26 This right when combined with all other rights shall provide no more than 4.0 afa per acre for the lands above.

RECEIVED
FEB 11 1993

APR 08 1993

MEMORANDUM

DATE: 09-Sep-1992

FROM: Loren Holmes 

TO: Transfer file 3880, Big Bend Irrigation & Mining Co.

SUBJECT: Recommendation for action

This application is filed in the name of the Big Bend Irrigation & Mining Co. (Big Bend), and is signed by it's president, Cleave Lloyd. The proposed change involves only one stockholder, Richard Cook, who is also a signator.

The application proposes a partial change of the place of use from 10 acres in the SWSW Sec. 15 T7S R13E, to 10 acres in the SESE Sec. 15 T7S R13E.

In preparing the application document, this office used the information contained in the incomplete "R" record which was being prepared for a recommendation in the SRBA. Advertisment of the transfer prematurely made the proposed finding public and caused considerable furor in the Hagerman Valley.

Big Bend raised the question of whether the change could be accomplished as an internal matter within the ditch company. At the time it wasn't clear whether the new place of use could be incorporated in Big Bend's claim under one of the presumptions. It was also unclear whether the water rights were held by Big Bend as a mutual company or by the users as members of a carrying ditch organization, since overlapping claims had been filed by both Big Bend and individual stockholders.

Now that the proposed findings for basin 36 are complete, it is clear that Big Bend is the holder of the water rights & is a mutual company. A transfer is required to accomplish this change in the place of use because the new 10 acres do not appear in the proposed findings as irrigated land.

Strange as it is, the application has been published, and, with respect to the actual change proposed, correctly reflects the change. Although an objection was received following notice of the application, it did not address the change proposed, but other information contained in the "R" record.

I believe the application can be approved without further delay if it is conditioned limiting administrative approval to the limited change in place of use and reserving judgement to the SRBA court on all other matters involved in adjudicating these water rights.




STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APR 17 1991

Department of Water Resources
Southern Region Office

TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY:

J. P. Stanton
36-2087
36-0192
36-0183

Date

1. Right number 36-0183 Applicant Big Bend Irrigation & Mining Co.

2. Type of right: ☒ Decree ☐ License ☐ Claim

3. Purpose of transfer: ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Other _____

4. Check:

a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use

b. ☒ Description of original point of diversion.

c. ☒ Description of original place of use.

5. Amount of land &/or water transferred:

a. ☒ All of right.

b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).

c. ☒ Check description of point(s) of diversion.

d. ☒ Check description of place of use.

e. ☒ Check map (shows p.d. and p.u. after transfer).

f. ☒ Check for correct signature, notarization, and fee.

g. ☒ Check proof of ownership of right &/or land from which water is transferred. Not required

h. ☒ Check for expansion in use of right. Comments no expansion

i. ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) none

j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No

If yes, what district? 36

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on 11/26/91 Received on 12/10/91

2. Is transfer published correctly? ☒ Yes ☐ No

3. Protest received? ☐ Yes ☒ No

RECOMMENDED ACTION

1. ☒ Approve

2. ☐ Deny

3. Conditions* OS <36A, Billingsley, R. H. et>

- See Memo -

4. By Tarrell D. Hulme Date 2/14/92

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD
D. BERNARD ZALEHA
JOHN K. SIMPSON

Twin Falls Office
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P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83702-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

RECEIVED

AUG 13 1992

Department of Water Resources
Southern Region Office

August 4, 1992

Dr. Ivan J. Gustafson
2853 S. 900 E.
Hagerman, ID 83332

Re: Big Bend Ditch

Dear Dr. Gustafson:

I've asked Idaho Department of Water Resources what they want to confirm that Big Bend is a non-profit company entitled to treat transfers as internal matters pursuant to Idaho Code § 42-108. They'll call next week.

Regards,

John A. Rosholt /JE
JOHN A. ROSHOLT

JAR:le
08049202.JAR

Enclosures

RECEIVED

APR 08 1993

RECEIVED

AUG 13 1992

MEMORANDUM

Department of Water Resources
Southern Region Office

TO: JAR

FROM: GLQ

RE: Big Bend Mutual Canal Co. - "Mutual" Irr. Dists.

DATE: July 28, 1992

DISCUSSION

Soon after the Nez Perce suit was filed late in 1991 Jim Tucker requested a brief memorandum, for use by out-of-state counsel, distinguishing the various irrigation delivery organizations in Idaho. Attached is RRT Boise Brief Bank Memorandum # 190 "Idaho Irrigation Delivery Organizations," (February 27, 1992.) Also attached as a further reference on this matter are three pages from the February 1992 water law seminar in which Randy Budge discussed Idaho water delivery organizations with specific attention to mutual ditch companies.

There are no Idaho statutory provisions which are solely addressed to the functioning of mutual ditch companies. There is nothing legally significant about the title "mutual" in reference to these water delivery organizations. The use of the term "mutual" is descriptive of the organization and arises from the historic development of irrigation delivery organizations through the mutual effort of the irrigators to be served by the system. As stated by the Colorado Supreme Court in *Great Western Sugar Co. v. Jackson Lake Reservoir & Irrig. Co.*, 681 P.2d 484, 492 (Colo. 1984), "This principle ensures the ability of mutual ditch companies to carry out the fundamental purpose that distinguishes them from other forms of corporate endeavor--the spirit of mutual cooperation that is essential to ensure a fair distribution of available water to all interested parties."

The Idaho Supreme Court in *Application of Johnston*, 69 Idaho 139, 204 P.2d 434 (1949) noted, in comparing Carey act corporations and mutual irrigation corporations, that "the right of transfer under both classes of irrigation corporations is substantially the same." 69 Idaho at 145. Earlier this year it was determined that the TFCC qualified for a federal tax exemption pursuant to § 501(c)(12) of the tax code, "Mutual irrigation companies." See. RRT Boise Brief Bank Memorandum # 223, (May 29, 1992). The differences between Carey Act and mutual irrigation districts are largely a result of historic development, not legal distinction. As the court further noted in the *Johnston* case:

APR 08 1993

[T]he origin and purpose of Carey Act companies are distinct from those of ordinary water corporations. They are the result of statutory and contractual relations between the Federal Government, the State of Idaho, and the construction companies, providing for the permanent reclamation of arid lands belonging originally to the Federal Government. They have been generally recognized by the statutes and by the court as forming a distinct class of water corporations.

69 Idaho at 145.

Chapter 24, Title 42, Idaho Code, provides for the purpose and operation of irrigation or canal companies. This authority is in addition to the general authority given non-profit corporations pursuant to I.C. § 30-301 et seq. Idaho Code § 42-2401 provides of list of general powers for such organizations and I.C. § 42-2402 empowers these corporations to have their purpose determined by their articles of incorporation. The articles of incorporation of the Big Bend Irrigation and Mining Company provide that purposes for which the corporation was formed are "Diverting water from a spring situated on the S.E. 1/4, S.E. 1/4, Sec. 36, T7S, R13E of Boise Meridian and known as Thompsons Spring, for irrigating and mining purposes." Both the Bylaws and Articles of Incorporation adopted by Big Bend incorporated standard form provisions.

The following excerpt is taken from the recently published water treatise, 3 Beck, Waters and Water Rights § 26.02 Mutual Ditch or Water Corporations (1991 ed):

§ 25.02. Mutual Ditch or Water Corporations.

It was inevitable as the West became more densely populated that the early form of community organizations involved in the mutual ditch arrangement would give way to more elaborate and expensive plans for distributing water to irrigators. An early solution was the mutual ditch or water company, usually in the form of a non-profit corporation organized for the exclusive benefit of the users in a particular area who became its stockholders. Often the bylaws required water to be distributed to stockholders at cost.

Historically, these companies appeared to have come about in a variety of ways. Farmers in the area might informally band together in a cooperative enterprise for the purpose of facilitating distribution of water. Associations of this type were often unincorporated. Many mutuals were promoted as part of land development projects. "A land and water company" would subdivide land for sale to settlers. It would then promote a mutual water company and transfer the stock to land purchasers.

APR 08 1993

When a corporation was organized, the stockholders occasionally retained title to their water rights, and the corporation simply owned the distribution ditch. Or, in many cases, the stockholders formally transferred their water rights to the corporation in exchange for stock certificates. Frequently, the mutual ditch company was part of a vast land promotion scheme, with the ditch company a subsidiary of the "land" company. Sometimes the company was originally organized as a commercial venture to sell water and, after insolvency, it was taken over by the water users as a mutual company.

In all these situations the objective was the same: to provide a vehicle for organizing the distribution of water so that the individual water users were relieved of the burden of managing the ditch. The number of shares of stock issued to individual stockholders usually depended upon the amount of land to be irrigated. Frequently, one certificate of stock entitled the stockholder to irrigate one acre of land. The corporation's sole source of revenue for maintaining the irrigation system was assessments levied against the stockholders. The assets of the corporation consisted of the water rights, if they were owned by the corporation, and of physical distribution facilities.

The principle that underlies the mutual ditch is the same as that which governs most agricultural cooperatives - mutual cooperation. Generally, a cooperative is a democratic business formed by a group of people to provide themselves certain goods and services, rather than to seek a return on investment in the cooperative. In a cooperative, each member/owner has one vote in running the company, and earnings are returned to members in proportion to their use of the company. Agricultural cooperatives are organized to market products produced by farmers or to purchase or manufacture supplies to be sold to farmers. Although mutual ditch companies are customarily organized as business corporations, they can also be organized under state statutes authorizing agricultural cooperatives.

In summary there appears to be virtually no legal distinction in Idaho law that attaches to the identification of a water delivery organization as a "mutual" ditch or irrigation company. Even the IDWR in its rules and regulations does not define or distinguish this term. The only place in the present rules and regulations where this issue is addressed at all is in the recently promulgated adjudication rules and regulations where the following terminology is used:

APR 08 1993

IDAPA 37.Q.2,23

Water Delivery Organization means an irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization.

APR 08 1993

MEMORANDUM

COPY

TO: File
FROM: GLQ
RE: Idaho Irrigation Delivery Organizations
DATE: February 27, 1992

ISSUE

Provide a brief outline of the irrigation delivery organizations recognized under Idaho law and their duties and responsibilities.

DISCUSSION

This discussion does not include municipal water delivery organizations organized under Title 50, Idaho Code, nor does it discuss "water districts" which are administration subdivisions of the Idaho Department of Water Resources for the purposes of distribution of water, Chapter 6, Title 42, Idaho Code.

This discussion addresses "water-user" controlled irrigation delivery organizations, which encompass the irrigation-related organizations named in the Nez Perce suit. The Idaho Code recognizes three different entities which may be organized to deliver irrigation water: (1) irrigation districts, which are quasi-municipal corporations organized under Title 43, Idaho Code, (2) canal companies, private non-profit corporations organized under Idaho's non-profit corporation act, Chapter 3, Title 30, Idaho Code, and (3) lateral ditch associations, private associations organized under Chapter 13, Title 42, Idaho Code. It is important to keep in mind that "irrigation districts" and "water districts" are different entities and that irrigation districts are quasi-governmental in nature while canal companies and lateral ditch associations, while serving a public purpose, are private organizations.

Although each of the three irrigation water delivery organizations functions independently and autonomously, I. C. § 42-605(5) provides for the participation of canal companies in the distribution of water in a water district and lateral ditch associations can function as a distribution agent within a canal company.

Idaho Bank No. 1990-1990

APR 08 1993

I. IRRIGATION DISTRICTS

Irrigation Districts in Idaho are quasi-municipal corporations. Although not municipal corporations for the purpose of tax exemptions based on that classification, property used for irrigation purposes is tax exempt under I.C. § 63-105I. Irrigation districts are treated as political subdivisions of the state for the purpose of the Tort Claims Act, I.C. § 6-902.2.

Irrigation districts are organized by election under the authority of the county commissioners. Once created, the district is defined by physical boundaries and provision is made for addition or exclusion of lands from the boundaries of the district. The district is governed by a board of directors elected by the qualified electors residing within the district.

Besides the usual authority for governance of the district, the Board of Directors has authority to acquire land and water rights by purchase or condemnation and for the construction of canals, dams, and reservoirs. The district is authorized to construct drainage works, construct and operate electric power plants, and may incur indebtedness within statutory limits. Upon approval by the electorate of the district bonds can be issued for the construction or repair of irrigation works. All property within a district is subject to assessment, whether or not it receives water. Irrigation districts are often the entity contracting with the Bureau of Reclamation for storage rights in Bureau water projects.

II. CANAL COMPANIES

Canal companies in Idaho are private non-profit corporations usually formed to operate a single irrigation project. Because of the unusual success of the Carey Act in Idaho, many canal companies are also Carey Act operating companies. In addition to general statutory provisions relating to canal companies there are also special statutory provisions that only apply to Carey Act operating companies.

The Carey Act, passed by Congress in 1894, represents a pre-Reclamation Act attempt by Congress to induce private investment for the reclamation of arid lands in the West. Each of the arid western states received a segregation of 1,000,000 acres of federal public domain for Carey Act reclamation purposes. Generally the Carey Act did not prove to be a successful means of reclamation and as a result most irrigation development in the West was conducted under the Reclamation Act of 1902.

Canal companies have the same powers granted to corporations generally. They issue shares of stock, which typically are tied to shares of water, and elect a board of directors to govern the activities of the company. Assessments for the operating and maintenance expense of the companies are based on the issued shares of stock.

III. LATERAL DITCH ASSOCIATIONS

A lateral ditch association may be organized when three or more parties take water from the same canal or reservoir at the same point. I.C. § 42-1301. The lateral ditch association allows users on the same delivery conduit to organize for their common benefit, elect officers, assess maintenance charges, and elect a manager who, under provisions of Chapter 9, Title 42, I.C., is vested with similar authority as that granted a water master for the distribution of water to the association's members. Lateral Ditch Associations are authorized to borrow money and mortgage or pledge assets under I.C. § 42-1309.

The lateral ditch association provides a means, when needed, for the direct distribution to water users. For example, Carey Act canal companies are not required to bring water directly to each water user, but rather only within a 1/2 mile point from a quarter section of land. In certain situations, where necessary, lateral ditch associations are formed for the direct and final delivery of water to actual users.

REPRODUCED

APR 08 1993

- a. If the lands are too high to be watered;
 - b. The owners have an independent irrigation system;
 - c. The lands are not agricultural lands.
3. Board conducts investigation and hearing with any order of exclusion also recorded to effectuate a change in the boundaries.
 4. Excluded lands no longer entitled to receive water from the district or any other benefits.

II. CANAL AND MUTUAL DITCH COMPANIES.

A. Overview.

1. Companies owned and operated on a non-profit community basis by the farmers themselves are known as mutual irrigation companies. In the development of the west, large scale irrigation developments for the profit of distant investors was frequently a losing venture. Consequently, mutual irrigation companies developed naturally in the west as diversions of waters by individual farmers became increasingly difficult both physically and financially and neighborhood cooperation was needed.
2. Irrigation companies ordinarily control their main canals and diversions, with lateral or ditch companies or associations distributing water on to the users. Some companies actually own the water rights distributed to their members or shareholders, while others simply own, operate and maintain reservoirs, diversion structures, canals and related distribution facilities to convey water to the owners.

B. Non-Profit Corporations.

1. Overview.
 - a. Most canal and ditch companies organize and exist as non-profit companies. Under Title 30, Chapter 3, Idaho Code, non-profit corporations may be formed for "agricultural purposes". Like all corporations, they are governed by the provisions of the Idaho

APR 08 1993

Business Corporation Act, Title 30, Chapter 1.

- (1) No part of the income of a non-profit corporation can be distributable to members or shareholders. I.C. § 30-305.

2. General Powers.

- a. The same as granted to corporations generally under I.C. § 30-1-4.
- b. Right-of-way granted to utilize public roads and highways for pipes, ditches, canals, etc., from cities and counties. I.C. § 30-802.
- c. Annual Reports.

- (1) Have a duty to file with the county recorder with a copy to IDWR of a statement showing the condition of the business including the property, income, indebtedness, expenditures, etc. I.C. §30-806.

3. Members.

- a. The corporation may have members of one or more classes and may issue certificates or shares of stock.
- b. Members have no personal liability for debts or liabilities of the corporation.
- c. Meetings: have annual meetings as provided by the by-laws.
- d. Quorum: one-tenth of the votes unless otherwise provided in the articles or by-laws.
- e. Voting: May vote by proxy. One vote per share unless otherwise provided by articles or by-laws.
- f. Board of directors: elected by the members/ shareholders at the annual meeting.

4. Board of Directors.

- a. Numbers and election.

- (1) The board of directors consists of 1 or

APR 08 1993

more directors elected annually at the shareholder meeting. I.C. § 30-315.

- (2) If the board consists of 9 or more members, in lieu of electing them annually, the articles may provide that they are divided into classes having staggered terms.

b. Officers.

- (1) Elected by board of directors per by-laws.

5. Dividends Prohibited.

- a. No dividend and no part of the income of a non-profit corporation can be distributed to its members, directors or officers. I.C. § 30-320. However, directors and officers may be reasonably compensated for services rendered.

6. Assessment and Sale of Shares.

a. Assessable stock.

- (1) Shares of canal and ditch companies normally provide in their articles of incorporation that the shares are assessable for the purpose of paying expenses, maintaining the canals and facilities and generally conducting business, pursuant to I.C. § 30-1-19.

b. Sale of Shares.

- (1) The company has the power to levy and collect assessments upon the shares. If the assessments are unpaid, the company can follow the procedure outlined in I.C. § 30-1-19A, and following notice, cause the shares to be sold at public auction to the highest bidder to pay the delinquency.

APR 08 1993

42-108. Change in point of diversion, place of use, period of use, or nature of use — Application of act. — The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature, except that any temporary change within the state of Idaho for a period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code. [R.S., § 3157; 1899, p. 380, § 11; reen. R.C. & C.L., § 3247; C.S., § 5563; I.C.A., § 41-108; am. 1943, ch. 53, § 1, p. 101; am. 1947, ch. 80, § 1, p. 130; am. 1969, ch. 303, § 1, p. 905; am. 1981, ch. 147, § 1, p. 253; am. 1986, ch. 313, § 1, p. 763.]

Compiler's notes. Section 2 of S.L. 1943, ch. 53 is compiled herein as § 42-222.

Section 2 of S.L. 1969, ch. 303 is compiled herein as § 42-222.

Section 2 of S.L. 1981, ch. 147 is compiled as § 42-221.

Section 2 of S.L. 1986, ch. 313 is compiled as § 42-201.

Section 2 of S.L. 1947, ch. 80 declared an emergency. Approved February 25, 1947.

Section 4 of S.L. 1981, ch. 147 declared an emergency. Approved March 27, 1981.

Sec. to sec. ref. This section is referred to in §§ 42-222, 42-1416A and 50-1805A.

Cited in: Schodde v. Twin Falls Land & Water Co. (1908), 161 Fed. 43; Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977).

ANALYSIS

Abandonment.
Application of 1947 amendment.
Approval of department.
Change causing injury.
Change in nature of use.
Constitutionality.
Dedication.
Extent of right.
Federal decree fixing priorities.
Jurisdiction of district court.
Proof.
Right of diversion.
Rights of subsequent appropriator.
Subterranean waters.
Transfer of rights.

Abandonment.

Such change does not work a forfeiture or

APR 08 1993

is not abandonment of such right. *Joyce v. Rubin*, 23 Idaho 296, 130 P. 793 (1913) (see also, *Joyce v. Murphy Land & Irrigation Co.*, 35 Idaho 549, 208 P. 241 (1922)).

Water right was not forfeited though abandoned for over five years where applicant for transfer resumed use of water prior to filing petition for transfer. *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

Application of 1947 Amendment.

1947 amendment to this section requiring consent of irrigation district to transfer of water right, which did not take effect until February 25, 1947, did not apply to application for transfer filed on October 7, 1946. *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

Approval of Department.

Change made without approval of state engineer (department of water resources) did not forfeit the water right. *Joyce v. Rubin*, 23 Idaho 296, 130 P. 793 (1913).

An appropriator who relies upon statutory appropriation through state engineer's (department of water resources) permit, must apply to state engineer (department) to change place of use. *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 147 P. 1073 (1915).

Change Causing Injury.

Change cannot be made if others are injured thereby. *Walker v. McGinness*, 8 Idaho 540, 69 P. 1003 (1902); *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904); *Hill v. Standard Mining Co.*, 12 Idaho 223, 85 P. 907 (1906); *Montpelier Milling Co. v. Montpelier*, 19 Idaho 212, 113 P. 741 (1911); *Bennett v. Nourse*, 22 Idaho 249, 125 P. 1038 (1912); *Hall v. Blackman*, 22 Idaho 539, 126 P. 1045 (1912); *Hall v. Blackman*, 22 Idaho 556, 126 P. 1047 (1912); *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917).

Prior appropriator of waters of stream will not be permitted to change his point of diversion, if such change will injuriously affect rights of subsequent appropriators as they existed at time such subsequent appropriations were made. *Crockett v. Jones*, 42 Idaho 652, 249 P. 483 (1926).

No change in point of use of water will be permitted without limitation if enlarged use in time or amount burdens the stream or decreases volume to injury of others. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

Change in Nature of Use.

The director of the Department of Water Resources has not been granted the authority to approve an application for a requested change in the nature of the use of water.

Baker Indus., Inc. v. Georgetown Irrigation Dist., 101 Idaho 187, 610 P.2d 546 (1980).

Constitutionality.

This section affords the water user due process of law. *In re Johnston*, 69 Idaho 139, 204 P.2d 434 (1949).

This section does not constitute a delegation of legislative power to a mutual water users' association and does not make an arbitrary discrimination between ordinary water corporations and Carey Act corporations, and the reason for Carey Act corporations not being included in § 42-108 was that the transfer of Carey Act water rights was already covered by chapter 25, title 42 of the Idaho Code. *In re Johnston*, 69 Idaho 139, 204 P.2d 434 (1949).

Dedication.

The wrongful diversion and use of water by appellant without the knowledge and consent of respondent, a mutual irrigation corporation, could not be made the basis of the dedication provided for in Const., art. 15, § 4. *In re Johnston*, 69 Idaho 139, 204 P.2d 434 (1949).

Extent of Right.

Right to change place of diversion includes cases in which use of water amounts to its absorption, or is such as to imply notice to subsequent appropriators that such change may reasonably be expected, but excludes appropriations to be used at a specific place for purpose of operating machinery and other works, where water is used and then returned to stream practically undiminished in quantity, when such change will damage a subsequent appropriator. *Last Chance Mining Co. v. Bunker Hill & S. Mining Co.*, 49 F. 430 (D. Idaho 1892).

Federal Decree Fixing Priorities.

The court should have followed the federal decree adjudicating interrelated water rights and fixing the priorities as of the same date as in the federal decree to avoid confusion in administering the water rights where a change in points of diversion was sought. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

Jurisdiction of District Court.

District court acquired full equitable jurisdiction on appeal from reclamation commission order and had full authority to impose reasonable conditions to avoid injury. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

Proof.

Challenge by shareholders in water company to change of diversion point effected by two holders of water rights pursuant to valid water exchange was without basis absent a

APR 08 1993

showing of actual harm to the shareholders. *Almo Water Co. v. Darrington*, 95 Idaho 16, 501 P.2d 700 (1972).

Right of Diversion.

Person claiming priority of right under judicial decrees had the statutory right to change his point of diversion provided that the rights of others were not injured, and such change did not work a forfeiture or an abandonment of such right. *Graham v. Leek*, 65 Idaho 279, 144 P.2d 475 (1944).

Rights of Subsequent Appropriator.

Subsequent appropriator had vested right to continuation of conditions as they existed when his appropriation was made. *Crockett v. Jones*, 42 Idaho 652, 249 P. 483 (1926).

Subterranean Waters.

Where a subsequent appropriator of subterranean water operated pumps at a lower level than prior appropriators, and thereby caused a shortage, the expense of lowering the prior appropriators' pumps so they received the same amount of water as before must be borne by the subsequent appropriators. *Noh v. Stoner*, 53 Idaho 651, 26 P.2d 1112 (1933).

Transfer of Rights.

Users of water from ditch or canal acquire property right therein which they may transfer to other lands under such ditch or canal, or may sell and transfer to purchaser who may also transfer the same to other lands under the ditch and canal, so long as the change does not interfere with the rights of others. *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904).

Nonconsent of ditch company and irrigation district did not bar transfer of water appropriation right where ditch company and irrigation district was unable to prove that the water appropriation right was represented by stock. *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

Collateral References. 78 Am. Jur. 2d, Waters, §§ 119-127.

94 C.J.S., Waters, §§ 352-363.

Obstruction, diversion, or other interference with flow of surface water as a taking or damaging of property. 128 A.L.R. 1195.

Prescriptive right of riparian owners to continuance of artificial channel or ditches. 88 A.L.R. 134.

42-108A. Leasing of water for hydroelectric generation — Exception to requirement of application to change nature of use. — Any person having the right to the beneficial use of a water right may lease the water to a private or public utility doing business in the state of Idaho for hydroelectric generation purposes within the state of Idaho for a period not to exceed one (1) year on application to the department of water resources indicating the name of the owner of the right, the lessor, the lessee, the amount of water leased, the duration of the lease, and the proposed place of use and point of diversion. Such a lease or leases shall not constitute a change in the nature of use of such water nor shall the same constitute an abandonment or forfeiture or any other diminution of such water right. [I.C., § 42-108A, as added by 1981, ch. 267, § 1, p. 566.]

42-108B. Leasing of water under established rights — Notice — Appeal. — Any person, entitled to the use of water whether represented by a license issued by the department of water resources, or by decree of the court, who shall desire to lease the water pursuant to section 42-108A, Idaho Code, shall make application to the department of water resources. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be leased. Upon receipt of said application, an application filing fee of thirty dollars (\$30.00) and a publication fee of fifty dollars (\$50.00), it shall be the duty of the director of the department of water resources to examine same and if otherwise proper, to cause notice of the proposed leasing of water and setting forth the hearing date at which protests will be heard, to be published once a week for two (2) consecutive weeks in a newspaper published and of

APR 8 1993

general circulation within the county where the water is diverted, if there is such a paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed leasing of water and who has a superior right to use the water and who may suffer pecuniary loss shall file notice of protest with the department within five (5) days of the last date of publication. The hearing date set by the director of the department of water resources shall be held not sooner than ten (10) nor later than fifteen (15) days after the last date of publication. Upon receipt of any protest, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed lease.

The director of the department of water resources shall examine all of the evidence and available information and shall approve, in whole or in part, or upon conditions, provided no other water rights senior or junior to the water to be leased are injured thereby. A copy of the approved application for leasing of water shall be returned to the applicant, and he shall be authorized upon receipt thereof to lease the water pursuant to section 42-108A, Idaho Code. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny same and forward a notice of such action to the applicant by certified mail, which decision shall be subject to review pursuant to section 42-1701A, Idaho Code.

All fees received by the department of water resources under the provisions of this section shall be submitted to the state treasurer for deposit in the water administration fund. [I.C., § 42-108B, as added by 1981, ch. 267, § 2, p. 566.]

42-109. Change in course of ditch — When prohibited. — Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal. [R.S., part of § 3189; reen. R.C. & C.L., § 3248; C.S., § 5564; I.C.A., § 41-109.]

Collateral References. 78 Am. Jur. 2d, Waters, §§ 119-127.

Obstruction, diversion, or other interference with flow of surface water as a taking or damaging of property. 128 A.L.R. 1195.

Right of owner to alter his easement in such a way as to deprive servient estate of incidental benefits. 172 A.L.R. 193.

42-110. Right of ditch owners to divert water. — The proprietors of any ditch, canal or conduit, or other works for the carriage of water, whose right relative to the quantity of water they shall be entitled to divert by means of such works shall have been established by any decree of court, shall be entitled to such quantity measured at the point of diversion, sub-

APR 06 1983

MICHAEL H. FELTON

Attorney at Law

Professional Center

May 1, 1992

COPY

1020 Main
Post Office Box 589
Buhl, Idaho 83316-0589
(208) 543-4368
FAX: (208) 543-4360

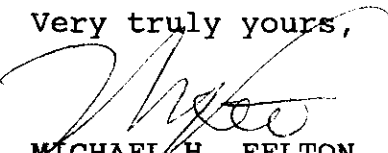
Tim Luke, Hydrologist
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83720-9000

Dear Tim:

RE: Vay and Jean Cook/Big Bend Irrigation and Mining Co.
Our File No. 1662

Enclosed please find the affidavit signed by Cleave Lloyd. Also enclosed please find copies of my letters to Loren Holmes and Doug Jones. Please do not go forward with Transfer No. 3880 until Mr. Lloyd has a chance to file an amended transfer with Doug Jones. Loren Holmes suggested to me that Doug Jones is the person to work with regarding the filing of an amended Transfer No. 3880. Please advise.

Very truly yours,


MICHAEL H. FELTON

MHF:pm

Enclosures

pc: Cleave C. Lloyd

Mr. & Mrs. Vay Cook

Loren Holmes @ Department of Water Resources

Douglas Jones @ Department of Water Resources


APR 08 1993

1 other errors and irregularities in the transfer including, but not
2 limited to, properties owned by Carl Hayden and Lyle Callow.

3 (7) That your affiant, on behalf of the Big Bend
4 Irrigation and Mining Company, requests an opportunity to approve
5 and possibly amend the aforementioned Transfer No. 3880 dated
6 April 15, 1991. That when this transfer application was signed,
7 we did not realize the effect of the document nor did we
8 appreciate the errors and inaccuracies contained therein.

9 (8) That as to Vay and Jean Cook in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
10 Section 22 and also the 300' x 300' square in the NE corner of the
11 NW $\frac{1}{4}$ NW $\frac{1}{4}$, their entitlement is and our deliveries have been in the
12 amount of thirty-seven inches or more and not in the amount of
13 five inches as shown in the transfer.

14 (9) That Mr. and Mrs. Cook own thirty-seven shares in
15 the Big Bend Irrigation and Mining Company; that Big Bend has
16 licenses totaling 35 cfs (1750 miners inches) to distribute among
17 a total of 917 shares; that at the source (Tucker or Thompson
18 Springs/upper and lower) we begin with approximately two inches
19 per share and, due to transportation and evaporation loss, we
20 believe we still deliver in excess of one inch per share at the
21 Vay and Jean Cook headgate.

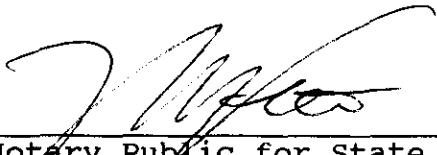
22 Further your affiant sayeth not.

23
24 
25 CLEAVE C. LLOYD

26 AFFIDAVIT OF CLEAVE C. LLOYD - 3

APR 08 1993

1
2 SUBSCRIBED AND SWORN TO before me this 21st day of
3 April, 1992.

4
5 
6 Notary Public for State of Idaho
7 Residing at Buhl, Idaho
8 My Commission Expires: 09-29-97

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26 AFFIDAVIT OF CLEAVE C. LLOYD - 4

Michael H.
elton
orney
Law
daho


APR 08 1993

MICHAEL H. FELTON

Attorney at Law

Professional Center

1020 Main
Post Office Box 589
Buhl, Idaho 83316-0589
(208) 543-4368
FAX: (208) 543-4360

April 16, 1992

*5/11/92
Rec'd Com'l From
Cleave Lloyd*

Cleave Lloyd
Route 1, 2715 S. 900 E.
Hagerman, ID 83332

Dear Mr. Lloyd:

RE: Big Bend Irrigation & Mining Company, Ltd.
Thirty-Seven Shares in Favor of Vay and Jean Cook
Our File No. 1662

Several weeks ago you kindly signed a Comment which was submitted to you at my request by Vay and Jean Cook. Enclosed herewith is a copy of that Comment wherein you indicate that the Cooks are entitled to thirty-seven shares of the Big Bend Ditch. Also enclosed herewith are some other documents which I have been able to come up with, including a list of Big Bend shareholders showing thirty-seven shares in favor of the Cooks and another document filed by the Big Bend Irrigation and Mining Company indicating that there was a forty-acre tract in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22, Township 7 South, Range 13 East, B.M. in Gooding County which was being irrigated with waters from the Big Bend Ditch.

Also enclosed herewith please find several copies of a transfer signed by yourself and Dick Cook on or about April 15, 1991, wherein it was certified that there are only five acres being irrigated in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ in Section 22, Township 7 South, Range 13 East, B.M., in Gooding County. Finally, I enclose herewith a copy of § 42-607 of the Idaho Code which concludes with this sentence:

So long as a duly elected watermaster is charged with the administration of the waters within a water district, no water user within such district can adversely possess the right of any other water user.

Based upon the foregoing, I must respectfully demand that the Big Bend Irrigation and Mining Company immediately revise the Application for Transfer of Water Right reflecting thirty-seven shares and acres being irrigated by Vay and Jean Cook in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22. I believe that the quickest way to remedy this problem is for you to contact Mr. and Mrs. Cook

Not Big Bend

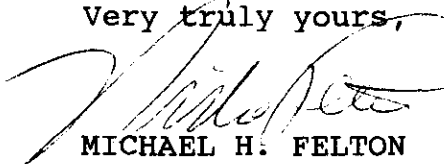
RECORDED

APR 08 1993

Cleave Lloyd
April 16, 1992
Page 2

and go with them to the Department of Water Resources office at Twin Falls and amend the transfer as it has not yet been acted upon by the Department of Water Resources. If I have not heard from you within five (5) days, I expect to follow-up with personal contact. I would appreciate a telephone call from you upon your receipt of this letter and if there is an attorney representing the Big Bend Irrigation and Mining Company, Ltd., I would appreciate receiving a telephone call from said attorney.

Very truly yours,



MICHAEL H. FELTON

MHF:pm

Enclosures

pc: Mr. & Mrs. Vay Cook (w/enc.)

Tim Luke, Hydrologist, Dept. of Water Resources (w/enc.)

Catherine Saul, Secretary

P.S. Please be advised that Mr. and Mrs. Cook irrigated their forty acres last irrigating season (1991) and they are again irrigating their pasture this season.

APR 08 1993

MICHAEL H. FELTON

Attorney at Law

Professional Center

1020 Main
Post Office Box 589
Buhl, Idaho 83316-0589
(208) 543-4368
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May 1, 1992

RECEIVED

MAY 04 1992

Douglas Jones, EIT
Department of Water Resources
222 Shoshone St. E.
Twin Falls, ID 83301

Department of Water Resources
Southern Region Office

Dear Doug:

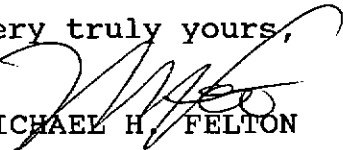
RE: Vay and Jean Cook/Big Bend Irrigation and Mining Co.
Our File No. 1662

Enclosed herewith is a copy of the affidavit which Mr. Lloyd signed in my office on April 21. When I spoke with Loren Holmes on the morning of the 21st, he suggested that I set up an appointment for Cleave to review Transfer No. 3880 with you and correct some of the errors he has found in that transfer. The enclosed affidavit speaks to the errors that he has noticed so far including, but not limited to, the Cooks' thirty-seven acres which are reflected in the April 15, 1991 transfer as five acres. As indicated by the enclosed affidavit, Mr. Lloyd wishes to correct that error and otherwise go through the transfer with you and either file an amendment to the transfer or do the whole thing again and title it "amended transfer."

Please contact Mr. Lloyd directly and please provide me with a copy of your correspondence until the amendments have been made. Mr. Lloyd's mailing address is Route 1, 2715 South 900 East, Hagerman, Idaho 83332.

Please file the enclosed affidavit in the appropriate files regarding the Snake River Adjudication filing (No. A36-10064) by Mr. and Mrs. Cook, the Application for Permit (No. 36-08599) filed by Mr. and Mrs. Cook, and Big Bend Transfer No. 3880.

Very truly yours,


MICHAEL H. FELTON

MHF:pm

Enclosure

pc: Cleave C. Lloyd
Mr. & Mrs. Vay Cook
Tim Luke

MICROFILMED

APR 08 1993

1 MICHAEL H. FELTON
2 1020 Main Street
3 Post Office Box 589
4 Buhl, Idaho 83316-0589
5 Tel. No. (208) 543-4368
6 Fax No. (208) 543-4360
7 (ABC-DOC\1662AFF.421)pm

8 BEFORE THE STATE OF IDAHO
9 DEPARTMENT OF WATER RESOURCES

10 * * * * *

11 In the Matter of:) Transfer No. 3880
12)
13 Big Bend Irrigation and)
14 Mining Company) AFFIDAVIT OF CLEAVE C. LLOYD

15 In the Matter of:) Permit No. A36-10064
16)
17 The Application of Vay M.) Permit No. 36-08599
18 and Jean Cook for an)
19 Application to Appropriate)
20 Waters of the State of)
21 Idaho)

22 * * * * *

23 STATE OF IDAHO)
24 : ss
25 County of Twin Falls)

26 COMES NOW Cleave C. Lloyd, who being first duly sworn
upon oath, deposes and says as follows:

(1) That your affiant is the President of Big Bend
Irrigation and Mining Company.

AFFIDAVIT OF CLEAVE C. LLOYD - 1

Michael H.
Felton
Attorney
At Law
Buhl, Idaho

APR 08 1993

1 (2) That on or about April 15, 1991, your affiant signed
2 Transfer No. 3880 relating to the Snake River Basin Adjudication.

3 (3) That upon reflection, your affiant has found several
4 inconsistencies in the aforementioned Application for Transfer of
5 Water Right entitled Transfer No. 3880.

6 (4) That in particular your affiant has found that the
7 Big Bend Irrigation and Mining Company has for many years delivered
8 thirty-seven (37) inches or more of water from the Big Bend Ditch
9 to Vay and Jean Cook for use on a 300' x 300' square parcel and for
10 use on the adjoining forty-acre parcel which are described as
11 follows:

12 Section 22, Township 7 South, Range 13 E.,
13 B.M., in Gooding County, Idaho, as follows:

14 Parcel 1:

15 NE $\frac{1}{4}$ NW $\frac{1}{4}$

16 Parcel 2:

17 300' x 300' square in the Northeast corner of
18 the NW $\frac{1}{4}$ NW $\frac{1}{4}$

19 (5) That your affiant served as ditch rider for the Big
20 Bend Ditch Company through the 1986 irrigation season or
21 thereabouts, and that your affiant delivered no less than thirty-
22 seven inches, and oftentimes substantially more, to Vay and Jean
23 Cook each year for a period of approximately twenty years.

24 (6) That your affiant has reviewed the aforementioned
25 transfer dated April 15, 1991, and has noticed that there are
26

AFFIDAVIT OF CLEAVE C. LLOYD - 2



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

06-May-1992

R. KEITH HIGGINSON
Director

MICHAEL H FELTON ESQUIRE
PO BOX 589
BUHL ID 83316

RE: Big Bend Irrigation & Mining Company

Dear Mr. Felton:

Enclosed please find a Water Rights Summary for Big Bend Irrigation & Mining Company.

Also enclosed are copies of the licenses 36-2007, 36-7237, 36-7865 and 36-8567 as well as a copy of Approved Permit 36-8571.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

APR 08 1993

MICHAEL H. FELTON

Attorney at Law

Professional Center

May 1, 1992

1020 Main
Post Office Box 589
Buhl, Idaho 83316-0589
(208) 543-4368
FAX: (208) 543-4360

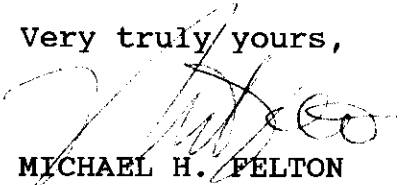
Loren Holmes, Manager
Department of Water Resources
222 Shoshone St. E.
Twin Falls, ID 83301

Dear Loren:

RE: Water License No. 36-7237
Our File No. 1662

When we spoke on Tuesday morning, April 21, you mentioned that there were a couple of rights (licenses) upon which the Big Bend Irrigation and Mining Company depended for and traced their water to. I believe that the above-referenced license number is one of those. I would like a copy of the above-quoted license number and the other license whereby the water rights in favor of Big Bend are recognized by the Department. I would appreciate a complete copy of each one of the licenses. Please advise.

Very truly yours,


MICHAEL H. FELTON

MHF:pm

pc: Cleave C. Lloyd
Mr. & Mrs. Vay Cook
Tim Luke

P.S. Please stop processing of Transfer No. 3880 until Mr. Lloyd has a chance to meet with Doug Jones for the purpose of filing an amended transfer.

MAILED
MAY 8 1992

MICHAEL H. FELTON

Attorney at Law

Professional Center

May 1, 1992

COPY

1020 Main
Post Office Box 589
Buhl, Idaho 83316-0589
(208) 543-4368
FAX: (208) 543-4360

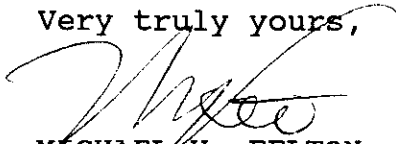
Tim Luke, Hydrologist
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83720-9000

Dear Tim:

RE: Vay and Jean Cook/Big Bend Irrigation and Mining Co.
Our File No. 1662

Enclosed please find the affidavit signed by Cleave Lloyd. Also enclosed please find copies of my letters to Loren Holmes and Doug Jones. Please do not go forward with Transfer No. 3880 until Mr. Lloyd has a chance to file an amended transfer with Doug Jones. Loren Holmes suggested to me that Doug Jones is the person to work with regarding the filing of an amended Transfer No. 3880. Please advise.

Very truly yours,


MICHAEL H. FELTON

MHF:pm

Enclosures

pc: Cleave C. Lloyd

Mr. & Mrs. Vay Cook

Loren Holmes @ Department of Water Resources

Douglas Jones @ Department of Water Resources

RECEIVED

APR 08 1993

4-21-92

Memo:

TO T 3880 From: LK
Re Amended Application

Mike Felton, Attorney for Vay & Jean Cook
Called about the Transfer.

Applicant is concerned that approval
of the transfer will prejudice the
SRBA against their contention that
they are entitled to 37 inches of
water & entitled to a 37 Acre
Place of use even though investigation
shows 5 Acres irrigated.

Cleave Lloyd will be filing an
amended transfer application.

RECORDED

APR 28 1993

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT

DEC 10 1991

NO. R 36-00133

(3880)

Department of Water Resources
Southern Region Office

RECOMMENDATION OF WATERMASTER

I, Geo. H Lemmon, watermaster of Hagerman Valley,
of Water District No. 36-A, County of Gooding, State of Idaho, 83332
whose address is 1050 E, 2727 S
have read the attached copy of the application for transfer of water right for Big
Bend Irrigation & Mining Co. 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: That 35 C.F.S be transferred.

OR

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

Dated at Hagerman, Idaho, this 7 day of December 19 91.

Geo H. Lemmon
(signature)

APR 08 1993

Please use reverse side if needed.

WM Recommendation

36-00133

Trans # 3880

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NOS.36-00133, 36-00192

Notice is hereby given that BIG BEND IRRIGATION & MINING CO., c/o Richard L. Cook, of Hagerman, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to Section 42-222 of the IDAHO CODE.

WATER RIGHT AS RECORDED

Water right no. 36-00133

Basis of right: Decreed to Big Bend Irrigation & Mining Co. in case of New International Mortgage Bank vs. Idaho Power Company, Et al dated 3/22/1932 in U.S. District Court, Southern District. Source: Upper Tucker Springs tributary to Riley Creek

Priority Date: 12/17/1903

Amount of water: 20.0 cfs

Use: irrigation

Point(s) of diversion: NW1/4SE1/4SE1/4, S36, T7S, R13E (Big Bend Ditch); Gooding County.

Historic place of use as determined by Snake River Basin

Adjudication: 434 acres within S1/2SW1/4, S15, T7S, R13E; Lot 3 (NE1/4SE1/4), SW1/4SE1/4, Lot 6 (SE1/4SE1/4), S16, T7S, R13E; Lot 5 (SE1/4NE1/4), S21, T7S, R13E; NE1/4, NE1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, NE1/4SE1/4, NW1/4SE1/4, SE1/4SE1/4, S22, T7S, R13E; SW1/4NW1/4, S23, T7S, R13E; W1/2NE1/4, NW1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4, S26, T7S, R13E; NE1/4, N1/2SE1/4, S27, T7S, R13E; Gooding County.

WATER RIGHT AS RECORDED

Water right no. 36-00192

Basis of right: Decreed to Big Bend Irrigation & Mining Co. in case of New International Mortgage Bank vs Idaho Power Company, Et. al dated 3/22/1932 in U.S. District Court, Southern Division. Source: Lower Tucker Springs tributary to Riley Creek

Priority Date: 4/1/1906

Amount of water: 15.0 cfs

Use: irrigation

Point(s) of diversion as determined in Snake River Basin

Adjudication: SE1/4NW1/4SE1/4, S36, T7S, R13E (Big Bend Ditch); Gooding County.

Place of use: Same as described above for Water Right No. 36-00133.

WATER RIGHT NO. 36-00133 & ADJUDICATION CLAIM NO. A36-00133 TO BE CHANGED AS FOLLOWS:

Water right No.: 36-00133

Priority Date: 12/17/1903

Period of Use: 3/15 to 11/15

Water Use: irrigation*

Amount: 20.0 cfs*

BIG BEND 1

APR 08 1993

WATER RIGHT NO. 36-00192 & ADJUDICATION CLAIM NO. A36-00192 TO BE
CHANGED AS FOLLOWS:

Water right No.: 36-00192
Period of Use: 3/15 to 11/15
Water Use: irrigation

Priority Date: 4/1/1906

Amount: 15.0*

Total amount being transferred: 35.0*

*Or as determined by Snake River Basin Adjudication

Source: Upper & Lower Tucker Springs tributary to Riley Creek
Point of diversion: No Changes.

Place of use: 434 acres within SE1/4SW1/4, SE1/4SE1/4, S15, T7S, R13E; Lot 3 (NE1/4SE1/4), SW1/4SE1/4, Lot 6 (SE1/4SE1/4), S16, T7S, R13E; Lot 5 (SE1/4NE1/4), S21, T7S, R13E; NE1/4, NE1/4NW1/4, SW1/4NW1/4, SE1/4NW1/4, NE1/4SE1/4, NW1/4SE1/4, SE1/4SE1/4, S22, T7S, R13E; SW1/4NW1/4, S23, T7S, R13E; W1/2NE1/4, NW1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4, S26, T7S, R13E; NE1/4, N1/2SE1/4, S27, T7S, R13E; Gooding County.

Any protest against approval of the application for transfer must be filed with the Department of Water Resources, 222 Shoshone Street East, Twin Falls, ID 83301 on or before December 30, 1991.

R. Keith Higginson, Director

Published in Gooding County Leader on 12/11 & 12/18/91.

BIG BEND 2

APR 08 1993

26-Nov-1991

GOODING COUNTY LEADER
PO BOX 56
GOODING ID 83330

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 required publication dates. If time allows, please submit 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.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

APR 08 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

26-Nov-1991

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

BIG BEND IRRIGATION & MINING CO
C/O RICHARD L COOK
RT 1 BOX 22
HAGERMAN ID 83332

Re: Application for Transfer No. 36-00133, 36-00192

Dear Mr. Cook:

The Department of Water Resources acknowledges receipt of your Application for Transfer.

This office will be advertising the application in the Gooding County Leader on 12/11 and 12/18/91. The advertisement will be published for two weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

The department's review process may have to include field investigation and verification of the claims which is required as part of the Snake River Basin Adjudication.

In order to complete regional review, a list of corporate officers and addresses should be submitted to this office.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

APR 08 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

26-Nov-1991

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

GEORGE LEMMON WATERMASTER
WATER DISTRICT #36
RT 1 BOX 218
HAGERMAN ID 83332

Re: Application for Transfer of Water Right No. 36-00133,
36-00192

Dear Mr. Lemmon:

Enclosed is a copy of an Application for Transfer of a Water Right within your District, and Watermaster's Recommendation Form.

Section 42-222 of the IDAHO CODE requires that the watermaster must be advised of proposed changes in water rights in the water district and must notify the Department of his recommendation on the application.

Please complete the enclosed recommendation form and return it to this office.

Processing of the application can be completed in 20 days, therefore, your prompt response to this request will be appreciated.

If you have any questions about the application, please contact this office or the applicant.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosures

APR 26 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Big Bend Irrigation & Mining Co.
c/o Richard L. Cook
Rt. 1 Box 22
Hagerman, ID 83332

October 23, 1991

Dear Mr. Cook;

In reviewing your recent application for transfer, numerous errors have been found in the transfer as originally submitted. I have therefore prepared a new transfer, a copy of which is enclosed. The new transfer still requests a change in the place of use for 10 acres from the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 15 to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 15, but also takes into account information recently gathered in the Snake River Basin Adjudication.

Please look over the transfer application to determine if it is satisfactory. If we do not hear from you by November 8, we will assume that the new document is acceptable. processing of the transfer will proceed.

Sincerely,

James E. Stanton
James E. Stanton
Sr. Water Resource Agent

RECEIVED

APR 08 1993