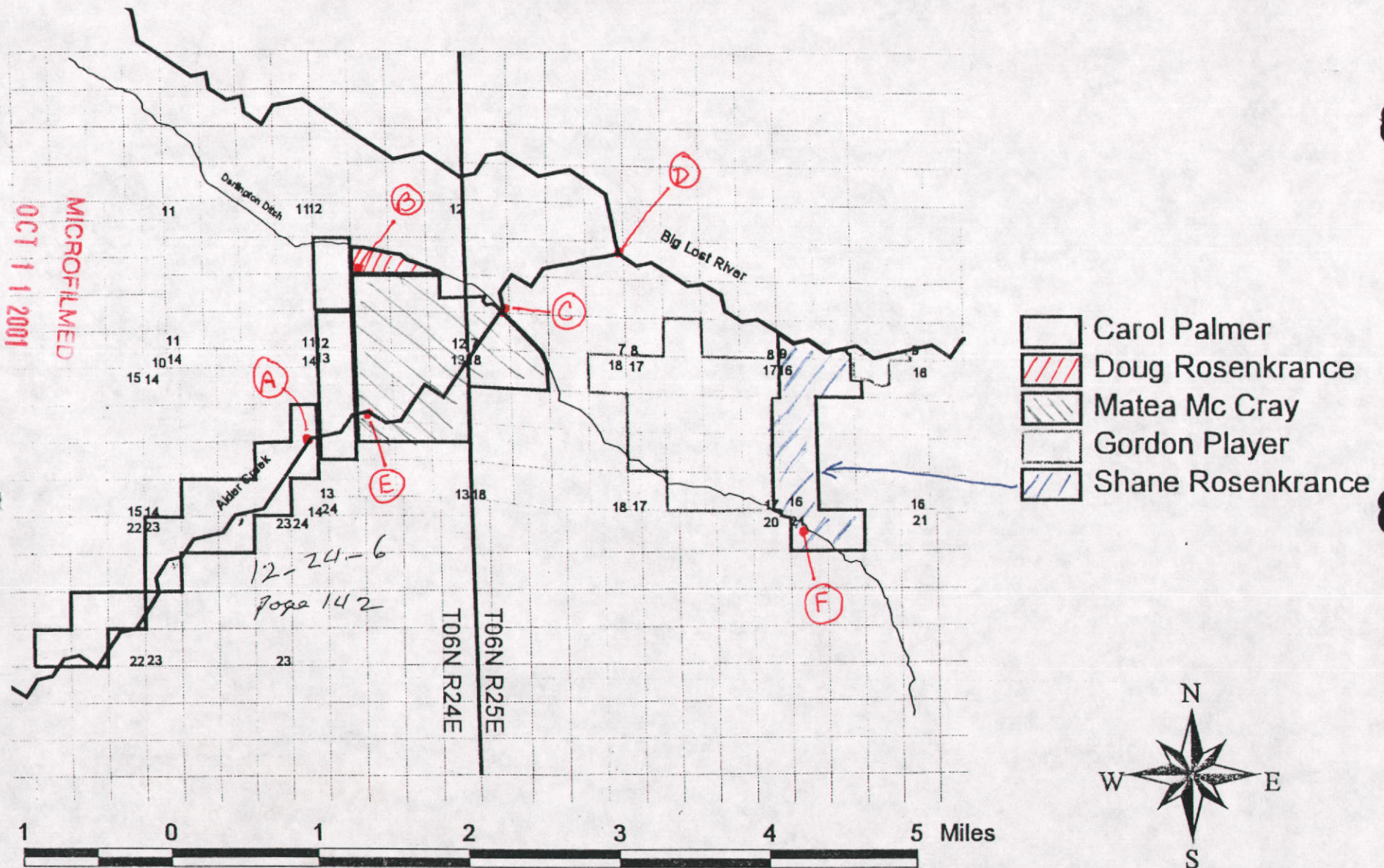


Alder Creek Area



Alder Creek Area

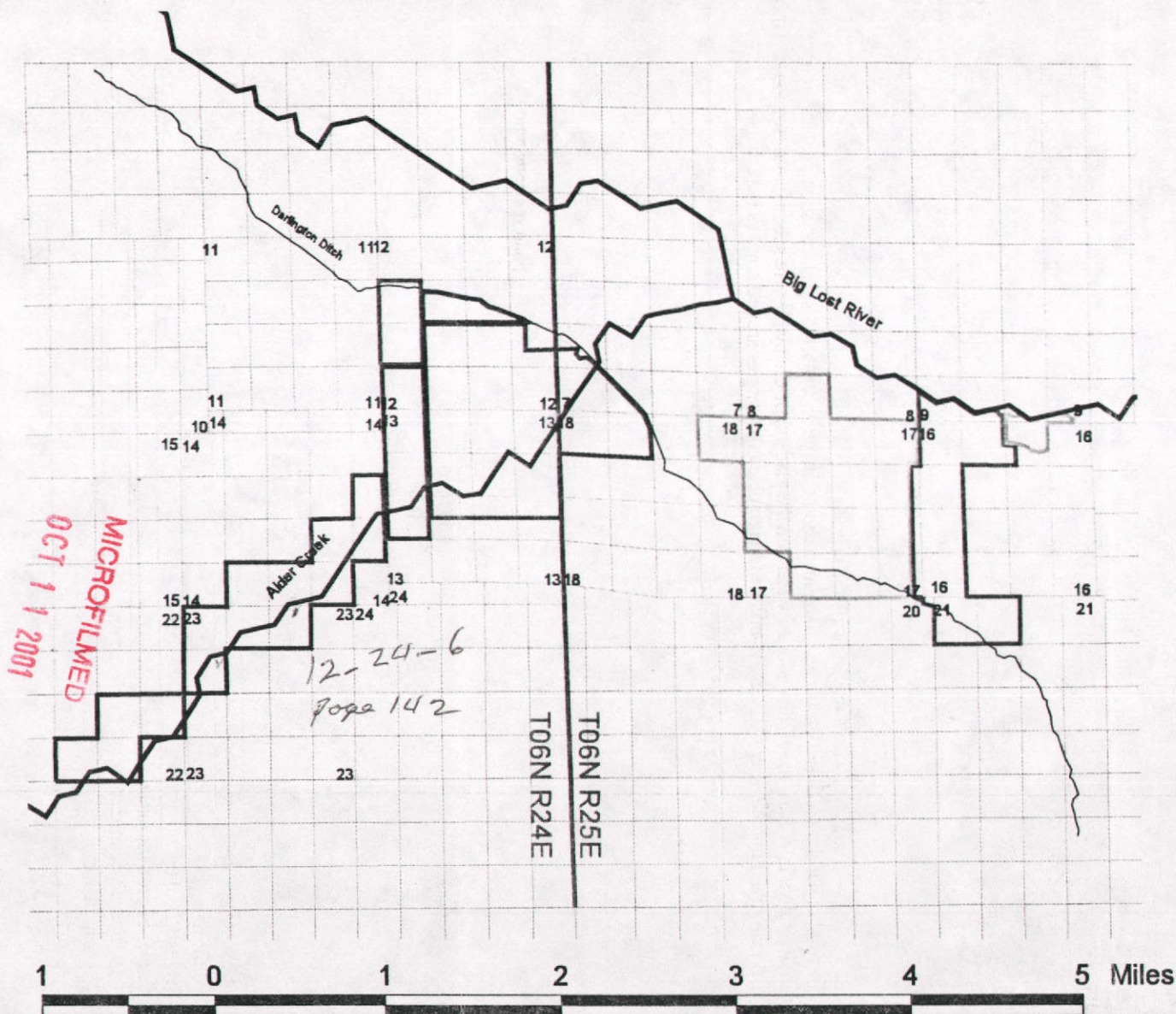


PHOTO FILMED
1-1-2001

14

Doug
R.

SWSW

SESW

SWSE

SESE

SESE

7

Loonie
O/Son 3.4cr+J

~~Jerry Gould
(Doug sold to Jerry in 2000)~~

Lambert
Ground.

Lambert

McCray

n/c Cray

Older Creek.

7-12-13

Larkin.

Eaton and Lockin
Planes sold by Doug
in 1995.

5/ACR-15
3/1/2050C

Eaton

51 Acres
434-120500
Hous. 19
Brack

~~DARLINGTON DITCH~~

 Larkin land
 description Associates
 with NR 34-12050

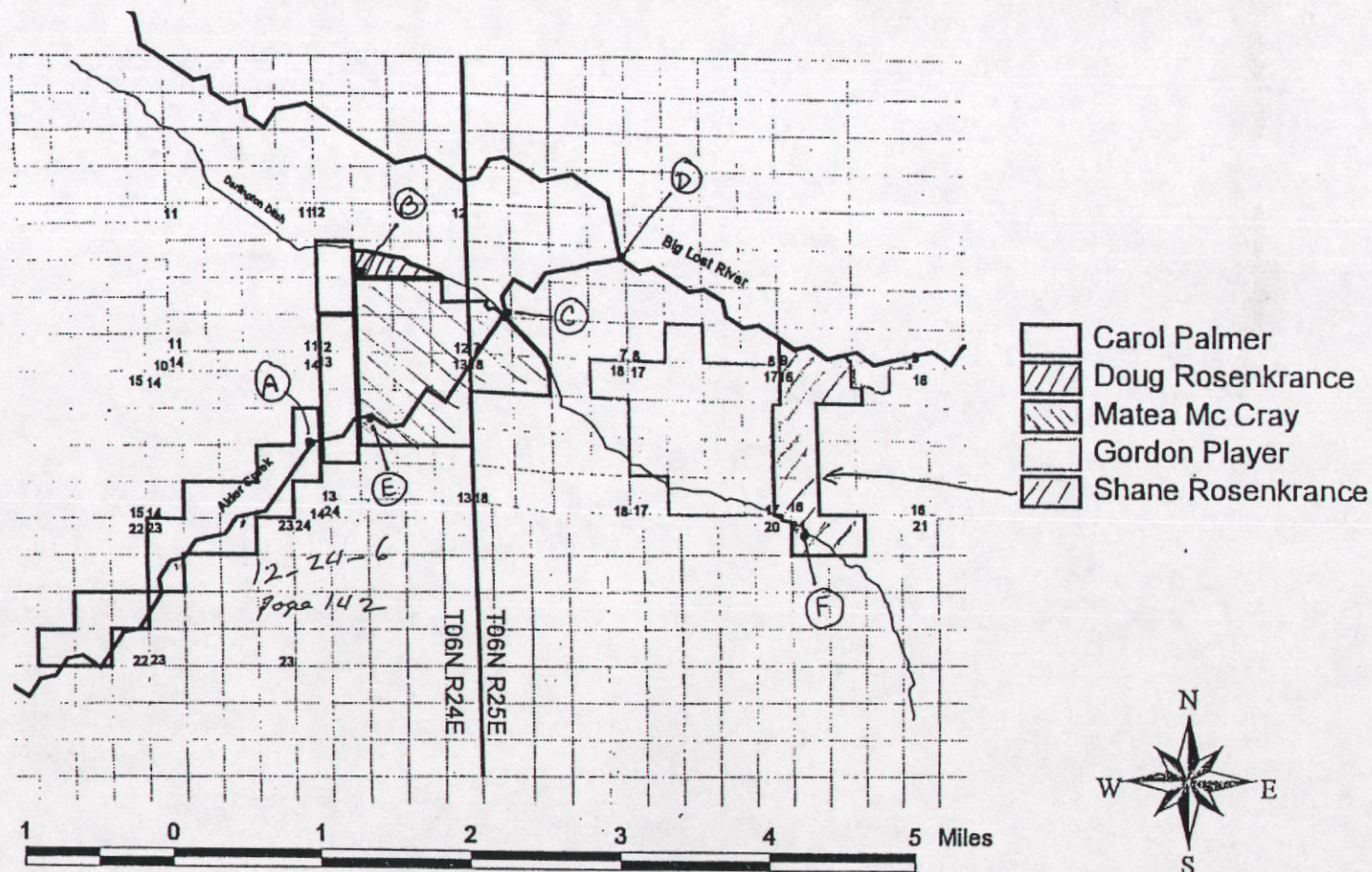
111 Eaton ~~in~~ land
descriptin associated
with NR 34-12050c

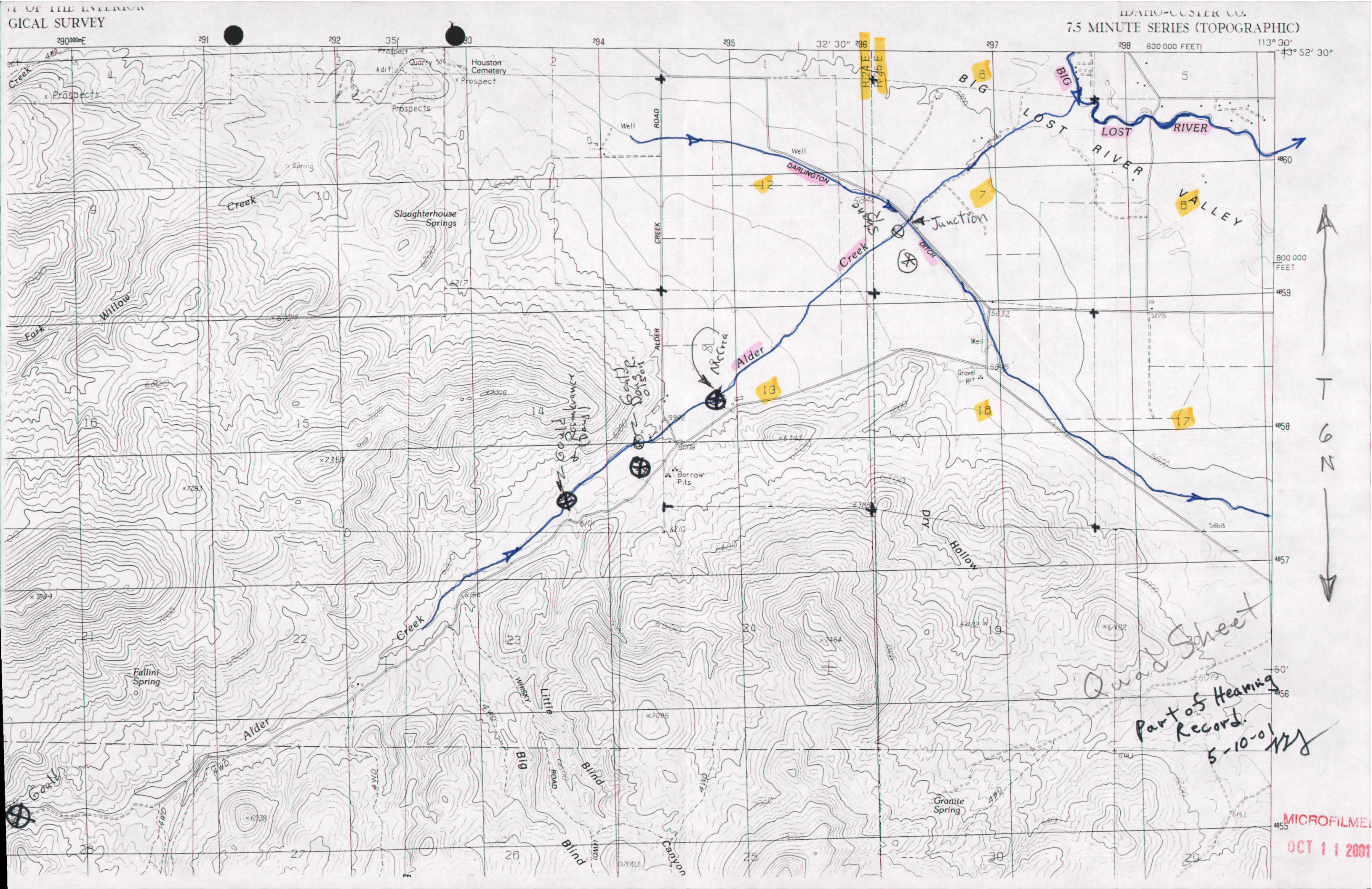
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OCT 11 2001

Alder Creek Area





AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Ruth E. Burchill, representing the
Challis Messenger, a weekly newspaper, pub-
lished at Challis, Idaho, do solemnly swear that
the notice hereto attached and made a part here-
of, was published in the regular and entire issue
of the Challis Messenger for 2
consecutive weeks, commencing with the issue
dated Sept 7 2000 and ending with
the issue dated Sept 14 2000.

Ruth E Burchill

STATE OF IDAHO

COUNTY OF CUSTER

On this 14th day of Sept. in the
year of 2000 before me, a Notary Public,
personally appeared Ruth E. Burchill
known or identified to me to be the person
whose name subscribed to the within instru-
ment, and being by me first duly sworn, declared
that the statements therein are true, and ac-
knowledgeed to me that he executed the same.

James W. Dangis
Notary Public for Idaho

Residing at Challis

My commission expires: 4/30/04

NOTICE OF APPLICATION FOR EXCHANGE OF WATER for 34-10400 and 34-12050

Notice is given that the Shane
Rosenkrance, Rt 1 Box 25A,
Mackay ID 83251, owner of right
34-10400 and Douglas Rosen-
krance, Rt 1 Box 24, Mackay ID
83251, owner of right 34-12050,
are applying for an exchange of
water.

Decree No.: 34-10400

Source: Alder Creek/Big Lost
River

Amount: 1.20 cfs

Priority: 05/01/1928

Point of Diversion(s): NWNWSW
SEC 7 T06N R25E, CUSTER
COUNTY

The water is used for irrigation
of 272 acres within SEC 9, 16, 17,
20 and 21 T06N R25E, B.M.

Decree No.: 34-12050

Source: Alder Creek/Big Lost
River

Amount: 1.20 cfs

Priority: 09/30/1882

Point of Diversion(s): NWNESE
SEC 14 T06N R24E, CUSTER
COUNTY.

The water is used for irrigation
of 162 acres within SEC 12 and
13 T06N R24E, B.M.

Each party will exchange 1.20
cfs of their rights and utilize their
own point of diversion to get this
water. The places of use stay the
same.

The application will be subject
to all prior water rights. Any
protest against approval of the
proposed amendment must be
filed with the Department of Water
Resources, Eastern Region, 900 N
Skyline Dr, Ste. A, Idaho Falls ID
83402 together with a protest fee
of \$25.00 for each application on
or before September 25, 2000. The
protestant must also send a copy
of the protest to the applicant.

Karl J. Dreier, Director
Pub: Sept 7 & 14, 2000.

OCT 11 2000 RECEIVED

SEP 15 2000

Department of Water Resource
Eastern Region

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

IN THE MATTER OF APPLICATION)
FOR EXCHANGE OF WATER RIGHT)
NOS. 34-12050C AND 34-10400 FILED)
IN THE NAME OF SHANE)
ROSENKRANCE)
_____) **PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources ("Department" or "IDWR") in the form of a protested application for exchange and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On December 8, 1997, the Snake River Basin Adjudication ("SRBA") Court decreed water right no. **34-12050** to Doug G. Rosenkrance and Dolores Rosenkrance as follows:

Source:	Alder Creek tributary to Big Lost River
Priority:	September 30, 1882
Rate of diversion:	4.76 cubic feet per second ("cfs")
Point of diversion:	NW1/4NE1/4SE1/4 (Lot 18) Section 14, T6N, R24E, B.M., Custer County, Idaho
Use:	Irrigation
Season of use:	Irrigation season
Place of use:	162 acres in parts of Sections 12 and 13, T6N, R24E, B.M.
Remarks:	Use of this right with right no. 34-02329 is limited to the irrigation of a combined total of 203 acres in a single irrigation season

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. Right no. 34-12050 was split into parts A and B by an ownership change as follows:

Identification no:	34-12050A
Owner:	Doug G. Rosenkrance and Dolores Rosenkrance
Source:	Alder Creek tributary to Big Lost River

Priority: September 30, 1882
Rate of diversion: 1.50 cfs
Volume: 178.5 AFA
Use: Irrigation
Season of use: May 1 to October 15
Place of use: SWNE (17.5 ac), SENE (2 ac), SENW (28.5 ac) and SWSW (3 ac), Section 12, T6N, R24E, B.M. 51 acres total.

Identification no: **34-12050B**
Owner: Jerry and Stephanie Gould
Source: Alder Creek tributary to Big Lost River
Priority: September 30, 1882
Rate of diversion: 3.26 cfs
Point of diversion: NESE (Lot 18) and SWSE (Lot 21) Section 14, T6N, R24E, B.M., Custer County, Idaho
Use: Irrigation
Season of use: May 1 to October 15
Place of use: 111 acres in parts of Sections 12 and 13, T6N, R24E, B.M.

3. Part A was then split by an ownership change into parts C and D as follows:

Identification no: **34-012050C**
Owner: Doug G. Rosenkrance and Dolores Rosenkrance
Source: Alder Creek tributary to Big Lost River
Priority: September 30, 1882
Rate of diversion: 1.41 cfs
Point of diversion: NWNESE (Lot 18) Section 14, T6N, R24E, B.M., Custer County, Idaho
Use: Irrigation
Season of use: May 1 to October 15
Place of use: SWNE (17.5 ac), SENE (2 ac), SENW (28.5 ac), Section 12, T6N, R24E, B.M. 48 acres total.

Identification no: **34-012050D**
Owner: Lonnie G. Olson and Susan M. Olson
Source: Alder Creek tributary to Big Lost River
Priority: September 30, 1882
Rate of diversion: 0.09 cfs
Point of diversion: NWNESE (Lot 18) Section 14, T6N, R24E, B.M., Custer County, Idaho
Use: Irrigation
Season of use: May 1 to October 15
Place of use: 3 acres in SWSW Section 12, T6N, R24E, B.M.

4. Water right no. **34-10400** has been recommended in the SRBA in the name of Shane D. Rosenkrance and Mimi L. Rosenkrance as follows:

Source: Alder Creek tributary to Big Lost River
Priority: May 1, 1928
Rate of diversion: 5.0 cfs
Point of diversion: NWNWSW (Lot 3) Section 7, T6N, R25E, B.M., Custer County, Idaho
Use: Irrigation
Season of use: May 1 to October 15
Place of use: 268 acres in parts of Sections 9, 16, 17, 20 and 21, T6N, R25E, B.M.
Remarks: Several other water rights irrigate the same land

5. Water right no. **34-00600** has been decreed in the Supreme Court of the state of Idaho in the case of John McCray and Matea McCray v Doug Rosenkrance, Shane Rosenkrance and James C. Lambert, filed on January 24, 2001 as follows:

Owner: John and Matea McCray
Source: Alder Creek tributary to Big Lost River
Priority: September 30, 1882
Rate of diversion: 0.5 cfs - Irrigation
0.02 - Stockwater
Point of diversion: SWSE Section 14, T6N, R25E, B.M., Custer County, Idaho
Use: Irrigation
Season of use: May 1 to October 15
Place of use: NWNE (9 ac), SWNE (9 ac), SENE (7 ac), Section 13, T6N, R25E, B.M. (25 acres total)
Remarks: Use of this right when used in combination with right 34-00606 is limited to a total of 25 acres within the place of use described above

6. Water right no. **34-00606** has been decreed in the Supreme Court of the state of Idaho in the case of John McCray and Matea McCray v. Doug Rosenkrance, Shane Rosenkrance and James C. Lambert, filed on January 24, 2001 as follows:

Owner: John and Matea McCray
Source: Alder Creek tributary to Big Lost River
Priority: September 30, 1882
Rate of diversion: 0.5 cfs - Irrigation
0.02 - Stockwater
Point of diversion: SWSE Section 13, T6N, R25E, B.M., Custer County, Idaho
Use: Irrigation
Season of use: May 1 to October 15
Place of use: NWNE (9 ac), SWNE (9 ac), SENE (7 ac), Section 13, T6N,

Remarks: R25E, B.M. (25 acres total)
Use of this right when used in combination with right 34-00600 is limited to a total of 25 acres within the place of use described above

7. On August 21, 2001, Shane Rosenkrance ("applicant") filed an application for exchange ("application") proposing to exchange 1.2 cfs of water right no. 34-10400 ("Shane Rosenkrance right") with 1.2 cfs of water right no. 34-12050C ("Doug Rosenkrance right").

8. IDWR published notice of the application that was subsequently protested by John and Matea McCray.

9. On May 10, 2001, IDWR conducted a hearing in the matter. The applicant was present and represented himself. The protestants were present and represented themselves.

10. Issues that IDWR can consider in a contested case involving a proposed exchange are as follows:

- a. Whether the proposed exchange will injure other water rights.
- b. Whether the proposed exchange constitutes an enlargement in use of the original right.
- c. Whether the proposed exchange is in the local public interest.
- d. Whether the proposed exchange is consistent with the conservation of water resources within the state of Idaho.

11. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Protestant's Exhibit 1 - Letter dated December 6, 1990, signed by Francis L. Smith
- b. Protestant's Exhibit 2 - Envelope post-marked October 13, 1998, a letter to the Department of Water Resources from Francis Smith and Notice of Protest with attachments
- c. Protestant's Exhibit 3 - Letter to Ron Carlson from Matea McCray (letter received April 19, 2001)
- d. Protestant's Exhibit 4 - Letter dated April 24, 2001 to Matea McCray from Harold W. Jones and IDWR printout of water right no. 34-12050C

- e. Protestant's Exhibit 5 - Letter dated June 11, 1999 to Alder Creek Water Users from Tim Luke and Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34 prepared by IDWR
- f. Protestant's Exhibit 6 - Warranty Deed to Isabel L. Eaton from Douglas G. Rosenkrance and Dolores I. Rosenkrance dated July 12, 1995 together with attachments
- g. Protestant's Exhibit 7 - Idaho Supreme Court decision titled John McCray and Matea McCray v. Doug Rosenkrance, Shane Rosenkrance and James C. Lambert, Filed January 24, 2001

The hearing officer also officially noticed a copy of a U.S. Geological Quadrangle sheet showing the Alder Creek area and the Darlington Ditch area on which the applicant marked the location of 4 diversion points that are used to divert the 1882 water rights from Alder Creek.

12. Alder Creek is a tributary of the Big Lost River and is to be administered in priority with the Big Lost River unless a futile call determination has been made and confirmed as described in a document titled Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34, prepared and distributed by IDWR on June 11, 1999.

13. The Darlington Ditch diverts water from the Big Lost River. Alder Creek flows into the Darlington Ditch or can be passed through the Darlington Ditch to the Big Lost River. (The point where Alder Creek meets the Darlington Ditch will be referred to in this order as the "Darlington Ditch junction" or "junction").

14. Several water rights on Alder Creek have a priority date of September 30, 1882, that is the most senior priority of use on the creek. The 1882 rights are all diverted from Alder Creek upstream from the Darlington Ditch junction through 4 points of diversion. The location of the point of diversion for the Doug Rosenkrance right is located about 1.75 miles upstream from the junction. The protestant's point of diversion is located about 1.25 miles upstream from the junction and is located about 0.5 miles downstream from the Doug Rosenkrance diversion. The protestant's diversion is the most downstream of the diversions that divert 1882 water.

15. There are several water rights on Alder Creek with junior priority dates ranging from 1896 to 1928. These rights are all diverted into the Darlington Ditch at the junction, and are re-diverted from the Darlington Ditch at each right holder's turnout on the ditch.

16. When the flow in Alder Creek is not sufficient to fill water rights with a priority later than September 30, 1882, the water distribution practice has been to proportionately distribute the available water to the 1882 rights based on the amount of

the 1882 rights.

17. The applicant believes he can best utilize water right no. 34-12050C at the place of use decreed for right no. 34-10400.

18. The applicant does not believe there will be an enlargement in use, since he proposes to exchange 60 miner's inches of water with 60 miner's inches.

19. The protestant's concerns are as follows:

- a) Water right no. 34-12050C has been forfeited through non-use.
- b) The exchanged 1882 water right will be used on more acres than originally decreed, thus enlarging the water use.
- c) If 60 miner's inches of the Doug Rosenkrance right is delivered to the junction, the loss in the Alder Creek channel that occurs between the protestant's point of diversion and the junction, being a distance of about 1.25 miles, will have to be borne by the other September 30, 1882 right holders on Alder Creek resulting in injury to their rights.

20. Doug Rosenkrance who is the watermaster for the Big Lost River including Alder Creek stated that there is a loss in Alder Creek in the 1.25 mile reach from the protestant's point of diversion and the junction, but that he has not measured the loss. The watermaster, however, stated that the loss was directly related to the amount of flow in the creek and estimated the loss to be from 20% to 30% of the flow.

21. As presently divided by ownership splits, water right no. 34-12050C has been used on about 48 irrigated acres of the original place of use of right no. 34-12050. The exchange would allow the applicant to use water right no. 34-12050C on 268 acres.

22. Measuring devices do not exist in the Alder Creek channel that could be used to measure and regulate delivery of the Doug Rosenkrance right to the junction. Outside of offering to subordinate the Doug Rosenkrance right to the protestant's right, the applicant did not propose a means of preventing injury to other water rights or enlargement in use of the right proposed for exchange.

ANALYSIS

The protestants contend that water right no. 34-12050C has been lost through non-use, since in 1995, Doug Rosenkrance sold most of the land to which the right is appurtenant. Although use of the Doug Rosenkrance right during the last 5 or so years is not clear in the record due to the sale of some of the appurtenant land, a finding of forfeiture requires clear and convincing evidence. Such clear and convincing evidence

was not shown by the protestant or by information in the record.

The protestants allege they will be injured if the Doug Rosenkrance right is now used by the applicant, since reduced use of the right in the last several years has made more water available for their use. The loss of this incidental benefit to the protestants due to resumed use of the Doug Rosenkrance right can not be considered as an injury to the protestant's water rights.

The applicant's use of the older water right on more acres than the right was originally used will enlarge the water use. While the rate of diversion may be the same or similar to the exchanged right, if the right is used for a longer period of time, a larger volume is removed from the system and other rights will be injured. The applicant did not offer any proposal to prevent enlargement in use or to prevent the existing users on Alder Creek from having to assume additional loss which would be incurred in the delivery of the 1882 water right to a more downstream point of diversion.

CONCLUSIONS OF LAW

1. Section 42-240, Idaho Code, provides in pertinent part as follows:

The director shall examine all the evidence and available information and shall approve the exchange in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the exchange does not constitute an enlargement in use of the original right or rights, the exchange is consistent with the conservation of water resources within the state of Idaho and the exchange is in the local public interest as defined in section 42-203A, Idaho Code.

2. The applicant carries the burden of coming forward with evidence that the proposed exchange will not injure other water right holders, that it will *not constitute an* enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-240, Idaho Code.

5. The proposed exchange will constitute an enlargement in use of the Doug Rosenkrance right, since more acres can and will be irrigated for a longer period of time with the older water right from Alder Creek than could be irrigated with the junior Alder Creek right.

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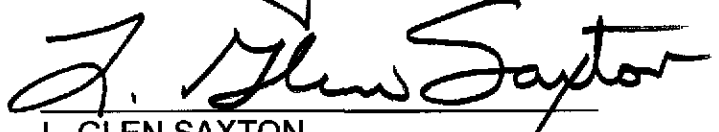
6. The application does not provide a means to prevent the additional channel loss that will be incurred by all water users on Alder Creek with a September 30, 1882 right, if the Doug Rosenkrance right is delivered to a point 1.25 miles further downstream on Alder Creek. The additional loss would have to be assessed to the users of the 1882 water rights resulting in less water being distributed to the rights, ultimately resulting in injury to all 1882 water rights on the creek, not just to the rights of the protestant.

7. The Department should not approve the proposed exchange.

ORDER

IT IS THEREFORE, hereby ORDERED that the proposed exchange of water right nos. 34-12050C and 34-10400 submitted in the name of Shane Rosenkrance is **DENIED**.

Signed this 24th day of May, 2001.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2001, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Shane Rosenkrance
Rt. 1, Box 25A
Mackay, ID 83251

John McCray
Matea McCray
3470 Cobblestone Lane
Idaho Falls, ID 83404

Douglas Rosenkrance
Rt. 1, Box 24
Mackay, ID 83251



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 25 2000

Department of Water Resources
Eastern Region

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested exchange of water right 34-10400 and 34-12050

2. Name of protestant John and Matea McCray

RECEIVED

3. Protestant's Representative for service (If different than protestant)

APR 19 2001

Department of Water Resources

4. Service mailing address 3470 Cobblestone Lane, Idaho Falls, ID 83404

5. Service telephone no. 208-524-4985

6. Basis of protest (including statement of facts and law upon which the protest is based)

See McCray Attachment

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? See McCray attachment

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 23 day of September, 2000

Matea McCray
Protestant

Protestant's Representative

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OCT 11 2001

E026194.

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____".
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by C. Undermeulen Date 9-25-00 Time 11:25 a.m.

\$25.00 fee Receipted by C. Underm # E0261910 Date 9-25-00

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OCT 11 2001

Sam
M/M

MCCRAY ATTACHMENT

Item 6. Basis of protest:

We protest the exchange of Alder Creek water applied for by Shane Rosenkrance and Doug Rosenkrance for multiple reasons. The attached map, which was drawn by IDWR and closely represents the area of concern, will be occasionally used to illustrate certain points below:

1. This exchange will result in damage to our own Alder Creek water rights. Any downstream shift of the point of diversion of the earlier water right owned by Doug Rosenkrance will result in shrink. The current point of diversion for the earlier right owned by Doug is currently at point A of the map. The point of diversion of the junior (1928) flood water right, which is owned by Shane Rosenkrance and is proposed for the exchange, is at point C; 1.5 miles downstream from point A. Whenever Alder Creek cannot supply the full amount for all respective water rights, the water is proportionally divided among the early right holders (9/30/1882). A junior Alder Creek water right (as owned by Shane) has no effect on our water right. With a downstream change in the point of diversion of one of the early rights, all other early right (9/30/1882) holders, including us, will be damaged by having to allow 60 inches at the new POD. In other words, we will all be charged for the additional shrink between points A and C.
2. We are currently involved in a case in the Supreme Court, in an effort to re-establish the original Alder Creek waters rights on our property. Assuming a just judgement in this case, the supply of Alder Creek water would at all times (except during any short flood periods) be unable to fill all rights. Any required increase in the water flow past our POD, as a result of a change in the point of diversion for an 1882 water right, would directly and significantly damage us for the same reason as Item 1.
3. We believe that the property owned by Doug Rosenkrance that he is proposing to exchange 60" of 1882 water from consists of approximately 50 acres. Last year, Doug sold the remainder of the 162 acres that Doug refers to in his application to Jerry and Jennifer Gould. To apply the same water that is restricted to 48 acres to instead irrigate 272 acres guarantees an expansion of use. As stated in Mr. Karl Dreher's April 7, 1999 letter titled Water Distribution on Alder Creek in Water District No. 34, "Water from Alder Creek has not consistently been distributed as it should have been." The past demonstrated and documented use of hundreds of inches of Alder Creek water by Shane Rosenkrance on the very land he plans to transfer this right to (while possessing a water right for only 12.5 inches of Alder Creek water), leads us to believe that this proposed "exchange" could result in a similar misuse of Alder Creek water at the expense of all other water rights holders.
4. Very seldom has the watermaster (Doug Rosenkrance) allowed Alder Creek to flow past the Darlington ditch to the river (between points C and D of the

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OCT 11 2001

SAM
11/10/01

map). Instead, based on this futile call reasoning of the watermaster (from 1986 until 1998) [and now with help from IDWR's Alder Creek Guidance Document - Author Mr. Tim Luke, IDWR, 1999], Alder Creek water has been allowed to flow to Shane's property.

It is amazing how the Alder Creek flow between points C and D is "futile" but it seems to make it just fine from points A to B, A to C, and C to F. Alder Creek flow from point A to point C for 60 inches of water should also be a futile call, as the distance is significantly greater, and the grade is less steep than the points C to D. Furthermore, diverting 60" of water from point A to irrigate at point B would also be a futile call, for the same reasons.

Item 7. Resolution of Protest

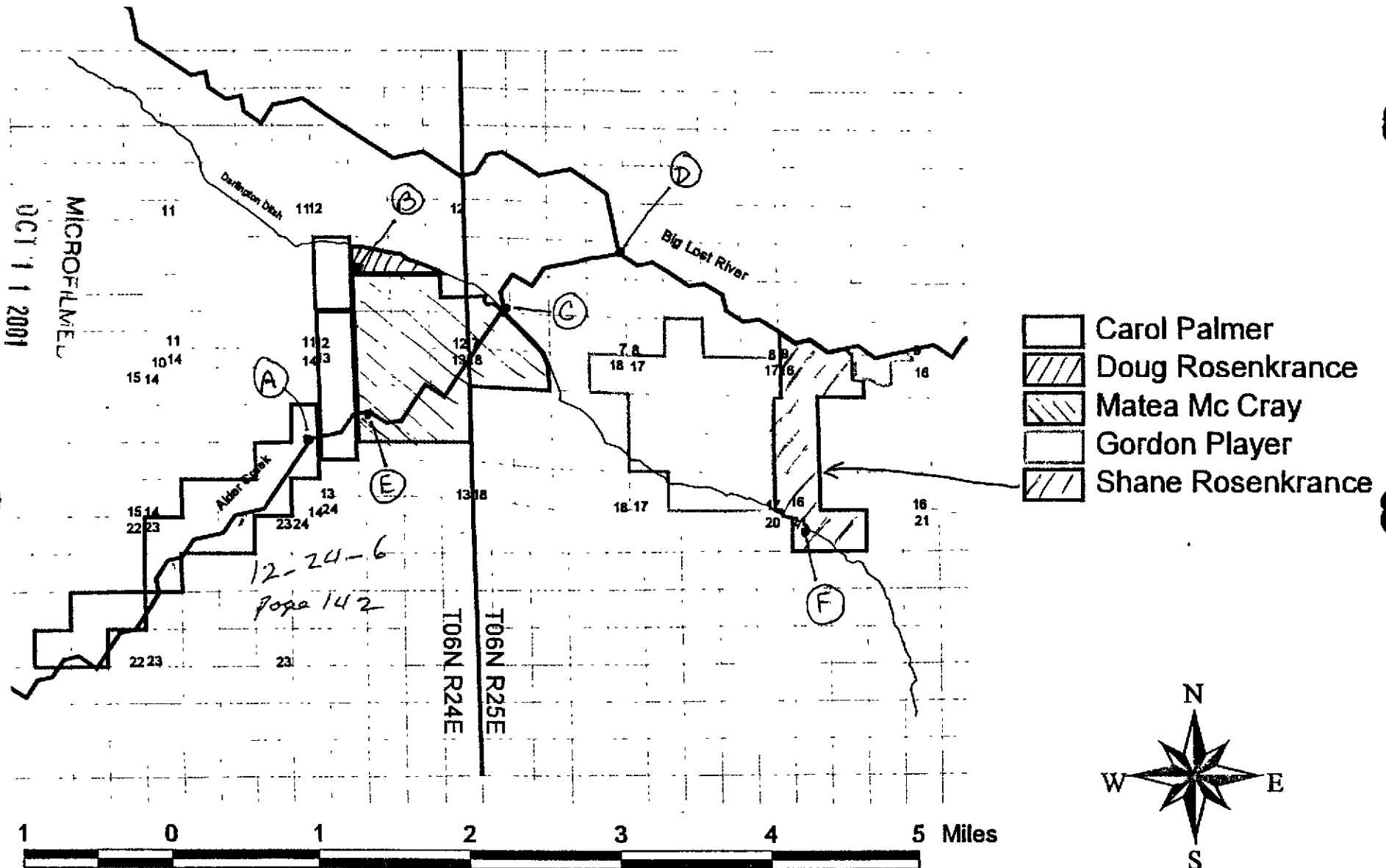
To resolve our protest, the following restrictions must be met for this exchange:

1. All shrink realized by in Alder Creek flow between the original point of diversion (point A - Doug's current POD) and the Darlington ditch (point C- Shane's current POD) must be subtracted from the exchanged amount.
2. Shane and/or Doug Rosenkrance are responsible for continuously and accurately measuring this shrink by putting in place permanent flow measuring devices just downstream of Doug's diversion (point A) and just upstream of the Darlington intersection (point C).
3. The same criteria used to "justify" a futile call for Alder Creek water use by Junior Alder Creek water right holders and BLR water rights holders (50% shrink between points C and D on the map) be similarly applied between points A and C and between points A and B. We believe that the watermaster should follow the same rules he expects the rest of the public to follow in accordance with Tim Luke's 1999 Alder Creek Guidance Document.

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OCT 11 2001

Alder Creek Area



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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AUG 21 2000

Department of Water Resources
Eastern Region

APPLICATION FOR EXCHANGE OF WATER

Under the provisions of Section 42-240, *Idaho Code*, any person holding a surface water right may apply to exchange such water for the use of water from the same source or a different surface water source. Surface water right holders may also apply to exchange for the use of water authorized for diversion under one or more other valid water rights from the same source or a different surface water source. A filing fee of \$100.00 must be submitted with this application.

1. INFORMATION ABOUT THE APPLICANT

Applicant Shane Rosenkrance
Mackay Id (Name of Applicant) 83251 Telephone No: 588-3086
(Mailing Address) (Zip Code)

Applicant's Water Right(s) to be exchanged 34-10400
Attach a photocopy of the License, Permit, Transfer, Decree, or Claim evidencing the right(s) or attach a printout obtained from IDWR.

2. INFORMATION ABOUT THE CO-APPLICANT

Complete this portion if the applicant proposes to exchange for water diverted under a water right held by another party. The co-applicant is the holder of the right to be exchanged for the applicant's right. If more space is needed, please attach another sheet containing information about each co-applicant.

Co-applicant Douglas Rosenkrance
Mackay Id (Name of Co-applicant) 83251 Telephone No: 588-3086
(Mailing Address) (Zip Code)

Co-applicant's Water Right(s) to be exchanged 34-12050
Attach a photocopy of the License, Permit, Transfer, Decree, or Claim evidencing the right(s) or attach a printout obtained from IDWR.

3. EXCHANGE AGREEMENT -- Attach a copy of the written agreement between the applicant and the co-applicant(s).

4. EXCHANGE INFORMATION -- Complete Part A or Part B to explain how the proposed exchange will operate.

Part A -- For an exchange involving two or more water right holders.

The applicant proposes to divert 1.2 cfs and/or 404.6 acre feet per year of water authorized to be diverted under the co-applicant's water right(s) listed above at 1/4 of 1/4 Govt. Lot 3 Sec. 7 Township 6N Range 25E B.M., Custer County.

Additional points of diversion, if any:

In exchange for authorization to divert water as described above, 1.2 cfs and/or 404.6 acre feet per year of water authorized for diversion under the applicant's water right(s) listed above will be (complete 1 or 2 below):

1. made available to the co-applicant for diversion at 1/4 of 1/4 Govt. Lot 18 Sec. 14 Township 6N Range 24 B.M., Custer County.
Additional points of diversion, if any:

OR

2. released from storage by the co-applicant into at 1/4 of Govt. Lot Sec. Township Range B.M., County.

MICROFILMED

2000 11 2000

Part B -- For an exchange involving only the applicant's water right(s).

The applicant proposes to divert _____ cfs and/or _____ acre feet per year of water at _____ 1/4 of _____ 1/4, Govt. Lot _____ Sec _____ Township _____ Range _____ B.M., _____ County. Additional points of diversion, if any _____

In exchange for authorization to divert water as described above, _____ cfs and/or _____ acre feet per year of water authorized for diversion under the applicant's water right(s) listed above will be (complete 1 or 2 below)

1. diverted from _____ at _____ 1/4 of _____ 1/4, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County and injected into _____ at _____ 1/4 of _____ 1/4, Govt. Lot _____ Sec _____ Township _____ Range _____ B.M., _____ County.

OR

2. released from storage by the applicant into _____ at _____ 1/4 of _____ 1/4, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County.

Additional Explanation -- Attach additional sheets if necessary.

If this exchange is not intended to be a permanent arrangement, please describe the circumstances under which the proposed exchange will terminate. _____

5. MAPS -- Attach two maps, one showing the water right(s) as it is (they are) now used, and another showing how the water right(s) will be used under the proposed exchange. Each map should be on an 8 1/2"x11" sheet and should clearly identify the location(s) of the point(s) of diversion, injection, and re-diversion of water and the place(s) of use by 40-acre subdivisions, section, township and range of the public land survey. Photocopies of USGS 7 1/2-minute topographic quadrangles are preferred as base maps

SIGNATURE

Applicant hereby asserts that no one will be injured by such exchange of water and acknowledges that the applicant and/or the co-applicant will be responsible for all actions taken pursuant to this exchange. I understand that any willful misrepresentations made in this application may result in voiding its approval.

Shane Penkance
Applicant's Signature (and title if application is for an organization)

8-14-00
Date

FOR DEPARTMENT USE ONLY

This exchange application contains _____ pages, including attachments.

Received by HWT Date 8-21-00 Fee 290.00
Receipted by HWT Date 8-23-00 Receipt No EO26098

Preliminary review by _____

Published in Challis messenger

Publication dates Sept 7 & 14, 2000

Protests filed by John & Marea McCray

Copies of protests forwarded by _____

Watermaster recommendation requested on _____

Watermaster recommendation received on _____

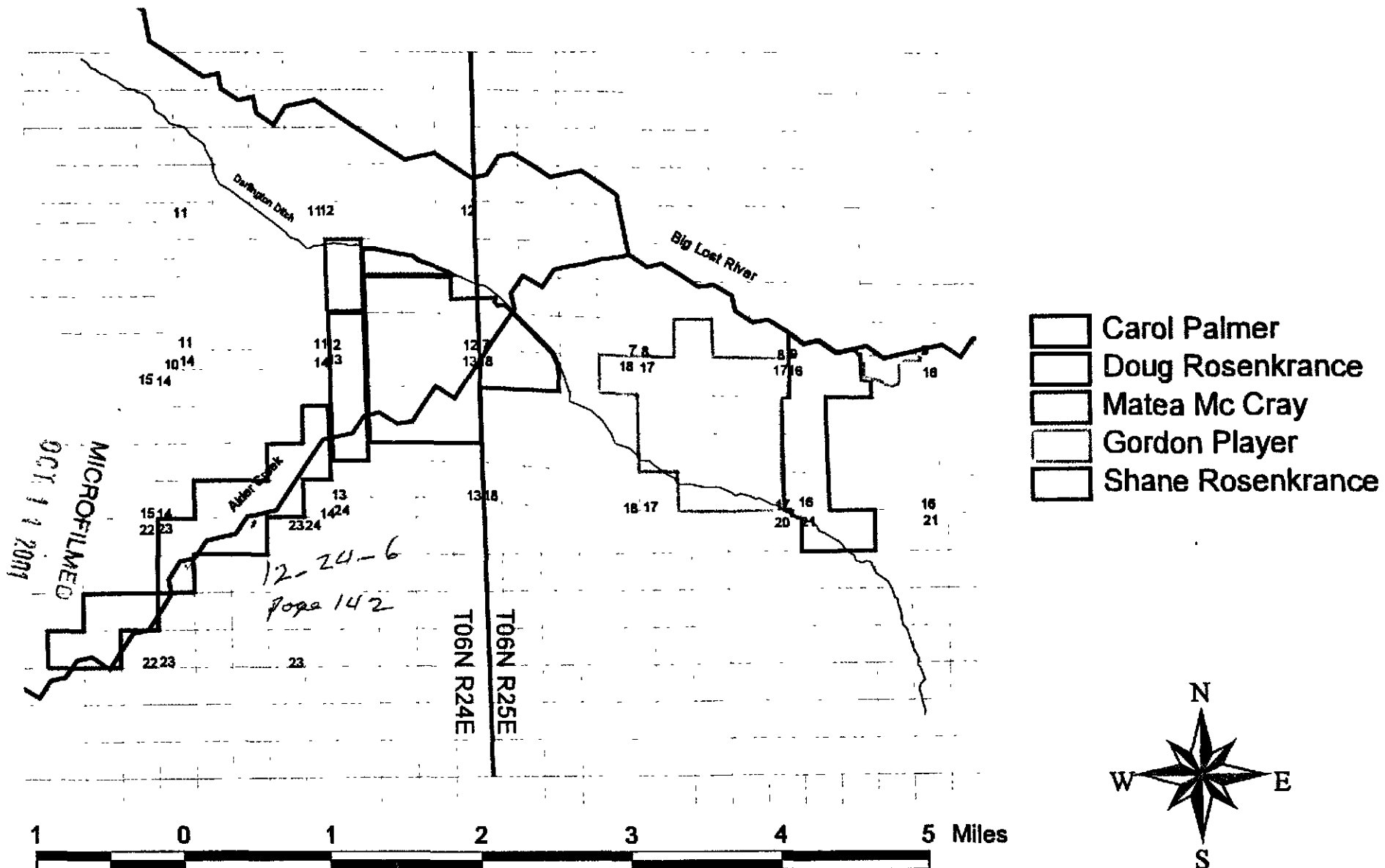
Hearing held by _____ Date _____

Recommended for Approval _____ Denial _____ By _____

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SEP 14 2001

Alder Creek Area



IDAHO DEPARTMENT OF WATER RESOURCES
ADJ. LISTING OF WATER RIGHTS

DATE: 05/22/96
PAGE: 2

OWNER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
-------	----------------	------------------	-----------	-----------------------	----------------------	-------

32050	DOUG G ROSENKRANCE DOLLIES ROSENKRANCE RT 1 BOX 24 MACRAY ID 83251	09/30/1882	IRRIGATION	05-01 10-15	4.76 CFS	DECREED
-------	---	------------	------------	-------------	----------	---------

TOTAL DIVERSION RATE: 4.76 CFS
TOTAL DIVERSION VOLUME: 0.00 AFA

SOURCE: ALDER CREEK

TRIBUTARY: BIG LOST RIVER

POINT OF DIVERSION:

T06N R24E S14 LOT 18 (NWNESE)

PLACE OF USE: IRRIGATION

T06N R24E S12	SUNE 17.5	SENE 2.0	SENW 28.5	SWSW 39.0
S13	NWNW 38.0	SWNW 31.0	NWSW 6.0	
162.0 ACRES TOTAL				

CONDITIONS OF APPROVAL:

- C01 - THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT
- TO IDAHO CODE 42-1416(1).
- C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
- PURSUANT TO SECTION 42-1425, IDAHO CODE.
- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
- SECTION 42-1425, IDAHO CODE.

DIVERSION MEANS: DIVERTED FROM ALDER CREEK

REMARKS: GENERAL USE OF THIS RIGHT WITH RIGHT NO. 34-02329 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 5.58 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 507.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 203 ACRES IN A SINGLE IRRIGATION SEASON. 0.13 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT. THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-00149, 34-00362, 34-00365 (PART), AND 34-00669. RIGHT NO. 34-00365A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

OLD RIGHTS: 34-02329

COPY

MICROFILMED
JUL 1 1997

AJ5856NP

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

DATE: MAY-27-1992

PAGE: A-8

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: ALDER CREEK		TRIBUTARY: BIG LOST RIVER				
34-10400	SHANE D ROSENKRANCE NIMI L G ROSENKRANCE RT 1 BOX 25A MACKAY ID 83251	05/01/1928	IRRIGATION	05-01 10-15	5.00 CFS	BENEFICIAL USE
TOTAL QUANTITY:					5.00 CFS	

POINT OF DIVERSION:

T06N R25E S07 LOT 3 (NNWWSW)

PLACE OF USE: IRRIGATION

T06N R25E S09

SSW 18.0

SESW 15.0

SWSE 0.3

S16

NUNE 3.7

NENW 35.0

NNW 29.0

SNW 31.0

S17

NWSW 19.0

NW 37.0

SESW 4.0

S20

SENE 8.5

NESE 8.5

SESE 6.0

S21

Lot 1 (ENE) 4.0

Lot 3 (NENW) 28.0

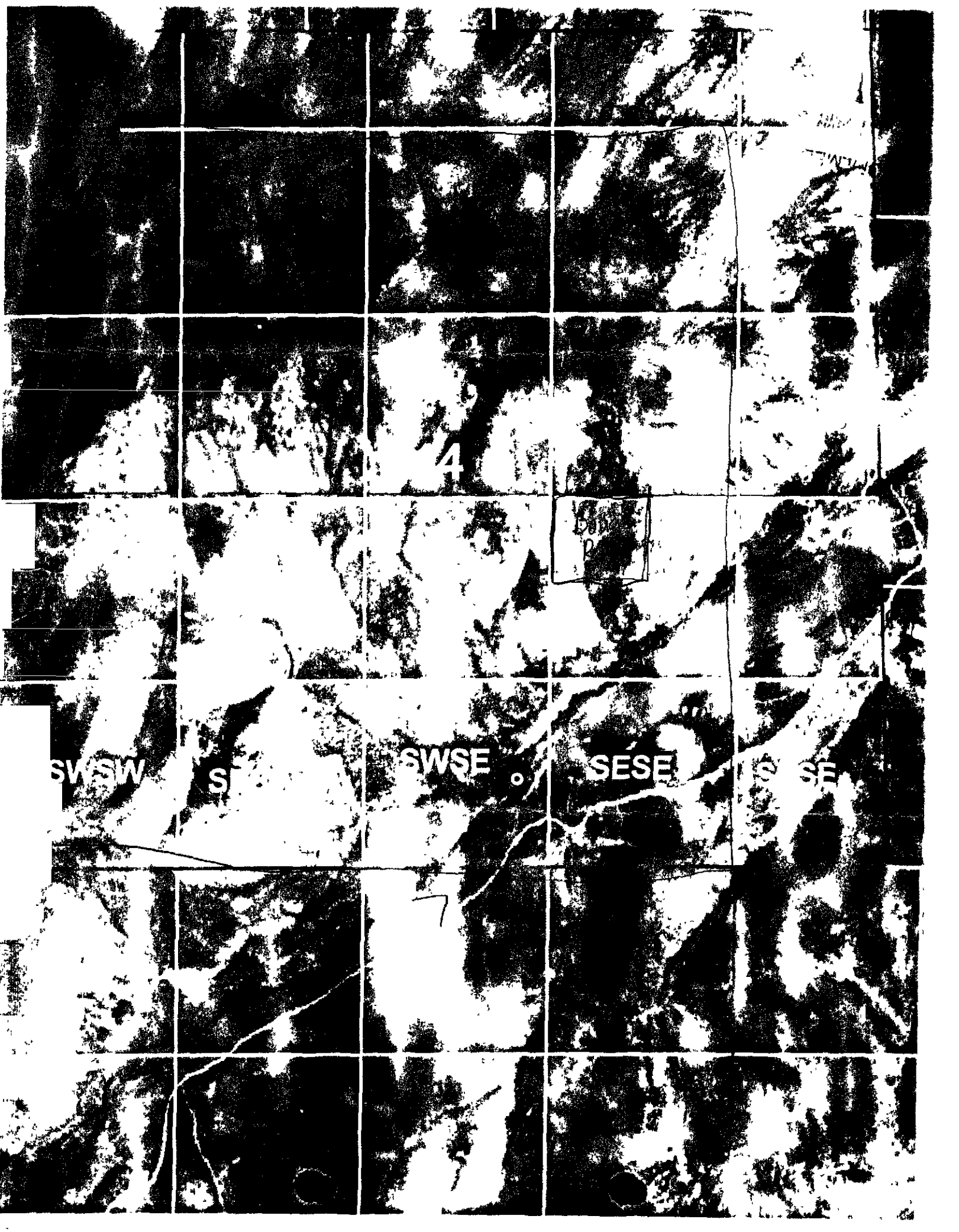
Lot 4 (NNW) 25.0

272.0 ACRES TOTAL

REMARKS: USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 8.01 CFS, A TOTAL COMBINED
ANNUAL CONSUMPTIVE USE VOLUME OF 680 AF, AND TO THE IRRIGATION OF
A COMBINED TOTAL OF 272 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-00119E, 34-00317C, 34-00381C, 34-00680A,
34-00682B, 34-07090A, 34-10392 AND 34-10396.

THE FOLLOWING RIGHTS ARE ACQUIRED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 34-00333, 34-00682A AND 34-00682B

0.24 CFS OF RIGHT NO. 34-10396 IS LIMITED TO USE FOR
CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NOS.
34-07090A AND 34-10396.



4

500
P

SWSW

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WATER DISTRICT 34

P.O. Box 53
Mackay, Idaho 83251

RECEIVED

AUG 23 2000

Department of Water Resources
Eastern Region

August 22, 2000

Department of Water Resources
Eastern Region
Attn: Harold Jones
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

Dear Harold:

I have reviewed the exchange application between Shane Rosenkrance and me and anticipate no problems with it. I have enclosed a signed statement of our mutual agreement.

Thank you for your attention to this matter. If I can be of further assistance, please let me know.

Sincerely,


Doug Rosenkrance
Watermaster

Enclosure

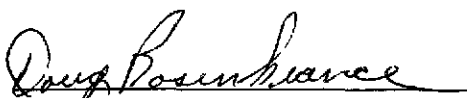
DR:stn

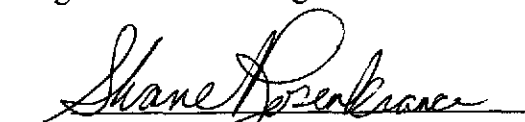
MICROFILMED

August 22, 2000

To Whom It May Concern:

The parties below have agreed to an exchange of their water rights.


Doug Rosenkrance
Water right # 34-12050


Shane Rosenkrance
Water right # 34-10400

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SEP 11 2001

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
INSTRUCTIONS FOR COMPLETING AN
APPLICATION FOR EXCHANGE OF WATER



Under the provisions of Section 42-240, *Idaho Code*, any person holding a surface water right may apply to exchange such water for the use of water from the same source or a different surface water source. Surface water right holders may also apply to exchange for the use of water authorized for diversion under one or more other valid water rights from the same source or a different surface water source. This sheet contains instructions for completing the Application for Exchange of Water

COMPLETE THE APPLICATION FOR EXCHANGE OF WATER AS FOLLOWS

1. INFORMATION ABOUT THE APPLICANT

Provide your name, address, and phone number, and indicate the identification number(s) of the water right(s) you are proposing to exchange. For each water right, attach a photocopy of the water right license, permit, transfer, decree, or claim evidencing the right, or attach a water right printout obtained from IDWR.

2. INFORMATION ABOUT THE CO-APPLICANT

Complete this portion of the application if you are proposing an exchange for water diverted under a water right held by another party. The co-applicant is the holder of the right to be exchanged for your right. Provide the co-applicant's name, address, and phone number, and indicate the identification number(s) of the co-applicant's water right(s) involved in the exchange. For each water right, attach a photocopy of the water right license, permit, transfer, decree, or claim evidencing the right, or attach a water right printout obtained from IDWR. If there are multiple co-applicants, please attach another sheet containing information about each co-applicant.

3. EXCHANGE AGREEMENT

If you propose an exchange for water diverted under a water right held by another party (the co-applicant), your exchange application *must* be accompanied by a copy of a written agreement signed by you and each co-applicant. Attach a copy of the written agreement. Be sure that you have also completed Item 2 of the Application for Exchange of Water.

4. EXCHANGE INFORMATION

You must complete Item 4 to describe how the proposed exchange will operate. To complete this part of the application form, you must know the amounts of water involved in the proposed exchange. You must also know the locations of the proposed point(s) of diversion, injection, and re-diversion of water by 40-acre subdivisions, section, township and range of the public land survey. For the location information, it may be helpful to have already prepared the maps required under Item 5. When describing the amounts of water involved in the exchange, remember that the exchange cannot result in an enlargement in use of the water right(s). If you need more space to explain how the proposed exchange will operate, use the area at the bottom of Item 4 and/or attach additional sheets.

Part A -- Complete Item 4 A of the exchange application if you are proposing an exchange involving yourself and one or more co-applicants. If you are completing Item 4 A you should have completed Items 2 and 3 also. Complete Item 4.A 1 if the co-applicant(s) water right(s) is (are) not storage water rights. Complete Item 4 A 2 if the co-applicant(s) water right(s) are storage water rights.

Part B -- Complete Item 4 B for an exchange involving only your water right(s). Complete Item 4 B 1 if your water right(s) is (are) not storage water rights. Complete Item 4 B 2 if your water right(s) is (are) storage water rights.

Do not complete both Item 4.A and Item 4.B.

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DEC 1 1999

ITEM 4 EXAMPLE -- The following example is for an exchange between an applicant with a natural flow right and a co-applicant with a storage water right.

Part A -- For an exchange involving two or more water right holders.

The applicant proposes to divert 0.80 cfs and/or 160 acre feet per year of water authorized to be diverted under the co-applicant's water right(s) listed above at NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Govt. Lot 1 Sec 6 Township 1 North Range 14 East B.M., Camas County Additional points of diversion, if any

In exchange for authorization to divert water as described above, _____ cfs and/or 160 acre feet per year of water authorized for diversion under the applicant's water right(s) listed above will be (complete 1 or 2 below):

1. made available to the co-applicant for diversion at _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____ Sec. _____ Township _____ Range _____ B.M., _____ County. Additional points of diversion, if any _____

OR

2. released from storage by the co-applicant into Noname Creek at SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Govt Lot _____ Sec. 6 Township 1 North Range 14 East B.M., Camas County

5. MAPS

Attach two maps, one showing the water right(s) as it is (they are) now used, and another showing how the water right(s) will be used under the proposed exchange. Each map should be on an 8½"x11" sheet and should clearly identify the locations of the point(s) of diversion, injection, and re-diversion of water and the place(s) of use by 40-acre subdivisions, section, township and range of the public land survey. Important landmarks such as rivers, streams, roads, and highways should be shown on the maps. Photocopies of USGS 7½-minute topographic quadrangles are preferred as base maps. If the required information will not fit on an 8½"x11" sheet at a reasonable scale, you may use multiple sheets of paper for one map or you may use a sheet larger than 8½"x11"

SIGNATURE AND FEE

Sign the exchange application form exactly as your name appears in Item 1, unless the applicant is a corporation, municipality, partnership or other organization, in which case the person signing the application must show his or her title or position with the signature.

A fee of \$100.00 must accompany the application. Make checks payable to Idaho Dept. of Water Resources. Submit your application and fee to the Department of Water Resources office in your area

Northern Region

Idaho Dept. of Water Resources
1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814
Tel - 769-1450

Eastern Region

Idaho Dept. of Water Resources
900 N Skyline Dr., Suite A
Idaho Falls, ID 83402
Tel - 525-7161

Southern Region

Idaho Dept. of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301
Tel - 736-3033

Western Region

Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705
Tel. - 334-2190

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2001 11 2001

06/19/2001

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

WATER RIGHT NO 34-10400

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MIMI L G ROSENKRANCE
Current Owner	SHANE D ROSENKRANCE
	RT 1 BOX 25A
	MACKAY, ID 83251
	(208)588-3086

Priority Date	05/01/1928
Basis	Decreed
Status	Active

<u>Source</u>	<u>Tributary to</u>
ALDER CREEK	BIG LOST RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	5/01	10/15	5 CFS		

Total Diversion	5 CFS
-----------------	-------

Location of Point(s) of Diversion

ALDER CREEK	NWNWSW Lt 3	Sec 07	Township 06N	Range 25E	CUSTER County
-------------	-------------	--------	--------------	-----------	---------------

IRRIGATION Use
Acre Limit 268

Place(s) of use

Place of Use Legal Description	IRRIGATION	CUSTER County
--------------------------------	------------	---------------

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
06N	25E	9		SWSW	18		SESW	15						
				SWSE	0.3									
		16		NWNE	3.7									
				NENW	35		NWNW	29		SWNW	31			
				NWSW	19		SWSW	37						
		17		SENE	8.5									
				NESE	8.5		SESE	6						
		20	1	NENE	4									
		21	3	NENW	28	4	NWNW	25						

Total Acres 268

Conditions of Approval

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

Remarks

1 Quantity USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION

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Water Right 34-10400

RATE OF 7 90 CFS

COMBINED RIGHT NOS.. 34-00119E, 34-00317C, 34-00381C, 34-00680A, 34-00682B, 34-07090A, 34-10392 AND 34-10396.

- 2 Purpose of Use THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE WATERMASTER FOR WATER DISTRICT 34
- 3 Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 268 ACRES IN A SINGLE IRRIGATION SEASON
COMBINED RIGHT NOS 34-00119E, 34-00317C, 34-00381C, 34-00680A, 34-00682B, 34-07090A, 34-10392 AND 34-10396
4. Explanatory THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE 34-00333, 34-00682A AND 34-00682B

Comments

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
FRITSCHL	9/10/91	COPIED FROM REMARKS	THIS IS RIGHT IS CONSIDERED A HIGH WATER RIGHT
FRITSCHL	4/1/92	NOTICE OF ERROR FLAG	NOTICE OF ERROR FLAG CHANGED FROM "A" TO "C".
FRITSCHL	5/11/92	ADDITION TO REMARK	RIGHT NO 34-00333 IS ALSO DIVERTED THROUGH P O D DESCRIBED IN THIS RIGHT
FRITSCHL	5/19/92	MODIFIED REMARKS	MODIFIED COMBINED RIGHT REMARK TO E04 VERIFIED DATE SET
DSMITH	1/16/96	ADDRESS CORRECTION	*CONFORMED NAME/ADDRESS TO AVOID DUPLICATE MAILING LABELS
CFRITSCH	4/10/97	COPIED FROM REMARKS/REFORM ATTED	0 24 CFS OF RIGHT NO 34-10396 IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NOS 34-07090A AND 34-10396
AJU10-DS	6/9/00	AJU10 CONDITION UPDATE	CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10

Dates

Licensed Date
Claim Received Date 12/19/1989
Enlargement Use Priority Date.
Enlargement Statute Priority Date
Decreed Date 11/24/1997
Date Filed with Court
Objection Filed Date
SF5 Filed
Special Master Recom Signed Date

Other Information

Receipt Number(s) E011464
State or Federal S
Owner Name Connector AND
Water District Number 34
Generic Max Rate per Acre
Generic Max Volume per Acre
Civil Case Number
Old Case Number
Decree Plaintiff
Decree Defendant
PresumptionFlag
Notice of Error Flag RECEIVED - RECOMMENDATION CHANGED
Swan Falls Trust or Nontrust:
Swan Falls Dismissed
DLE Act Number
Cary Act Number
Mitigation Plan. False

MICROFILMED

DEC 11 2001

06/19/2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

WATER RIGHT NO 34-10400

Owner Type Name and Address
 Current Owner MIMI L G ROSENKRANCE
 Current Owner SHANE D ROSENKRANCE
 RT 1 BOX 25A
 MACKAY, ID 83251
 (208)588-3086

Priority Date 05/01/1928
 Basis Decreed
 Status Active

Source Tributary to
 ALDER CREEK BIG LOST RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	5/01	10/15	5 CFS		

Total Diversion 5 CFS

Location of Point(s) of Diversion:

ALDER CREEK NWNWSW Lt 3 Sec 07 Township 06N Range 25E CUSTER County

IRRIGATION Use
 Acre Limit 268

Place(s) of use

Place of Use Legal Description IRRIGATION CUSTER County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
06N	25E	9		SWSW	18		SESW	15						
				SWSE	0.3									
		16		NWNE	3.7									
				NENW	35		NWNW	29		SWNW	31			
				NWSW	19		SWSW	37						
		17		SENE	8.5									
				NESE	8.5		SESE	6						
		20	1	NENE	4									
		21	3	NENW	28	4	NWNW	25						

Total Acres 268

Remarks

- Quantity USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 7.90 CFS
 COMBINED RIGHT NOS 34-00119E, 34-00317C, 34-00381C, 34-00680A, 34-00682B, 34-07090A, 34-10392 AND 34-10396
- Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 268 ACRES IN A SINGLE IRRIGATION SEASON
 COMBINED RIGHT NOS 34-00119E, 34-00317C, 34-00381C, 34-00680A, 34-00682B, 34-07090A, 34-10392 AND 34-10396.

MICROFILM

Water Right 34-10400

JUL 11 2001

3 Explanatory

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE
34-00333, 34-00682A AND 34-00682B

Comments.

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
FRITSCHL	9/10/91	COPIED FROM REMARKS	THIS IS RIGHT IS CONSIDERED A HIGH WATER RIGHT
FRITSCHL	4/1/92	NOTICE OF ERROR FLAG	NOTICE OF ERROR FLAG CHANGED FROM "A" TO "C"
FRITSCHL	5/11/92	ADDITION TO REMARK	RIGHT NO 34-00333 IS ALSO DIVERTED THROUGH P O D DESCRIBED IN THIS RIGHT
FRITSCHL	5/19/92	MODIFIED REMARKS	MODIFIED COMBINED RIGHT REMARK TO E04 VERIFIED DATE SET
DSMITH	1/16/96	ADDRESS CORRECTION	*CONFORMED NAME/ADDRESS TO AVOID DUPLICATE MAILING LABELS
CFRITSCH	4/10/97	COPIED FROM REMARKS/REFORM ATTED	0 24 CFS OF RIGHT NO 34-10396 IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NOS 34-07090A AND 34-10396

Dates

Licensed Date
Decreed Date 11/24/1997
Enlargement Use Priority Date
Enlargement Statute Priority Date
Application Received Date
Protest Deadline Date
Number of Protests 0

Other Information

Receipt Number(s)
State or Federal S
Owner Name Connector AND
Water District Number 34
Generic Max Rate per Acre.
Generic Max Volume per Acre
Civil Case Number
Old Case Number
Decree Plaintiff
Decree Defendant
Swan Falls Trust or Nontrust
Swan Falls Dismissed
DLE Act Number
Cary Act Number
Mitigation Plan False

MICROFILM
SEP 11 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 12, 2001

John & Matea McCray
3470 Cobblestone Lane
Idaho Falls, ID 83404

RE: APPLICATION FOR EXCHANGE OF WATER RIGHT NOS. 34-12050C AND 34-10400 IN THE NAME OF SHANE ROSENKRANCE

Dear Mr. and Mrs. McCray:

On June 12, 2001, I received the Petition for Reconsideration ("petition") that was received by the Department on June 11, 2001, in connection with the above referenced matter. I can not consider the petition, since you did not timely submit it to the hearing officer. More specifically, the Department served the Preliminary Order to the parties on May 24, 2001. Section 67-5243(3), Idaho Code, and IDAPA 37.01.01730.02.c (Rule of Procedure 730.02.c) provide that parties have fourteen (14) days after the date of service to file a petition. The date by which to timely file a petition in this matter was June 7, 2001. Your petition was received on June 11, 2001.

Since your letter does not show that you served the applicant with a copy of the petition as you are required to do by IDAPA Rule 37.01.01302 (Rule of Procedure 302), by copy of this letter, I will forward a copy of your petition to the applicant for his information.

Sincerely,

L. GLEN SAXTON, P.E.
Hearing Officer

c: IDWR - Harold Jones w/ encl
IDWR - Norman Young
Shane Rosenkrance w/ encl

MICROFILMED
JUN 13 2001

RECEIVED

JUN 11 2001

Department of Water Resources

June 5, 1001

Glen L. Saxton, Hearing Officer
Idaho Dept. of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-7866

Subject: Petition for Reconsideration

Dear Mr. Saxton:

This letter combines: 1) our response to the preliminary order regarding a proposed exchange of water rights allegedly owned by Doug Rosenkrance (Watermaster Basin 34) and his son Shane and 2) our third formal complaint against the watermaster. As such, this letter is addressed to both ~~Mr. Saxton~~ and Mr. Dreher, respectively.

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3. Shane Rosenkrance testified that Doug's 60 inch water right was in fact appurtenant to approximately 60 acres of Doug's property located at the site of his home ("at the mouth of Alder Creek").
4. Only after repeated questioning did Doug finally admit that those rights are actually appurtenant to 51 acres located approximately 1 mile from his homesite and not at the mouth of Alder Creek.
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6. Doug Rosenkrance does not own 40 or 60 acres of property located at the site of his home. It is, in fact, much less and would have to be verified by a copy of Doug Rosenkrance's deed. Regardless, the water that he proposed to exchange is not associated with his land located at his homesite.

Based on the wording of the "Preliminary Order", I am not sure that you ever did come to realize the total truth of the case. The facts are that Doug Rosenkrance now owns approximately 11 irrigatable acres. This property has its own water right 34-00365A, which is 0.24 CFS of 1882 Alder Creek. This water right is completely separate from the one he is trying to exchange with Shane and was not included in the Preliminary Report. Water right 34-12050C has absolutely no land associated with it because Doug sold the land that is listed in the copy of that water right in 1995 without the Alder Creek water right to a Ms. Brenda Larken and a Ms. Isabelle Eaton as identified in exhibit 6.

With respect to the "Analysis" section of the preliminary order, we presented the documents that verify all of the land that 34-12050C is associated with was sold in 1995, without the water right. It is becoming quite clear to us that the IDWR interpretation of "clear and convincing evidence" regarding a water right forfeiture is more dependant on who the person being affected is than on any facts pertaining to the forfeiture. IDWR's Carter Fritschle recommended Carol Palmer suffer a partial forfeiture of Alder Creek water for non-use in August of 1990. He also recommended a total forfeiture of the water rights on our property per a quote from Doug Rosenkrance on his field report saying that "the place had not been watered since 1982". In court, Doug denied that he made that statement because he knew that the place had been irrigated in 1985. On the same day in August of 1990, Carter investigated Shane Rosenkrance's new claim of a 1928 water right based on a vague letter of past use of Alder Creek water during flood conditions (included as exhibit 1 of this record). Both of these forfeitures (McCray and Palmer), and the "give away"

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JUN 11 2001

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I request that appropriate changes be made to the preliminary (or final) order to reveal all truths of this case as described above. This should, at a minimum, describe the attempted deceit of both Rosenkrances. Complete forfeiture of water right 34-12050C, and some form of reprimand for presenting false information should also result from this case.

Again, we see significant differences in the ways water laws and rules are enforced for IDWR employees, as opposed to ordinary citizens. Instead of having a code of ethics and being subjected to tighter scrutiny as law enforcers, IDWR employees apparently are allowed to abuse their positions for personal gain with little fear of penalty. Several additional questions have developed as a result of this request for exchange, hearing and subsequent preliminary order;

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I would appreciate answers to all of the above questions

I conclude this letter with another formal complaint against Doug Rosenkrance as watermaster of Basin 34. His misrepresentation of his alleged water right shows his true character. I invite you to listen to the testimony tape of the hearing for this exchange. Specifically, listen closely at the point (near the beginning of my questioning of Shane) where Shane is describing the claimed 40 acres- and then 60 acres at the mouth of Alder Creek that Doug's water right is allegedly appurtenant to. Listen for Doug's whisper of

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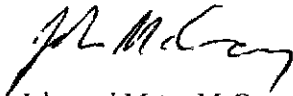
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Furthermore, I maintain all of my previous complaints against Doug. The "investigation" carried out by Mr. Norm Young was totally inadequate. The "evidence", reportedly supplied by Rosenkrance (and copies given to me) to support his "historical use" claim and excuse the documented years of water theft by him, is laughable. Take another look at those papers I would like to know specifically where any past similar use is shown. Additionally, I will be happy to present to you my interpretation of this so called evidence. Acceptance of those papers as evidence revealed the true intent of the "investigation": to sweep my allegations under the rug.

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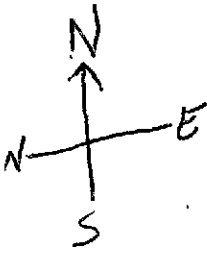


John and Matea McCray
3470 Cobblestone Lane
Idaho Falls, Idaho 83404

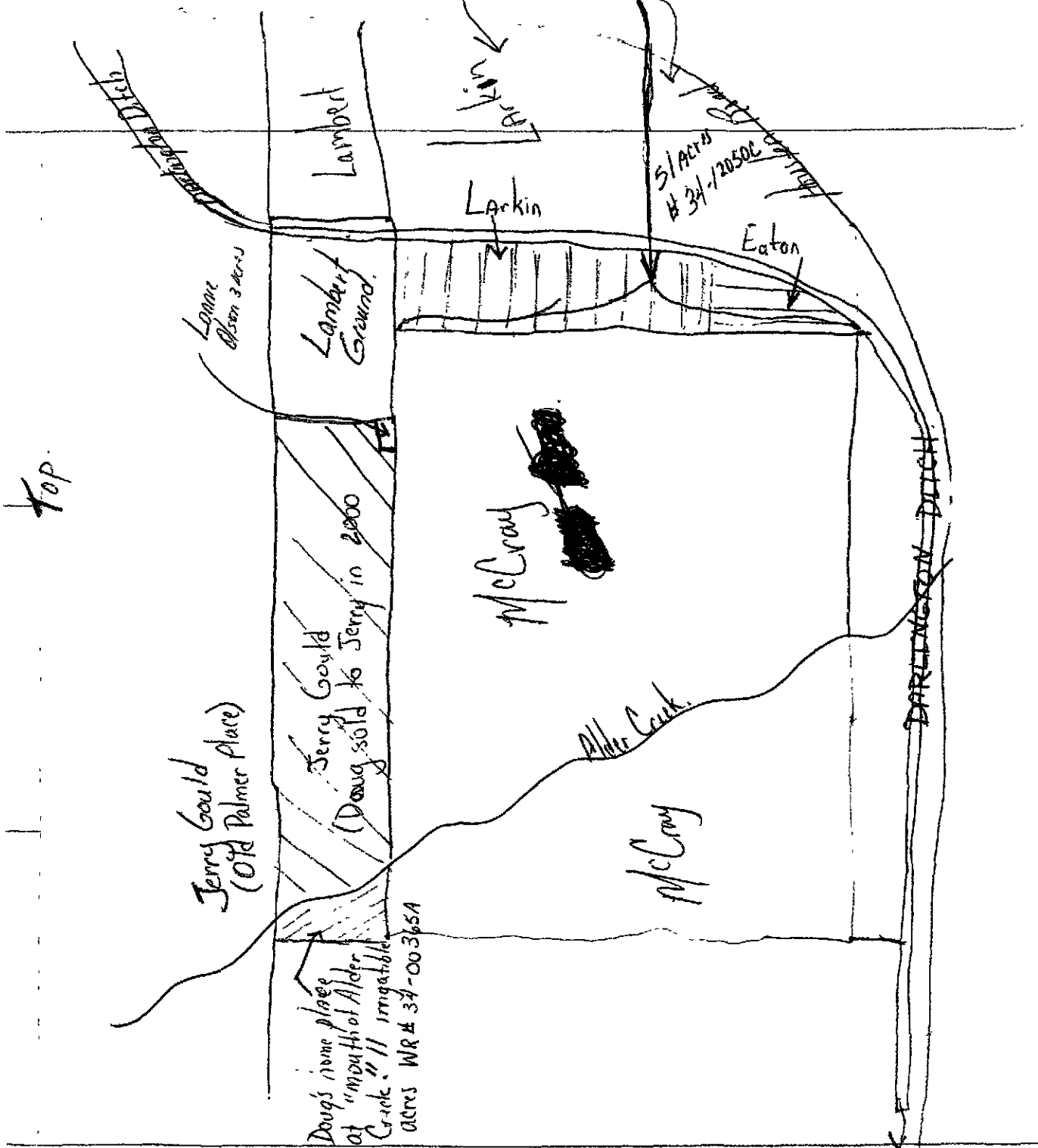


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Top



==== Larkin land description associated with WR 34-12050C

==== Eaton land description associated with WR 34-12050C

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June 5, 1001

Glen L. Saxton, Hearing Officer
Idaho Dept. of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-7866

Subject: Petition for Reconsideration

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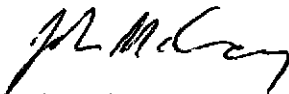
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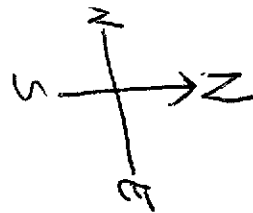
John and Matea McCray
3470 Cobblestone Lane
Idaho Falls, Idaho 83404



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1987
JUL 1

Top.



Jerry Gould
(Old Palmer Place)

Loraine
Olson 3 Acres

Darlington Ditch

Doug's home place
at "mouth of Alder
Creek." // irrigable
acres WR # 34-00365A

Jerry Gould
(Doug sold to Jerry in 2000)

Lambert
Ground

Lambert

McCray



Larkin

Larkin

Eaton and Larkin
Places sold by Doug
in 1995.

McCray

Alder Creek

51 acres
34-12050C

Eaton

Harvey Road

DARLINGTON DITCH

=== Larkin land
description associated
with WR 34-12050C

/// Eaton land
description associated
with WR 34-12050C

Microfilm
copy of
original
survey
map
of
this
area
is
available
for
viewing
at
the
Bureau
of
Land
Management
in
Helena,
Montana.

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CERTIFIED MAIL RECEIPT

(☐) ☒ Domestic Mail Only; No Insurance Charge

Article Sent To:

Douglas Rosenkrantz

Postage

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Certified Fee

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5/24/01

Postmark
Here

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

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Name (Please Print Clearly) (To be completed by mailer)

Rt. 1, Box 24

Street, Apt. No., or PO Box No.

City, State, ZIP+4

Shawnee, Id. 83251

7099 3220 0005 5178 8178 5209

CERTIFIED MAIL RECEIPT(D **stic Mail Only; No Insura**

Article Sent To:

John McCray

Postage

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Certified Fee

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Postmark
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Name (Please Print Clearly) (To be completed by mailer)

Maria McCray

Street, Apt. No.; or PO Box No.

3470 Cobblestone Lane

City, State, ZIP+4

Idaho Falls, Id. 83404

9725 9715 5000 0225 6607 7099 3220 0005 5178 5216

(E Domestic Mail Only; No Insurance)

Article Sent To:

Shane Rosenkranz

Postage

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Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

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Postmark
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Name (Please Print Clearly) (To be completed by mailer)

Street, Apt. No., or PO Box No.

Rt. 1, Box 25A

City, State, ZIP+4

Michigan Id. 83251

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEBORAH GIBSON
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

WA

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JUN 12 2001

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JUN 07 2001

Department of Water Resources

SENDER:

- Complete items 1 and 2 for additional services
- Complete items 3 and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an addressee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee

3. Article Addressed to.

DOUGLAS ROSENKRANCE
RT 1 BOX 24
MACKAY ID 83251

4a. Article Number

70993220000551785209

4b. Service Type

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|---|---|
| ☐ Registered | ☒ Certified |
| ☐ Express Mail | ☐ Insured |
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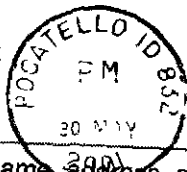
7. Date of Delivery

20F11 06-01-01
8. Addressee's Address (Only if requested and fee is paid)

5. Received By* (Print Name)**6. Signature* (Addressee or Agent)**

34-10400
Doug Rosenkrance

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEBORAH GIBSON
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

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JUN - 1 2001

Department of Water Resources



SENDER:

- Complete items 1 and 2 for additional services
- Complete items 3, 4a, 4b, 5, 6, and 7.
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee).

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee

3 Article Addressed to:

SHANE ROSENKRANCE
RT 1 BOX 25A
MACKAY ID 83251

34-10400

5. Received By: (Print Name)

Walter B. Valverde Jr.

6. Signature: (Addressee or Agent)

X *Walter B. Valverde Jr.*

4a. Article Number

70993220000551785193

4b. Service Type

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|---|---|
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| ☐ Express Mail | ☐ Insured |
| ☐ Return Receipt for Merchandise | ☐ COD |

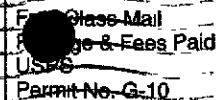
7. Date of Delivery

5-30-91 *J*

8 Addressee's Address (Only if requested and fee is paid)

COPILED
OCT 11 2001

UNITED STATES POSTAL SERVICE



- Print your name, address, and ZIP Code in this box •

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DEBORAH GIBSON
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

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Department of Water Resources



SENDER:

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- Complete item 4a, 4b, and 4c.
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- 1 ☐ Addressee's Address
2 ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JOHN McCRAY
MATEA McCRAY
3470 COBBLESTONE LANE
IDAHO FALLS ID 83404

34-10400

4a. Article Number

70993220000551785216

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By (Print Name)

6. Signature (Addressee or Agent)

X

May 24, 2001

Department Orders Routing list:

(These documents are also available at <http://www.idwr.state.id.us/info/pio/orders.htm>)

NORTHERN - Bob Haynes

SOUTHERN - Allen Merritt

EASTERN - Ron Carlson / Skip Jones

WESTERN - Gary Spackman

SALMON OFFICE - Bob Foster

Legal Division - Phil Rassier

Adjudication Bureau - Dave Tuthill

Information Officer - Dick Larsen

Water Allocation Bureau - Glen Saxton

Water Distribution Section - Tim Luke / Cindy Hodges / Jane Tallman / Burke Scholer / Dayna Ball

Water Permits Section - Jeff Peppersack / Shelley Keen

Administration - Norm Young

Planning - Bill Graham

One copy is routed to:

Darla Block _____
Sharla Curtis _____
Pam Skaggs _____

Kay Walker _____
Cynthia Bridge _____
Kari Lynn Townsend _____
Vault _____

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JUN 1 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

May 24, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Shane Rosenkrance
Rt. 1, Box 25A
Mackay, ID 83251

John McCray
Matea McCray
3470 Cobblestone Lane
Idaho Falls, ID 83404

Douglas Rosenkrance
Rt. 1, Box 24
Mackay, ID 83251

Re: Application for Exchange of Water for water right nos. 34-10400 and
34-12050C, in the name of Shane Rosenkrance

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **Preliminary Order** pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.**

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

If you have any questions, please call me at (208)327-7953.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

c: IDWR - Regional Office

MICROFILMED

MAY 24 2001

Responding To Preliminary Orders Issued By The Idaho Department Of Water Resources

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (department) pursuant to section 67-5243, Idaho Code It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

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

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CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

RECEIVED

MAY 17 2001

Department of Water Resources

Mr. Glen Saxton
IDWR
1301 North orchard Street
Boise, Idaho 83706

Mr. Saxton:

Enclosed is the Idaho Supreme Court Decision Rosenkrance Vs McCray as affirmed January 24, 2001. Please note section 3 F on Page 12 of that document. As you can see, in this case, Shane used our farm's water to irrigate his own property and that did not save the water for us because he "did not make application to change the place of use". In this case Shane supposedly has been using Doug's 60 inches to irrigate his land, but as Doug so eloquently pointed out, neither Doug nor Shane made application to use Doug's water on Shane's property. Please refer to pages 3-4 and pages 12-13.

Matea McCray

MICROFILMED

100-1-1000

Hearing Information
Rosenbloom Exchange
34-12050C and 34-10400
Hearing Held 5-10-01

MICROFILMED

1975-1-2000

State of Idaho
Department of Water Resources



ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR EXCHANGE
OF WATER RIGHT NOS. 34-10400 AND 34-12050 FILED IN THE NAME
OF SHANE AND DOUGLAS ROSENKRANCE

Date: May 10, 2001
Time: 9:30 a.m.
Location: IDWR Conference Room
900 N. Skyline Drive
Idaho Falls, ID
Hearing Officer: L. Glen Saxton

** Please Print **

NAME	ADDRESS	REPRESENTING (Applicant, Protestant or Intervenor)
John McClary	3470 Cobblestone Idaho Falls	protest
Doug Green	RT Mackay Id	applicant
Shane Rosenkrance	3532 Barton Flat Rd Mackay Id 83257	applicant
Matea McClary	3470 Cobblestone Idaho Falls	protest

MICROFILMED
MAY 15 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: L. Glen Saxton

From: Karl J. Dreher 

RE: **APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410**

Date May 4, 2001

You are hereby appointed as hearing officer and are authorized to represent the department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following matter:

**IN THE MATTER OF APPLICATION FOR EXCHANGE OF WATER RIGHT
NOS. 34-10400 AND 34-12050 FILED IN THE NAME OF SHANE AND
DOUGLAS ROSENKRANCE**

Date: May 10, 2001

Time: 9:30 a.m.

Location: IDWR Conference Room
900 N. Skyline Drive
Idaho Falls, ID

MICROFILMED

MAY 11 2001

RECEIVED

DEC - 7 1990

Department of Water Resources
Eastern District Office

TO WHOM IT MAY CONCERN:

I WITNESSED BENEFICIAL USE OF THE ALDER CREEK WATER ON THE
PROPERTY OWNED BY SHANE ROSENKRANCE AT THE PRESENT TIME.

MY FAMILY LIVED ON THE RODGERS PLACE IN THE 1920's, AND
I AM SURE HIGHWATER, OR FLOODWATER WAS DIVERTED FROM ALDER C
CREEK DOWN THE RODGER'S DITCH; NOW THE DARLINGTON DITCH
TO THE PROPERTY AS EARLY AS 1928

YOURS TRULY,

Francis F. Smith

SUBSCRIBED BEFORE ME DECEMBER 6, 1990.

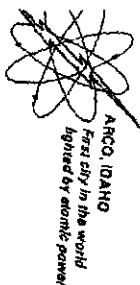
James D. McKelvey
McKay, Idaho
Comm. Exp. 5-31-94

Department of Water Resources	
PROTESTANT'S	
Exhibit	
Date Admitted	5-10-01 <i>HUT</i>

MICROFILMED

NOV 13 1991

Harriet Smith
Box 359
Machung-2440
P 3381



Mr John McCarty
3470 Cobblestone Lane
Grain Valley, Idaho 83404



059.BMP

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AUG 1 1999

Department of Water Resources	
PROTESTANT'S	
Exhibit	2 pg-1
Date Admitted	5-10-0196

Dept of Water Resources
Boise, Idaho.

Pertaining to the Statement Shane Rosenshane
Presented to you of Alder Creek Water.

I did not see the need in December 1990
to more clearly clarify the usage of Alder Creek
Water. I just became aware of what had been done lately.

We - the Lewis Smith family - were in possession
of the Rodgers farm (which Shane now owns) from
1924 to 1934. We had a Decree of 1896 River water
those later Alder Creek rights were really negated
to us, being mostly dry years

of Alder Creek water, we didn't get any other
except during High Water. The Alder rights
took all of the decreed water. In the spring
we used some of the High Water, as many
others did. When irrigation season began,
we were shut off - down to our Decree and
it wasn't 350 inches. As to the Decree of
05/01/1928 of 250 inches, as Shane claims, we
never saw that water in those 10 years
we farmed it - from '24 to '34.

I never quoted that amount of time to
anyone. There must have been a misunderstanding
or assumption, as I never saw that decreed water
as we farmed 6 years after 1928

Francis Smith
Mackay Ida
83251

MICROFILMED

1991 5 1 5PM

Department of Water Resources	
PROTESTANT'S	
Exhibit	2 PG 2
Date Admitted	5-10-01 JWF

November 18, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested exchange of water right 34-10400 and 34-10050
2. Name of protestant John and Marea McCray
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 3470 Cobblestone Lane, Idaho Falls, ID 83404
5. Service telephone no. 208-524-4985
6. Basis of protest (including statement of facts and law upon which the protest is based)
See McCray Attachment

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? See McCray Attachment

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 23 day of September, 2000

John and Marea McCray
Protestant

Protestant's Representative

MICROFILMED

1999 11 18

Sam
slip

MCCRAY ATTACHMENT

Item 6. Basis of protest:

We protest the exchange of Alder Creek water applied for by Shane Rosenkrance and Doug Rosenkrance for multiple reasons. The attached map, which was drawn by IDWR and closely represents the area of concern, will be occasionally used to illustrate certain points below:

1. This exchange will result in damage to our own Alder Creek water rights. Any downstream shift of the point of diversion of the earlier water right owned by Doug Rosenkrance will result in shrink. The current point of diversion for the earlier right owned by Doug is currently at point A of the map. The point of diversion of the junior (1928) flood water right, which is owned by Shane Rosenkrance and is proposed for the exchange, is at point C; 1.5 miles downstream from point A. Whenever Alder Creek cannot supply the full amount for all respective water rights, the water is proportionally divided among the early right holders (9/30/1882). A junior Alder Creek water right (as owned by Shane) has no effect on our water right. With a downstream change in the point of diversion of one of the early rights, all other early right (9/30/1882) holders, including us, will be damaged by having to allow 60 inches at the new POD. In other words, we will all be charged for the additional shrink between points A and C.
2. We are currently involved in a case in the Supreme Court, in an effort to re-establish the original Alder Creek waters rights on our property. Assuming a just judgement in this case, the supply of Alder Creek water would at all times (except during any short flood periods) be unable to fill all rights. Any required increase in the water flow past our POD, as a result of a change in the point of diversion for an 1882 water right, would directly and significantly damage us for the same reason as Item 1.
3. We believe that the property owned by Doug Rosenkrance that he is proposing to exchange 60" of 1882 water from consists of approximately 50 acres. Last year, Doug sold the remainder of the 162 acres that Doug refers to in his application to Jerry and Jennifer Gould. To apply the same water that is restricted to 48 acres to instead irrigate 272 acres guarantees an expansion of use. As stated in Mr. Karl Dreher's April 7, 1999 letter titled Water Distribution on Alder Creek in Water District No. 34, "Water from Alder Creek has not consistently been distributed as it should have been." The past demonstrated and documented use of hundreds of inches of Alder Creek water by Shane Rosenkrance on the very land he plans to transfer this right to (while possessing a water right for only 12.5 inches of Alder Creek water), leads us to believe that this proposed "exchange" could result in a similar misuse of Alder Creek water at the expense of all other water rights holders.
4. Very seldom has the watermaster (Doug Rosenkrance) allowed Alder Creek to flow past the Darlington ditch to the river (between points C and D of the

JAM
11/1/99

map). Instead, based on this futile call reasoning of the watermaster (from 1986 until 1998) [and now with help from IDWR's Alder Creek Guidance Document - Author Mr. Tim Luke, IDWR, 1999], Alder Creek water has been allowed to flow to Shane's property.

It is amazing how the Alder Creek flow between points C and D is "futile" but it seems to make it just fine from points A to B, A to C, and C to F. Alder Creek flow from point A to point C for 60 inches of water should also be a futile call, as the distance is significantly greater, and the grade is less steep than the points C to D. Furthermore, diverting 60" of water from point A to irrigate at point B would also be a futile call, for the same reasons.

Item 7. Resolution of Protest

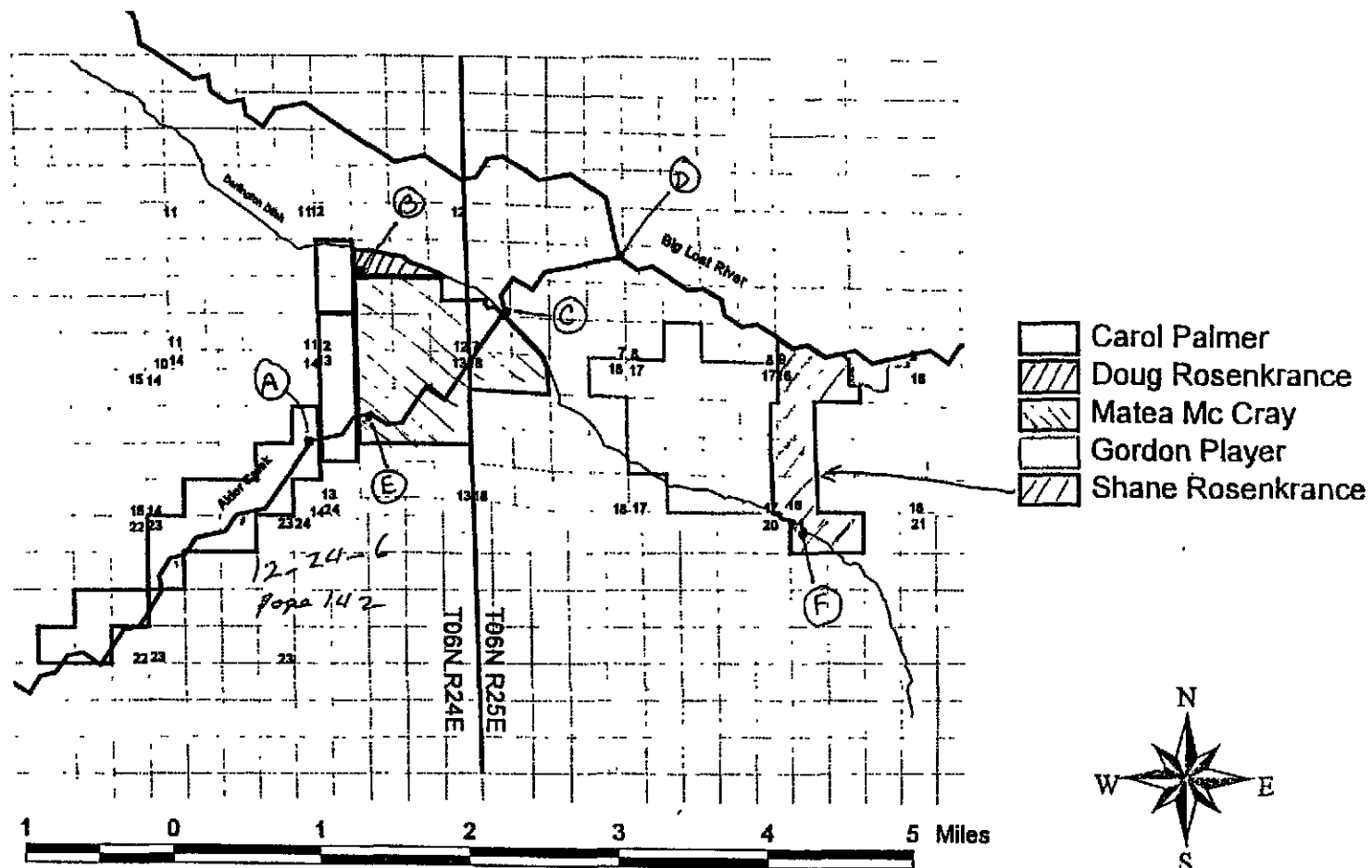
To resolve our protest, the following restrictions must be met for this exchange:

1. All shrink realized by in Alder Creek flow between the original point of diversion (point A - Doug's current POD) and the Darlington ditch (point C- Shane's current POD) must be subtracted from the exchanged amount.
2. Shane and/or Doug Rosenkrance are responsible for continuously and accurately measuring this shrink by putting in place permanent flow measuring devices just downstream of Doug's diversion (point A) and just upstream of the Darlington intersection (point C).
3. The same criteria used to "justify" a futile call for Alder Creek water use by Junior Alder Creek water right holders and BLR water rights holders (50% shrink between points C and D on the map) be similarly applied between points A and C and between points A and B. We believe that the watermaster should follow the same rules he expects the rest of the public to follow in accordance with Tim Luke's 1999 Alder Creek Guidance Document.

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OCT 11 2001

Alder Creek Area



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PUBLIC Notices

The People's Right to Know

NOTICE OF APPLICATION FOR EXCHANGE OF WATER for 34-10400 and 34-12050

Notice is given that the Shane Rosenkrance, Rt 1 Box 25A, Mackay ID 83251, owner of right 34-10400 and Douglas Rosenkrance, Rt 1 Box 24, Mackay ID 83251, owner of right 34-12050, are applying for an exchange of water.

Decree No.: 34-10400
Source: Alder Creek/Big Lost River

Amount: 1.20 cfs
Priority: 05/01/1928
Point of Diversion(s): NWNWSW SEC 7 T06N R25E, CUSTER COUNTY

The water is used for irrigation of 272 acres within SEC 9, 16, 17, 20 and 21 T06N R25E, B.M.

Decree No.: 34-12050
Source: Alder Creek/Big Lost River

Amount: 1.20 cfs
Priority: 09/30/1882
Point of Diversion(s): NWNESE SEC 14 T06N R24E, CUSTER COUNTY.

The water is used for irrigation of 162 acres within SEC 12 and 13 T06N R24E, B.M.

Each party will exchange 1.20 cfs of their rights and utilize their own point of diversion to get this water. The places of use stay the same.

The application will be subject to all prior water rights. Any protest against approval of the proposed amendment must be filed with the Department of Water Resources, Eastern Region, 900 N Skyline Dr, Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before September 25, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director
Pub: Sept. 7 & 14, 2000

NOTICE OF TRUSTEE'S SALE

NOTICE IS HEREBY GIVEN, That on Tuesday, the 28th day of November, 2000, at 10.00 a.m., Mountain Standard Time of said day, at the office of Mr. [Name], Custer County, Idaho, Custer Street, Challis, Idaho, Custer County Title, Inc., an Idaho corporation, as Trustee, will sell, in one parcel or separate parcels, at public auction to the highest bidder for cash, lawful money of the United States, payable at time of said sale, the following described real property situate in the County of Custer, State of Idaho, described as follows, to-wit:

Lot 1, Unit 5, Third Addition, Round Valley Acres, Custer County, Idaho as shown by the Official Plat thereof, filed July 31, 1981, as instrument No 159450, records of Custer County, Idaho.

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Attention Hecla & Tt
4:30-7:00 A.M., get a free tr.
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Jenson Oil Di

Get your daily smile at Jenson Oil
Open 'til 10 p.m. Sunday-Thursday
Hwy. 93 S. • Challis • 879-

Four PRE-FALL

Mens
Heavyweight
Hooded
Sweatshirts
Assorted Colors

Reg. \$24 **16⁹⁹**

— New Shipment —
Prewashed

IDAHO DEPARTMENT OF WATER RESOURCES
ADJ. LISTING OF WATER RIGHTS

DATE: 05/22/96
PAGE: 2

NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
12050	DOUG G ROSENKRANCE DOUGLES ROSENKRANCE RT 1 BOX 24 MACADON ID 83251	09/30/1882	IRRIGATION	05-01 10-15	4.76 CFS	DECEDED

TOTAL DIVERSION RATE: 4.76 CFS
TOTAL DIVERSION VOLUME: 0.00 AFA

SOURCE: ALDER CREEK

TRIBUTARY: BIG LOST RIVER

POINT OF DIVERSION:

T06N R24E S14 LOT 18 (NWNESE)

PLACE OF USE: IRRIGATION

T06N R24E S12	SWNE 17.5	SENE 2.0	SESW 28.5	SWSW 39.0
S13	NWNW 38.0	SNW 31.0	NWSW 6.0	
142.0 ACRES TOTAL				

CONDITIONS OF APPROVAL:

- C01 - THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).
- C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

DIVERSION MEANS: DIVERTED FROM ALDER CREEK

REMARKS: GENERAL USE OF THIS RIGHT WITH RIGHT NO. 34-02329 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 5.58 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 507.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 203 ACRES IN A SINGLE IRRIGATION SEASON. 0.13 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT. THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-00149, 34-00362, 34-00365 (PART), AND 34-00669. RIGHT NO. 34-00365A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

OLD RIGHTS: 34-02329

COPY

Mr. Ron Carlson
900 N. Skyline Drive
Idaho Falls, Idaho 83402

RECEIVED

APR 14 2001

Department of Water Resources
Eaton

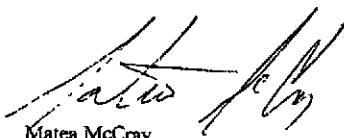
Subject: Notice of Rosenkrance Hearing set for May 10, 2001 on Proposed Exchange of Water Right 34-10400 and Water Right 34-12050

Dear Ron:

As referenced in the first paragraph of your letter, please send the rules of procedure. Also, for the hearing, I am requesting the following information be provided to me by May 4, 2001:

1. A list of all current Alder Creek water right holders, the date and quantities of water they own and identify the land (by both description and number of acres) the water is allocated to.
2. All IDWR records that identify which water rights belong to Mr. Larkin, whom I believe purchased land from Doug Rosenkrance, located in Section 12 of T 6N R24 E. This is a Freedom of Information Request for everything in his IDWR file pertaining to this parcel of land dating up and through yesterday April 18, 2001.
3. All IDWR records that identify which water rights belong to Ms. Isabel Eaton, whom I believe purchased land from Doug Rosenkrance, located in Section 12 of T 6N R24 E. This is a Freedom of Information Request for everything in her IDWR file pertaining to this parcel of land dating up to and through yesterday April 18, 2001.
4. Please provide me with a copy of all applicable sections of Idaho Code (or other regulations that IDWR relies upon) that define water exchanges, water transfers and the rules associated with selling land and holding the water rights separate from the land.

I will likely present exhibits. Therefore, if there is a time requirement (since I do not have the rules that you referenced in your letter) for when I have to have those exhibits into IDWR, let me know. Otherwise, I will plan on bringing them with me to the meeting. I will pay the \$ 05 or \$.10 per page recovery fee that allowed to government agencies under the FIOA act. If personal tape recorders are not allowed, let me know by document reference.


Matea McCray
3470 Cobblestone Lane
Idaho Falls, ID 83404

Department of Water Resources
PROTESTANT'S

Exhibit 3

Date Admitted 5-10-01 *AW*

MICROFILMED



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

April 24, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Matea McCray
3470 Cobbiestone Lane
Idaho falls, Idaho 83404

Mrs. McCray:

Enclosed you will find a printout of the Alder Creek right holders, Rule of Procedure and copies of Idaho Code 42-222 (transfers) and 42-240 (exchanges).

I could find no record of a Mr. Larkin or Isabel Eaton on our change of ownership database. If they have purchased land from Mr. Rosenkrance that have irrigation rights it is up to the new owners to come forward.

If I have missed any right holders on Alder Creek, let me know.

Sincerely,

Harold W. Jones
Water Resource Supervisor

HWJ/ck

Department of Water Resources	
PROTESTANT'S	
Exhibit	4
Date Admitted	5-10-01 <i>HWJ</i>

~ Celebrating Our Centennial Year of Service to Idaho 1895-1995 ~

0108011412

10/10/01

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

RIGHT NUMBER: 34-12050C
NAME AND ADDRESS: DOUG G ROSENKRANCE
3926 N 4300 W HOUSTON RD
MACKAY ID 83251

DOLORES ROSENKRANCE
RT 1 BOX 24
MACKAY ID 83251

SOURCE: ALDER CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 1.410 CFS
USE OF THIS RIGHT WITH RIGHT NO. 34-02329 IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 2.23 CFS.^^^

PRIORITY DATE: 09/30/1882

POINT OF DIVERSION.
T06N R24E S14 NWNESE Lot 18 Within CUSTER County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	5/01 10/15	1.410 CFS

THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN
SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND
AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE WATERMASTER FOR
WATER DISTRICT 34.^^^

PLACE OF USE:

IRRIGATION Within CUSTER County

T06N R24E S12	SWNE	17.5	T06N R24E S12	SENE	2.0
T06N R24E S12	SENE	28.5			

48 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-02329 IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 89 ACRES IN A SINGLE IRRIGATION SEASON.^^^

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

EXPLANATORY MATERIAL. BASIS OF CLAIM - Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO
SECTION 42-1425, IDAHO CODE.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
SECTION 42-1425, IDAHO CODE.
THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-00149, 34-00362, 34-00365
(PART), AND 34-00669 ^^^ THE FOLLOWING RIGHTS ARE ALSO DIVERTED
THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 34-12050B, 34-00365A,
34-12050D.^^^



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 11, 1999

Alder Creek Water Users

Re: Final Guidance Document for Distribution of Alder Creek Water Rights and Flows

Dear Water User,

Enclosed is a final copy of the document providing guidance to the water district concerning the distribution of water rights and flows on Alder Creek. A copy of this document has been sent to those individuals listed on the attached mailing list. Several parties submitted comments on the draft document. We appreciate your comments and cooperation.

Most of the revisions made to the final document are minor. Note that the time to install measuring devices and controlling works has been extended to June 28, 1999. This extension is provided since high flows in the creek may interfere with installations.

Further questions or inquiries for assistance may be addressed to Tim Luke at the above address, or by E-mail at tluke@idwr.state.id.us, or by calling 208-327-7864.

Sincerely,

Tim Luke
Water Distribution Section

Cc: Mailing List

Enclosure

C:\Word_Docs\WtrDistricts\AldrCkCovLet.doc

MICROFILMED

JUN 15 1999

Department of Water Resources	
PROTESTANT'S	
Exhibit	5
Date Admitted	Jul 5-1999

IDAHO DEPARTMENT OF WATER RESOURCES
GUIDANCE FOR DISTRIBUTION OF ALDER CREEK
WATER RIGHTS AND FLOWS, WATER DISTRICT 34

DESCRIPTION OF ALDER CREEK AND ALDER CREEK WATER RIGHTS

Attached to this document is a listing of Alder Creek water rights. Also attached is a map showing the location of lands owned by Alder Creek right holders. JB Gould now owns the lands shown as being owned by Carol Palmer. There are seven rights on the creek that share a priority date of September 30, 1882, which is the most senior priority date on the creek. The 1882 rights are all diverted from Alder Creek upstream from its confluence with the Darlington Ditch.

There are four other Alder Creek rights with junior priority dates ranging between 1896 and 1928. These latter four rights are all diverted into the Darlington Ditch where the creek intersects the ditch, and are then re-diverted at each right holder's turnout on the ditch. One of these junior rights, 34-00333, owned by James Lambert, is diverted in exchange with water from the Big Lost River. Lambert's turnout from the Darlington Ditch is upstream from the intersection of Alder Creek and the Darlington Ditch. Therefore, Lambert's Alder Creek right is delivered by diverting water from the Big Lost River at the head of the Darlington Ditch in exchange for an equal amount of water diverted in to the ditch from Alder Creek downstream of the Lambert ditch turnout.

Alder Creek flows directly into the Darlington Ditch. A spill structure with wood stop logs on the other side of the ditch is used for directing flows into the creek below the ditch. From the Darlington Ditch, the creek flows eight or nine-tenths of a mile before merging and commingling with water in the Vanous Ditch. The Vanous Ditch takes out from the Big Lost River about one and one-half miles northwest of its confluence with Alder Creek. A spring source that is drained by a small natural channel also commingles with the Vanous Ditch upstream of the point where Alder Creek intersects the Vanous. Two water rights are decreed from this spring source. Vivian and Melvin Ellwein, and the Houston Grazing Association own these rights. Both rights are re-diverted about two-tenths of a mile below the Vanous-Alder Creek confluence. The Big Lost River is located about four-tenths of a mile downstream of the Vanous-Alder Creek confluence.

The confluence of Alder Creek and the Big Lost River is located nearly two and one-half miles above Leslie. The river reach between the USGS gage below Mackay Reservoir and Leslie is either a gaining or a losing reach depending on river flow and ground water conditions. Losses in this reach are generally much less than losses in downstream reaches.

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1. DISTRIBUTION OF WATER

A. Determining Water Right Priority Cuts:

The watermaster has responsibility for determining which water rights are in priority to receive water. In making this determination, the watermaster shall use the Idaho Department of Water Resources (IDWR)/Water District 34 water right accounting program. This is a computer program developed and supported by IDWR to determine water right priority cuts, river reach gains and losses, and distribution of both natural flow and storage water below Mackay Reservoir.

Alder Creek is a tributary of the Big Lost River and is to be administered in priority with the Big Lost River unless a futile call determination has been made.

B. Delivery of Alder Creek Water Rights to Creek Diversions and Darlington Ditch:

The watermaster shall deliver Alder Creek rights according to dates of priority as specified on the attached listing of Alder Creek rights. The watermaster shall only deliver rights which are called for and that can be delivered according to priority. All water right holders on the creek, and those Alder Creek right holders who re-divert water from the Darlington Ditch must call for water in accordance with Rule 040.01b of the Water District 34 Rules, which states:

All water deliveries must be called for by the water user at least forty-eight (48) hours in advance of the actual water delivery. Water which can be delivered by the watermaster in less than forty-eight (48) hours may be used by the water user.

Holders of Alder Creek rights who re-divert from the Darlington Ditch must also inform the watermaster as to when the rights should not be delivered to the Darlington Ditch at any time when those priority rights are on. These same right holders may also inform the Big Lost Irrigation District (BLRID) ditch rider regarding their intent to stop delivery while their rights are on, and the ditch rider may request that the watermaster stop delivery of the rights to the Darlington Ditch.

In delivering any Alder Creek water to right holders on the Darlington Ditch, the watermaster shall have responsibility for determining the amount of water that is delivered to the ditch. The watermaster must coordinate this delivery with the appropriate BLRID ditch rider. The watermaster is responsible for determining the amount of water entering the Darlington Ditch from the creek. It is the responsibility of the BLRID to deliver this water with appropriate losses to the individual right holders' point of re-diversion on the ditch. However, the watermaster has the authority to oversee delivery at points of re-diversion on the ditch and may make his own measurements at such points for the purpose of assuring that the Alder Creek water is being properly distributed. This oversight should be invoked at any time Alder Creek right holders, the BLRID or other interested parties raise concerns or questions.

IDWR and the water district recognize that storage water and/or Big Lost River rights may also be delivered by the BLRID at the Alder Creek right holders points of re-diversion on the Darlington Ditch. Additionally, the BLRID may charge certain transmission losses or rotation credits to individual users or turnouts. The water district has no authority over how the BLRID records or credits deliveries to its individual shareholders, nor does the water district have authority over how the BLRID manages its accounts or assessments. As a result, the Water District 34 watermaster does not have full responsibility to address all questions and concerns relative to individual ditch turnouts and credits assigned by the BLRID to individual BLRID share holders. The watermaster and BLRID therefore must cooperate with each other and share information in order to address questions concerning individual water delivery credits.

Alder Creek water rights will not be rotated for credit with storage water from the Mackay Reservoir. Also, the watermaster will not deliver water to any user with an unclaimed/unrecorded domestic or stock water use until the use is claimed and adjudicated.

C. Delivery of Water when Supply is Short:

Rule 20.04 of the Water District 34 Rules provides some guidance regarding futile call for delivery of surface water. It states as follows:

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without reasonable waste as determined by the director, the watermaster will not curtail the junior rights in a futile effort to deliver water to the senior rights. The director may consult the Water District 34 advisory board, the Big Lost Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

When determining a futile call, the watermaster must first consult with director. The final decision of a futile call rests with the director. There may be several types of futile call scenarios regarding Alder Creek.

1. Futile call regarding rights above the Alder Creek-Darlington Ditch confluence:

All of the rights on the creek above the confluence with the Darlington Ditch are senior to the rights that are re-diverted from the Darlington Ditch. Obviously, water failing to reach the ditch when upstream rights are either on or off will not fill rights on the ditch.

If Alder Creek fails to reach the Darlington Ditch, then the 1882 priority rights upstream of the ditch may be filled as follows:

- a) Fill the 1882 rights on a pro-rata basis (the rights may be filled even if they are junior to the last priority right filled on the main river as determined by the IDWR water right accounting program).

- b) If there is an amount of water that exceeds the 1882 rights, then the extra water may be divided among the right holders on a pro-rata basis.
- 2. Futile call regarding junior priority rights from Alder Creek that are re-diverted on the Darlington Ditch:

The need to determine a futile call under this scenario should be triggered by a call from the holder of a valid junior priority water right. Determination of a futile call and delivery of water to junior priority Alder Creek rights that are re-diverted from the Darlington Ditch must be based on the watermaster's measurement of Alder Creek at the Alder Creek-Darlington Ditch confluence and the Alder Creek-Vanous Ditch confluence. Measurement options at these locations are discussed in Section 2 of this document. The watermaster must also follow the guideline provided under Rule 20.04 of the Water District 34 Rules.

The watermaster will consider that any flow reaching the Big Lost River will be adequate to help other rights unless the Big Lost River will not reach the most immediate downstream diversions.

A. Alder Creek Reaches Darlington Ditch but does not Reach Vanous Ditch/Big Lost River:

If the watermaster's measurements of Alder Creek between the Darlington Ditch and the Vanous Ditch show that no flow reaches the river, then the watermaster may deliver junior priority rights from Alder Creek as follows:

- a) Fill all the 1882 priority rights on Alder Creek upstream of the Darlington as called by the right holders.
- b) Fill all the junior priority Alder Creek rights on the Darlington Ditch to the extent possible according to priority.
- c) If excess water exists, that water may be turned into the ditch and credited as a gain (or reduced loss) to the Darlington Ditch (no adjustment to heading of Darlington Ditch required).

Upon making a futile call determination, the watermaster shall notify the BLRID that such a determination has been made and that water from Alder Creek can be delivered to Alder Creek rights on the Darlington Ditch. The appropriate BLRID ditch rider will then notify the Alder Creek right holders on the Darlington Ditch that this water can be delivered. The right holders can either accept or refuse delivery. If delivery is refused or the water can not be delivered to these Alder Creek right holders for any reason, the BLRID can use the water for the general benefit of BLRID shareholders on the Darlington Ditch, including offsetting ditch conveyance and transmission losses.

B. Alder Creek Reaches Darlington Ditch and Vanous Ditch/Big Lost River, but Loss Between Darlington and Vanous Ditches is Significant:

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If the watermaster's measurements of the creek between the Darlington and Vanous Ditches show a significant loss, then the watermaster must seek approval from the director of IDWR to turn the flow of Alder Creek into the Darlington Ditch and account for that water as being delivered from the Big Lost River. In seeking this approval, the watermaster's measurements must show a loss greater than 50 percent. In considering this request, the director will require that the diversion to the Darlington Ditch from the Big Lost River be reduced by the amount of flow from Alder Creek that is turned into the Darlington Ditch. Junior priority Alder Creek rights will not be delivered unless those priority dates are on as determined by the IDWR water rights accounting program.

D. Delivery of Excess Water (Excess Water and Alder Creek Reaches Vanous Ditch/Big Lost River):

During times of high runoff or when there is excess flow in the creek, the watermaster may deliver some excess flow into the Darlington Ditch if there are benefits to doing so. This practice should generally be limited to times when all priority rights in the water district can be delivered. In addition, the watermaster must implement the following procedures:

- a) Fill Alder Creek rights in priority as determined for the Big Lost River rights.
- b) Water in excess of that needed to fill priority rights from Alder Creek is credited as Big Lost River water and Darlington Ditch diversion heading is reduced accordingly.

E. Record Keeping Procedures:

The watermaster shall have responsibility for keeping records that show water has been properly distributed to all right holders on Alder Creek. The watermaster shall keep a *logbook or sheet of all measurements and deliveries made on the creek*. Deliveries to individual points of diversion, including deliveries to rights diverting from the Darlington Ditch, shall also be entered into the IDWR water right accounting program. Such records should include the following:

- a) Measured daily deliveries at each point of diversion from Alder Creek.
- b) Total daily deliveries of Alder Creek to the Darlington Ditch, sorted by individual right.
- c) Individual measurements of the creek at the confluence with the Darlington Ditch, and the confluence with the Vanous Ditch.

The watermaster is encouraged to maintain a file or record of all discharge measurements, calculations and field notes pertinent to delivery of water on Alder Creek. The watermaster is further encouraged to maintain a record of all futile call requests and responses.

F. IDWR Assistance:

IDWR staff will provide in-field training and assistance in implementing the procedures outlined ~~under this document~~. This training and assistance will extend to the

watermaster, deputy watermasters, BLRID ditch riders and/or manager, and other interested water right holders.

G. Recommended Assignment of Water District Staff Duties

IDWR recognizes that many state water district watermasters have some proprietary interest in water rights or have family members that own water rights within the district that he/she has jurisdiction. In some cases, it may be helpful if the watermaster hires an assistant to distribute water to diversions that are owned by the watermaster or his/her immediate family members. Sometimes the choice of an assistant may also be unacceptable to some users. Section 42-609, Idaho Code empowers the water master to employ 'suitable' assistants. If the watermaster hires an assistant, the director of IDWR has authority to approve the selection. The director has no authority under the code to force the hiring of an assistant. The decision to hire an assistant in this case shall be made by the watermaster. If the watermaster's decision is not agreeable to one or more users, then a user may petition the watermaster to re-consider his decision and can also provide suggestions about who to hire. Such petition should be carbon copied to the department and should be signed by more than one right holder on the creek. The users and the watermaster should work together to resolve assignment duties. An assistant, if hired, should be authorized to approach IDWR for instruction.

2. MEASURING DEVICES AND CONTROLLING WORKS

Each individual diversion from Alder Creek must have head works that can be controlled by the watermaster or the watermaster's assistants. Such head works must be capable of being locked by the water district. Each individual diversion must also have a suitable measuring device that is approved by the water district or IDWR. Measuring devices and controlling works must be installed prior to the irrigation season. If high stream flow conditions, snow or poor weather makes this installation impractical, then the users must install these devices before water is delivered under a call to the watermaster, but no later than June 28, 1999. Installation of controlling head works is not necessary at the Alder Creek-Darlington Ditch confluence. The watermaster however must have a means to measure the flow of Alder Creek and control the amount of water distributed to the ditch or turned down to Alder Creek below the ditch. Guidance for measuring and controlling flows at this confluence is provided below. Any references to temporary measuring devices below means that the installed device can be removed after the irrigation season and re-installed the following year after high flows have subsided. The devices must remain in place during the irrigation season when flows are regulated. Removal of the devices after the season can prevent them from being damaged in the winter or being washed out from high flows during the spring.

3. MEASUREMENT AND CONTROL OF WATER AT THE ALDER CREEK-DARLINGTON DITCH CONFLUENCE

A number of different methods may be implemented for measuring the flow of Alder Creek at its junction with the Darlington Ditch. Water District 34 is responsible for the installation and costs of measuring devices. IDWR recommends separate measurement of the creek above the Darlington Ditch for determining the natural flow of the creek and the amount of water that can be delivered to the ditch and/or bypassed to the lower portion of the creek. Regulating the delivery or bypass of Alder Creek at the confluence can be accomplished by using the spill structure located directly across the ditch from the creek.

Inflow to the Darlington Ditch from Alder Creek may best be measured by installing a temporary weir or flume in the channel of Alder Creek a short distance upstream of the ditch. Care should be taken installing the device too close to the ditch since higher flows or water levels in the ditch could raise the water level at the mouth of the creek and submerge the weir or flume. The measuring device should be installed after the high seasonal flows subside and prior to any call for water to the watermaster.

To measure water that spills or is turned out to the creek below the ditch, a temporary weir may be placed in the creek on the other side of the road. As an alternative to installing a weir at this location, the stop log structure that spills water from the ditch to the creek may be used directly as a weir providing the following steps are taken:

- Install about a one-eighth inch thick metal strip along the top stop log to provide a more standard thin plate weir blade or crest. The plate should protrude an inch or two above the log and must be level.
- Prevent or minimize leaks between stop logs.
- Measure head above the weir crest and apply the standard suppressed rectangular weir formula for calculating discharge.

4. MEASUREMENT OF WATER AT THE ALDER CREEK-VANOUS DITCH/BIG LOST RIVER CONFLUENCE

For the purpose of determining a futile call on the lower part of Alder Creek between the Darlington and Vanous Ditches, a temporary weir or flume should be installed in the creek just upstream of the Alder Creek-Vanous Ditch confluence. It may also be acceptable for water district staff to current meter the creek at this same location in lieu of installing a weir. IDWR encourages use of a weir or flume at this location so that other interested parties can measure the creek at this same point. Again, the measuring device should be installed after the high seasonal flows subside and prior to any call for water to the watermaster.

Mailing List

Doug Rosenkrance, Watermaster
Water District 34
PO Box 53
Mackay ID 83251

Shane Rosenkrance
Mimi Rosenkrance
Rt 1 Box 25A
Mackay ID 83251

Delores I Rosenkrance
Doug Rosenkrance
Rt 1 Box 24
Mackay ID 83251

A Gordon Player
Antelope Valley Ranch
HC 60 Box 257
Moore ID 83255

John & Matea Mc Cray
2470 Cobblestone
Idaho Falls ID 83404

James C Lambert
Rt 1 Box 20
Mackay ID 83251

J B Gould
Stephanie Gould
PO Box 6111
Ketchum ID 83340

Big Lost Irrigation District
PO Box 205
Mackay ID 83251

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54-2174
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WARRANTY DEED

FOR VALUE RECEIVED, DOUGLAS G. ROSENKRANCE and DOLORES I. ROSENKRANCE, husband and wife, Grantors, do hereby Grant, Bargain, Sell and Convey unto ISABEL L. EATON, dealing with her sole and separate property, the Grantee, whose current address is 429 Richland, Pocatello, Idaho, the following described premises, in Custer County, Idaho, to-wit:

That part of the S½NE¼ of Section 12, Township 6 North, Range 24 East, Boise Meridian, Custer County, Idaho, beginning at the Southeast corner of the SE¼NW¼; thence East 26 2/3 chains; thence North 2 1/3 chains to the Darlington Ditch; thence Northwesterly along said ditch 29 chains to the West line of the NE¼; thence South 13 chains to the place of beginning. Together with a 20% undivided interest in the water represented by Well License Number 1185253, State of Idaho, Department of Water Resources. 34-02329

SUBJECT HOWEVER TO Levies and assessments of Big Lost River Valley Irrigation District, if any.

SUBJECT ALSO TO Right-of-Way for Darlington Rogers Canal.

SUBJECT ALSO TO Oil and Gas Lease upon the terms, conditions and covenants contained therein:

Recorded: March 20, 1981, Instrument No. 157652

Lessor: Doug and Dolores Rosenkrance

Lessee: Ronan Inc.

(Covers this and other property)

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantee, her successors and assigns forever. And the said Grantors to hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all encumbrances save and excepting therefrom all covenants, conditions and restrictions of record and all easements of sight and of record as recorded in the records of Custer County, Idaho, and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: July 17, 1985
Department of Water Resources
PROTESTANT'S
Exhibit 6
Date Admitted 5-10-87

Douglas G. Rosenkrance
Douglas G. Rosenkrance

Dolores I. Rosenkrance
Dolores I. Rosenkrance

Wherever "Farmers Home Administration", "FmHA", "Rural Development Administration", or "RDA" may appear, the term "United States of America" is substituted.

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STATE OF IDAHO)
County of Custer) ss.
On this 2 day of
July, 1995, before
me, a Notary Public, per-
sonally appeared DOUGLAS G.
ROSENKRANCE and DOLORES I.
ROSENKRANCE, husband and
wife, known or identified
to me to be the persons
whose names are subscribed
to the within instrument
and acknowledged to me that
they executed the same.

Ethel M. Peck
Notary Public for Idaho
Residing at 200 N. 4th St.
Commission Expires 1998

STATE OF IDAHO, COUNTY OF CUSTER
I hereby certify that this instru-
ment was filed for record at the
request of First American Title
at 35 minutes past 11
o'clock 4 .M., this 14th day of
July, 1995, in my office,
and duly recorded in Book _____
of Deeds at page _____.

Ethel M. Peck
Ex-Officio Recorder
BY Wendy Murphy
Deputy

Fee: \$ 6.00
Mail to:

209090

NOTICE OF INSTALLMENT LAND SALE CONTRACT

NOTICE IS HEREBY GIVEN that DOUGLAS G. ROSENKRANCE AND DOLORES I. ROSENKRANCE, husband and wife, have sold under Installment Land Sale Contract, dated July 12, 1995, the following described property situate in Custer County, Idaho, to RICK R. LARKIN AND BRENDA L. LARKIN, husband and wife, of the County of ~~Bannock~~, State of Idaho, to wit:

Custer

Township 6 North, Range 24 E.B.M., Custer County, Idaho
Section 12: ~~E4NW4~~

Together with all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining including an 80% undivided interest in the water represented by Well License No. 1185253, State of Idaho, Department of Water Resources.

Dated this 12th day of July, 1995

Douglas G. Rosenkrance
Douglas G. Rosenkrance

Dolores I. Rosenkrance
Dolores I. Rosenkrance

Rick R. Larkin
Rick R. Larkin

Brenda L. Larkin
Brenda L. Larkin

209090
Custer County, Idaho
First American
Title
11:36 AM

7-14-95
Wanda Murphy
3-2

STATE OF IDAHO)

: ss.

COUNTY OF BINGHAM)

On this 12th day of July, 1995, before me the undersigned, a Notary Public in and for the said county and state, personally appeared DOUGLAS G. ROSENKRANCE AND DOLORES I. ROSENKRANCE, and RICK R. LARKIN AND BRENDA L. LARKIN known or proved to me to be the persons who executed the foregoing instrument, and acknowledged to me that they executed the same.

Anna Marie Smith
Notary Public for Idaho
Residing at: BLACKFOOT, ID.
My Commission Expires: 5-20-2000

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FMO100

PARCEL: ~~RP~~ 06N24E122402 A

F1=SL

NAME/ADDRESS

ROSENKRANCE, DOUGLAS G
& ROSENKRANCE, DOLORES I
& LARKIN, RICK P

LEGAL DESCRIP
E2NW4
SEC 12 T6N R24E

PO BOX 4666

CODE AREA 900 O
PARC TYPE AG L
EFFDATE 1011996 E
PREV PARCEL RP06N

KETCHUM ID 83340-4666

CAT	RY	QUANTITY	UN	VALUE	HO MRKT	HO EXMP	CB
1	1996	77500	AC	38440			
19	1996	2500	AC				

TOTALS 80000 38440

ENTER NEXT PARCEL NUMBER RP

FKeys: F2=TX F3=Exit F5=SS F6=NM F7=LG
F8=CT F13=TM F18=HS F20=SrcH F22=EU

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13:11:48

PARCEL MASTER INQUIRY

F1=SL

F9=MS

F17=DD

F23=AG

NAME/ADDRESS

LEGAL DESCRIPTION

ANTON, ISABEL L

TRACT 133

SEC 12 T6N R24E

429 RICHLAND

CODE AREA 900

OWNER CODE

POCATELLO ID 83201

PARC TYPE AG

LOC CODE 322

EFFDATE 1011996

EXPDATE

PREV PARCEL RP06N24E122401T

CAT	RY	QUANTITY	UN	VALUE	HO MRKT	HO EXMP	CB MRKT	OTHER
1	1996	21400	AC	10614				

TOTALS

21400

10614

ENTER NEXT PARCEL NUMBER

RP _____ A

FKeys: F2=TX F3=Exit F5=SS F6=NM F7=LG
 F8=CT F13=TM F18=HS F20=SrcH F22=EU

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RECEIVED

Docket No. 25905

MAY 17 2001

Department of Water Resources

IN RE: SRBA CASE NO. 39576, SUBCASE
NOS. 34-00600 AND 34-00606.

JOHN McCRAY and MATEA McCRAY,
husband and wife,

Appellants,

v.

DOUG ROSENKRANCE, SHANE
ROSENKRANCE and JAMES C. LAMBERT,

Respondents.

Twin Falls, November 2000

2000 Opinion No. 3.

Filed: January 24, 2001

Frederick C. Lyon, Clerk

Appeal from the SRBA District Court of the Fifth Judicial District of the
State of Idaho, Twin Falls County. Hon. R. Barry Wood, District Judge.

The decision of the district court is affirmed.

Ling & Robinson, Rupert, for appellants. Roger D. Ling argued.

Patrick D. Brown, P.C., Jerome, for respondents.

KIDWELL, Justice

This appeal is from an order of the SRBA district court, adopting the
recommendation of a special master in its entirety. The special master's recommendation
concluded that the majority of water rights 34-00600 and 34-000606 had been abandoned
and/or forfeited due to non-use for the statutory period.

I.

FACTS AND PROCEDURAL BACKGROUND

A. Facts

Water rights 34-00600 and 34-00606 are appurtenant to real property previously
owned and farmed by Gerald "Doug" Storer. Storer farmed the property (Storer
property) between 1973 and 1984. The source of the water rights is Alder Creek, which

Department of Water Resources
PROTESTANT'S
Exhibit 7
Date Admitted 5-17-01

is tributary to the Big Lost River. The water rights had a priority date of September 2, 1882.

Storer testified that in 1976, he made the transition from irrigating from Alder Creek to irrigating by sprinkler. He purchased an irrigation system and drilled a well in the northeastern portion of the property. During this conversion, Storer also plowed in all the ditches on the eastern portion of the property, except one. The west side of the property was irrigated by sprinkler from the time Storer began farming it in 1973 until the last time he irrigated the property in 1984.

On October 5, 1984, Storer transferred ownership of the property, along with all the appurtenant water rights, to Farmers Home Administration (FHA), as satisfaction of mortgages held by FHA on the property. In 1985, FHA leased the Storer property to Harold Bell who irrigated the property during that one-year lease. The property was then leased to Don Palmer and Randy Pehrson during 1986 and 1987. Palmer and Pehrson testified that they did not irrigate the property during this time. The special master found that the property was not irrigated during 1988.

From 1989 to 1990, the Storer property was leased to Richard Reynolds. Reynolds testified that the farm was not irrigated in 1989, and only for a few weeks in 1990. During this time, the irrigation was accomplished through the irrigation ditches on the property. Reynolds was not able to irrigate the entire property due to a combination of there not being enough water and because the equipment for irrigation was not in working order. The special master determined that Reynolds was able to irrigate 25 acres of the property with the water from Alder Creek in 1990. When asked, Reynolds admitted that if there had been more water in Alder Creek, he could have irrigated more of the property.

The 1990 irrigation of the property by Reynolds was terminated when the watermaster, Doug Rosenkrance, diverted the Alder Creek water above the Storer property onto his own property. When asked why the water had been diverted, Rosenkrance told Reynolds that "there wasn't any more, that the water right was off."

In response to claims filed with the SRBA, senior water agent Carter Fritschle investigated the water rights on behalf of the IDWR in August of 1990. Fritschle testified that "the ditch - there wasn't a lot left to it. It was mainly almost a depression in most

places rather than actually identifiable as a ditch." He also indicated that the hand lines on the property did not look like they had been used recently. They appeared to be "broken or bent, and weren't connected to any of the risers or anything."

In 1991 and 1992, the property was leased to Shane Rosenkrance, son of Doug Rosenkrance. During this lease, Shane used Alder Creek water on his own land rather than on the Storer property.

The United States sold the property by sealed bid auction in 1995. The first advertisement for the sale did not mention water rights. However, the second ad expressly stated that the irrigation equipment was to be sold with the property and the property contained no appurtenant water rights. Appellants, John and Metea McCray, along with Tai Fei Pao and Jenn-Hai Pao, submitted a bid, which listed the property as "635 acres of dry grazing and irrigation equipment." Shane Rosenkrance also submitted a bid for the property.

The McCrays' bid was accepted and the property was conveyed to the McCrays and the Paos in June of 1995. In October of 1996, the Paos transferred their interest in the property to the McCrays.

B. Procedure

On May 27, 1992, a director's report was filed, recommending that water rights 34-00600 and 34-00606 be disallowed on the basis of abandonment and/or forfeiture. On February 26, 1993, the United States, through the FHA filed objections to the director's report. On November 4, 1993, SRBA District Court Judge Daniel Hurlbutt entered an order appointing Brigitte Bilyeu as a special master for Reporting Area 34.

Prior to any hearings on the objections, the property was sold to the McCrays in 1995. On June 30, 1995, the United States, through FHA, agreed to allow the McCrays to take its place in the subcases. On June 26, 1997, the special master granted a motion to allow Shane Rosenkrance, Doug Rosenkrance, Carroll Palmer and James Lambert (upstream water users) to participate in the subcases.

The McCrays filed a motion for summary judgment on September 15, 1997, arguing that the property had been irrigated in 1985 and 1990 and thus had neither been abandoned nor forfeited. The special master denied the motion and set the matter for a

bench trial. The trial commenced on November 12, 1997. On February 12, 1998, the special master entered her findings of fact and conclusions of law.

In her memorandum, the special master set out that the director's report was to be given prima facie weight as to the issues. The special master then determined that the water rights on the eastern portion of the property had been abandoned when Storer filled in the ditches and installed the sprinkler system and the well. Additionally, the special master held that the water rights for the entire property had been forfeited due to nonuse, excluding the 25-acre portion irrigated in 1990. Finally, the special master held that Shane Rosenkrance's use of water from Alder Creek in 1991 and 1992, on his own property did not constitute resumption of the water rights on the Storer property.

On February 27, 1998, the special master entered an amended report and recommendation, amending only the legal description of the property. The McCrays filed their notice of challenge of the special master's findings of fact and conclusions of law on June 24, 1998. On December 22, 1998, the SRBA district court entered its memorandum decision on the McCrays' challenge. In its two-page memo, the court adopted the recommendation of the special master in its entirety. The McCrays filed their notice of appeal on September 17, 1999.

II.

STANDARD OF REVIEW

The special master's findings of facts, which are adopted by the district court, are considered to be the findings of the district court. I.R.C.P. 52(a); *State v. Hagerman Water Right Owners Inc.*, 130 Idaho 736, 740, 947 P.2d 409, 413 (1997). "In an action to be tried without a jury the court shall accept the master's findings of fact unless they are clearly erroneous." I.R.C.P. 53(e)(2). "The special master's conclusions of law are not binding upon the district court, although they are expected to be persuasive." *Hagerman*, 130 Idaho at 740, 947 P.2d at 413. The special master's conclusions of law which are adopted by the district court are treated as the conclusions of the district court. *Id.* This Court freely reviews the district court's conclusions of law. *Id.*

III.
ANALYSIS

A. The District Court And The Special Master Based Their Decisions On The Facts Of The Dispute, And Did Not Rely On The Prima Facie Status Of The Director's Report.

The McCrays argue that the district court erred in finding that the special master correctly gave prima facie weight to the director's report. They claim that while the director's report normally creates a rebuttable presumption, in this case the McCrays provided evidence to overcome the presumption and thus the director's report should be weighed as ordinary evidence without any presumptions.

The issue of the weight to be given a director's report is discussed in Idaho Code section 42-1411(4) which provides:

(4) The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

I.C. § 42-1411(4) (emphasis added).

Additionally, the Code provides that:

Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. Since the director's report is prima facie evidence of the nature and extent of the water rights acquired under state law, a claimant of a water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report. Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection. Any other party to the proceeding may submit evidence in opposition to the objector's position and in support of the director's report. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

I.C. § 42-1411(5).

This Court has considered the weight and effect of a director's report in *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 947 P.2d 409 (1997). In *Hagerman*, the claimants objected to the director's recommendation that the water rights

consist of a lesser amount than that claimed. *Id.* at 738, 947 P.2d at 411. The Court explained that the *prima facie* status contained in section 42-1411 "constituted a rebuttable evidentiary presumption." *Id.* at 745, 947 P.2d at 418. The Court then noted that I.R.E. 301 governs presumptions in civil cases. *Id.* The Court then reasoned that "when an evidentiary presumption arises it shifts only the burden of production. When rebutted, the presumption disappears and the party with the benefit of the presumption retains the burden of persuasion on the issue." *Id.* Furthermore, "the Director's Report is *prima facie* evidence and the facts contained therein are presumed to be correct until such time as a water claimant produces sufficient evidence to rebut the presumption." *Id.* "Once the presumption is rebutted, it disappears and the facts upon which the presumption is based are weighed with all other facts that may be relevant." *Id.* at 746, 947 P.2d at 419.

In the present case, the McCrays argue that the presumption normally granted to the director's report should have been disallowed in this case because the McCrays provided substantial evidence to rebut the presumption. Specifically, they point to Special Agent Carter Fritschle's testimony that the forfeiture/abandonment was recommended because of non-use beginning in 1982, which is inconsistent with the findings of the special master that the property was irrigated in 1985. The McCrays then argue that this fact should have rebutted the presumption that the director's report was correct, and the special master should have relied on the common law to resolve the issue of forfeiture/abandonment, rather than on the presumption.

It appears, however, that the McCrays' argument is misplaced. The special master's report and recommendation indicates that, although the special master was aware of the *prima facie* status of the director's report, the special master actually made her decision based on the facts of the case rather than relying on the statutory presumption of the director's report.

For example, after setting out the facts of the case, the special master analyzed the abandonment issue by applying the facts pursuant to common law. The special master set out the relevant law and then found that the actions of Gerald Storer constituted abandonment when he filled in his ditches, drilled a well and purchased the sprinkler

system. The special master specifically stated that she found "clear and convincing evidence" to support her determination.

The special master then set out the requirements for statutory forfeiture. She found that the majority of the property had not been irrigated for more than five consecutive years, which results in a forfeiture under I.C. § 42-222(2).

Therefore, from the record we conclude that the special master did not rely upon the *prima facie* status of the director's report. Rather, the record indicates that she based her conclusions of forfeiture and abandonment on the facts of the case as applied to both statutory and common law.

B. The Special Master Correctly Applied A Clear And Convincing Standard Of Proof.¹

The McCrays contend that the special master and the district court erred in finding a forfeiture in the absence of clear and convincing evidence. They maintain that the evidence does not establish a lack of use for the required statutory period.

Forfeiture of water rights is governed by Idaho Code section 42-222(2), which provides that water rights may be lost if they are not applied to the beneficial use for which the rights were appropriated for five continuous years. I.C. § 42-222(2). However, this Court has often repeated its position that forfeiture of water rights is not favored in Idaho. *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 87, 982 P.2d 917, 922 (1999). Because of its disfavor for water right forfeiture, Idaho law requires that such actions be proved by the heightened evidentiary standard of clear and convincing evidence. *Id.*

Here, the special master found by clear and convincing evidence that the water rights had been abandoned and/or forfeited. This finding must then be accepted by the trial court "unless clearly erroneous." I.R.C.P. 53(e)(2). To determine whether the special master's findings are clearly erroneous, "the trial court must independently review the evidence to determine whether the findings were supported by substantial evidence."

¹ It is necessary at this point to distinguish the present issue from issue E below. In the present issue, the McCrays are claiming that the special master and the district court applied the wrong standard of proof, i.e. clear and convincing evidence. In issue E below, the McCrays argue that the facts do not amount to clear and convincing evidence. Thus, the issue here will be limited to a discussion of the standard of proof required in a water rights forfeiture case.

Secombe v. Weeks, 115 Idaho 433, 435, 767 P.2d 276, 278 (Ct. App. 1989). On appeal from decisions of the district court, this Court again applies a substantial and competent evidence standard. *Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 389, 674 P.2d 1256, 1261 (1999).

Thus, the McCrays are correct that the proper standard of proof required to find a forfeiture of a water right by finder of fact is clear and convincing evidence. However, the district court is correct that once the special master has determined that the forfeiture is supported by clear and convincing evidence, that decision is reviewed by the district court and by this Court under the substantial and competent evidence standard.

C. The Special Master Made Sufficient Findings To Support The Conclusions Of The District Court.

Here, the McCrays take issue with the summary manner in which the district court adopted the findings of fact and conclusions of law and recommendation of the special master. Specifically, they argue that the district court committed reversible error when it failed to "set forth separately its Findings of Fact and Conclusions of Law."

To assist in the adjudication of water rights, the "district court may appoint one (1) or more special masters in any general adjudication Objections to and hearing on the special master's report shall be governed by rule 53(e) of the Idaho rules of civil procedure." I.C. 42-1422. Rule 53(e)(2) provides that "In an action to be tried without a jury the court shall accept the master's findings of facts unless they are clearly erroneous." *Id.*

This Court has held that "there is nothing in Rule 53 which precludes the court from adopting the master's factual findings verbatim if not clearly erroneous." *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 378, 816 P.2d 326, 334 (1991). This is "[b]ecause the court is required to make its own careful review to determine if the findings of fact are clearly erroneous, [thus] this procedure is consistent with the court's duty under I.R.C.P. 52." *Id.*

In *Rodriguez*, the Court found that the district court had made a sufficient review of the record when the district court "indicated that he reviewed 'the documents, affidavits and other papers' prior to accepting the findings of fact. Moreover, the court

heard objections to the findings and made a number of corrections and changes to the master's report as a result." *Id.*

In the present case, the district court noted that it conducted a "[c]areful review of the record and controlling case law [which] supports the decision of the Special Master." The court also determined that, "On each issue presented, forfeiture, abandonment, and resumption of use, the Special Master's findings of fact are well supported by substantial evidence and therefore, are not clearly erroneous." Thus, while the explanation of the district court as to the basis of its conclusions was not as detailed as those in *Rodriguez*, the court performed a sufficient review of the facts and record prior to adopting the special master's recommendation.

D. The Issue Of Whether The Statutory Period For Forfeiture Or Abandonment Should Be Tolled By Filing A Claim With The SRBA District Court Was Not Properly Preserved For Appeal.

In this section, the McCrays urge this Court to adopt a new rule of law that would require the five-year statutory period for water rights forfeiture to be tolled by the filing of a claim with the SRBA district court. The respondents counter by pointing out that while the McCrays raised the issue of whether filing an objection in the SRBA court should toll the time period, they have not raised the issue as to filing a claim prior to this appeal. In the McCrays' reply brief, they concede that the issue of whether the filing of a claim with the SRBA court should toll the statutory period was not raised prior to appeal. However, the McCrays contend that this is one of those special circumstances where the Court should consider an issue which was not preserved for appeal.

This Court has consistently held that an issue not raised below will not be considered when raised for the first time on appeal. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 637, 962 P.2d 1018, 1021 (1998). While this Court has, in the past, considered issues raised for the first time on appeal, these cases usually involve a constitutional issue. See *Inama v. Brewer*, 132 Idaho 377, 385, 973 P.2d 148, 156 (1999) ("We will consider constitutional issues raised for the first time on appeal if such consideration is necessary for subsequent proceedings in the case.") (Internal quotations omitted).

The issue the McCrays seek to raise for the first time on appeal is not a constitutional issue: rather, it involves urging this Court to adopt a new rule of law. Therefore, we decline to address the issue.

E. The McCrays Have Failed To Prove That The Abandonment And/Or Forfeiture Was Caused By Conditions Beyond The Control Of The Water Right Holder.

The McCrays allege that the abandonment and/or forfeiture was caused because Reynolds was not allowed to irrigate the Storer property, although he tried, because of factors beyond his control.

After hearing testimony on the matter, the special master determined that the water rights were forfeited because of non-use for the five-year statutory period. The five-year period ran from 1985 through 1990. The director's report suggested that all of the water rights had been lost for nonuse during this time. However, the special master determined that during 1990, Reynolds, who was leasing the property at the time, had irrigated 25 acres. Thus, the special master held that all of the water rights were forfeited except for the 25 acres irrigated by Reynolds. The McCrays complain that Reynolds tried to irrigate more than the 25 acres in 1990, but was prevented from doing so because of drought and/or the wrongful actions of the watermaster.

As the McCrays correctly point out, this Court has recognized certain defenses to forfeiture, such as "wrongful interference with a water right or failure to use the water because of circumstances over which the water right holder has no control." *Jenkins*, 103 Idaho at 389, 647 P.2d at 1261.

In *Almo Water Co. v. Darrington*, 95 Idaho 16, 501 P.2d 700 (1972), this Court noted that "Neither would interference by the watermaster in the exercise of a decreed right, by failure to fill that right in accord with the decreed priority, establish grounds for abandonment or forfeiture" *Id.* at 21, 501 P.2d at 705. See also *Hodges v. Trail Creek Irrigation Co.*, 78 Idaho 10, 16, 297 P.2d 524, 530 (1956).

As set forth above, the special master must find by clear and convincing evidence that the water rights have been forfeited. *Aberdeen-Springfield Canal Co.*, 133 Idaho at 87, 982 P.2d at 922. This Court must then determine whether the special master's

conclusion of clear and convincing evidence is supported by substantial and competent evidence. *Jenkins*, 103 Idaho at 389, 674 P.2d at 1261.

Here, the special master stated in her findings of fact that "The irrigation on the property was terminated in 1990 when Alder Creek water was diverted to Doug Rosenkrance's property." The special master based this conclusion on Reynolds' testimony at trial. Specifically, Reynolds testified that his father had begun irrigating the property in 1990 in order to "green it up a little bit here and there" Reynolds also stated that one day he returned to the property and found that the water was no longer flowing from Alder Creek onto the Storer property, but that it had all been diverted onto property owned by the water master, Doug Rosenkrance. Reynolds stated that when he asked Rosenkrance about the water, Rosenkrance stated that "there wasn't any more, that the water right was off" Reynolds did not pursue the issue because "we had quite a bit of trouble keeping the cows in and keeping the other cows out. So we just decided it wasn't worth it and took them home."

At trial, counsel for the McCrays asked Rosenkrance why he had terminated the water right on the property. At first, Rosenkrance stated that the director's report had indicated that in 1990 the property did not have a water right. However, when faced with the fact that the director's report had not been issued until 1992, Rosenkrance recanted. He then indicated, "nobody has called for the water right, anyway," and that "number one, there was no call for the water on the Storer place in 1990. And, number two, there hadn't been any assessments paid on the Storer place in 1990." However, Rosenkrance later stated that no assessments had been made on the place and further that even if Reynolds had asked to pay an assessment for the water rights, Rosenkrance would have been unable to set an amount.

The McCrays assert that Rosenkrance's questionable reasons for terminating the water right defeats the required of clear and convincing evidence. They argue that had Rosenkrance not interfered with the 1990 diversion, Reynolds may have been able to irrigate more of the property than only the 25 acres.

However, it appears that the special master considered this argument in her recommendation. In the special master's determination that all but 25 acres had not been irrigated, the special master appeared to rely on the testimony of Reynolds that the

property "wasn't set up for gravity irrigation." And that "there may have been enough water [from Alder Creek] if it had been leveled and disked and everything." This testimony appeared to convince the special master that even if Rosenkrance had not terminated the flow to the property, the property still could not have been irrigated because of the lack of ability to water the property.

To bolster this conclusion, the special master considered the testimony of Gerald Storer reliable, that the irrigation ditch being used by Reynolds to irrigate the property could only hold 25 inches of water. The special master also gave weight to the testimony of water agent Fritschle, that during an August 1990 investigation of the water rights, Fritschle did not see any erosion patterns and observed that "ditches were in bad shape in some places, and the property was barely indented where ditches had previously been located."

Therefore, we hold that the special master's conclusion that clear and convincing evidence exists is supported by substantial and competent evidence. The master's finding that the ditch that Reynolds was using could only hold 25 inches of water would further support this conclusion.

F. The Water Rights Were Not Resumed By Shane Rosenkrance.

The McCrays claim that in 1991 and 1992 Shane Rosenkrance resumed use of the water rights on the Storer property when, while he was leasing the Storer property, he used water from Alder Creek to irrigate his own property. The McCrays assert that since Shane used more water than he was entitled to during that time, it follows that he must have been using water rights from the subject property. This use, they claim, should result in a finding that the water right was resumed.

While the McCrays argue that there is evidence in the record to support their conclusion that Shane Rosenkrance used more water than he was entitled to while leasing the Storer property, they have failed to argue or provide evidence that any of that water was put to beneficial use anywhere other than on his own property. The McCrays have not challenged the special master's finding that Shane Rosenkrance "did not irrigate the land." It appears, that the McCrays are claiming that Shane resumed use of water right numbers 34-00600 and 34-00606, by changing the place of use from the Storer property to his own property.

This argument, however, is fatally flawed by the fact that Shane never sought to change the place of use of the water right. It has not been alleged that he sought the permission of the water district as required by I.C. § 42-108, or that he made application to change the place of use with the Department of Water Resources as required by I.C. § 42-222. Shane testified that he did not irrigate the subject property during his lease. It is clearly the law in Idaho that a water right cannot be resumed when the facts clearly establish that water was not applied to the land of which it was appurtenant.

Therefore, the fact that Shane used more water than he was entitled to appears to be irrelevant since it is undisputed that water was not applied to the Storer property during the time Shane held the lease.

G. Respondents Are Not Entitled To Attorney Fees On Appeal.

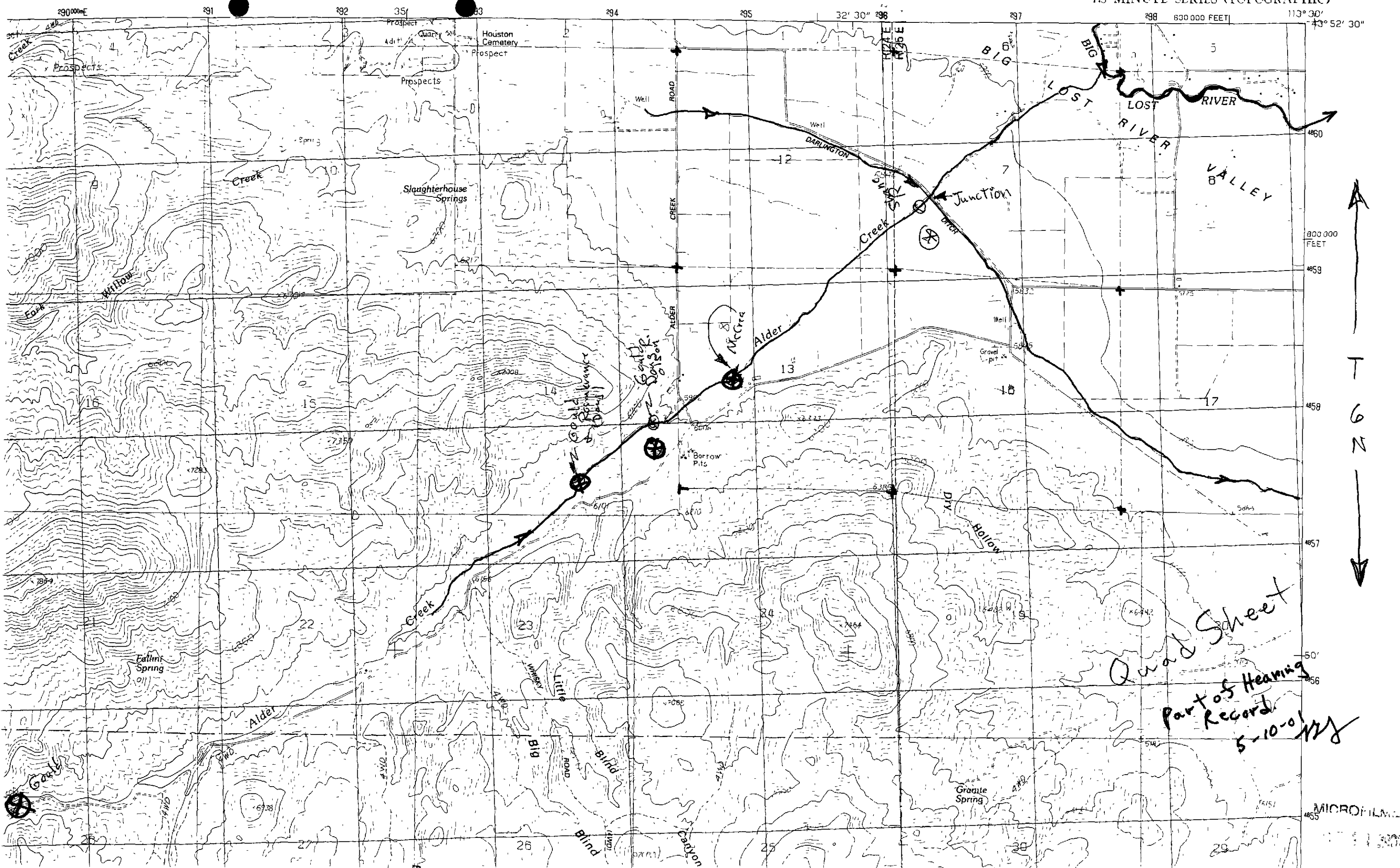
Respondents claim attorney fees and costs on appeal by arguing that the McCrays appeal "was brought, pursued or defended frivolously, unreasonably or without foundation" I.R.C.P 54(e)(1). Even though we find in favor of respondents, we are not persuaded that this appeal has been brought "frivolously, unreasonably or without foundation." The McCrays have provided reasonable arguments which were supported by citations to facts and to relevant authority. Therefore, we do not award respondents attorney fees on appeal.

IV.

CONCLUSION

The decision of the district court is affirmed for the reasons set out above. The McCrays have failed to show that the either district court or the special master erred in finding that the water rights had been abandoned and/or forfeited to all but 25 acres of the property. Respondents claim to attorney fees on appeal is denied. Costs to respondents.

Chief Justice TROUT, Justices SCHROEDER and WALTERS, and McKEE,
Senior District Judge, CONCUR.



Young, Norm

From: Meyer, Paul
Sent: Tuesday, May 01, 2001 1:58 PM
To: Young, Norm; Luke, Tim
Subject: Static Water Level in Anderson well (Arco)..

Norm and Tim,

Per Tim's request, on Monday, 04/30/01, I measured static water level in Joel Anderson's well located in the NWSWSW, Sec. 4, Twn 04N, Rge 26E

Mr. Anderson also asked if I would measure three other wells while I was there. I was able to measure two of the three, but unfortunately lost the probe and approx. 45' - 50' of coax line in the third well. I'll file a memorandum with an equipment report as soon as I can.

Mr. Anderson also voiced his concern about enforcement of the measuring device requirement condition on the Sorenson/Perkes transfer and requested that we make sure that the device is in place on the Sorenson/Perkes well per that condition.

I also recorded GPS locations for each of the three measured well and have attached an ArcView-generated map showing the wells and depths to water.

Here is the static water level information:

<u>Owner:</u>	<u>Legal Description</u>	<u>Static Water:</u>
Joel Anderson	NWSWSW, 04-04N-26E	34.8 feet
Anderson/Pearson	NWNESW, 09-04N-26E	34.0 feet
Haney/Beal/Beal	NENWNW, 04-04N-26E	43.6 feet

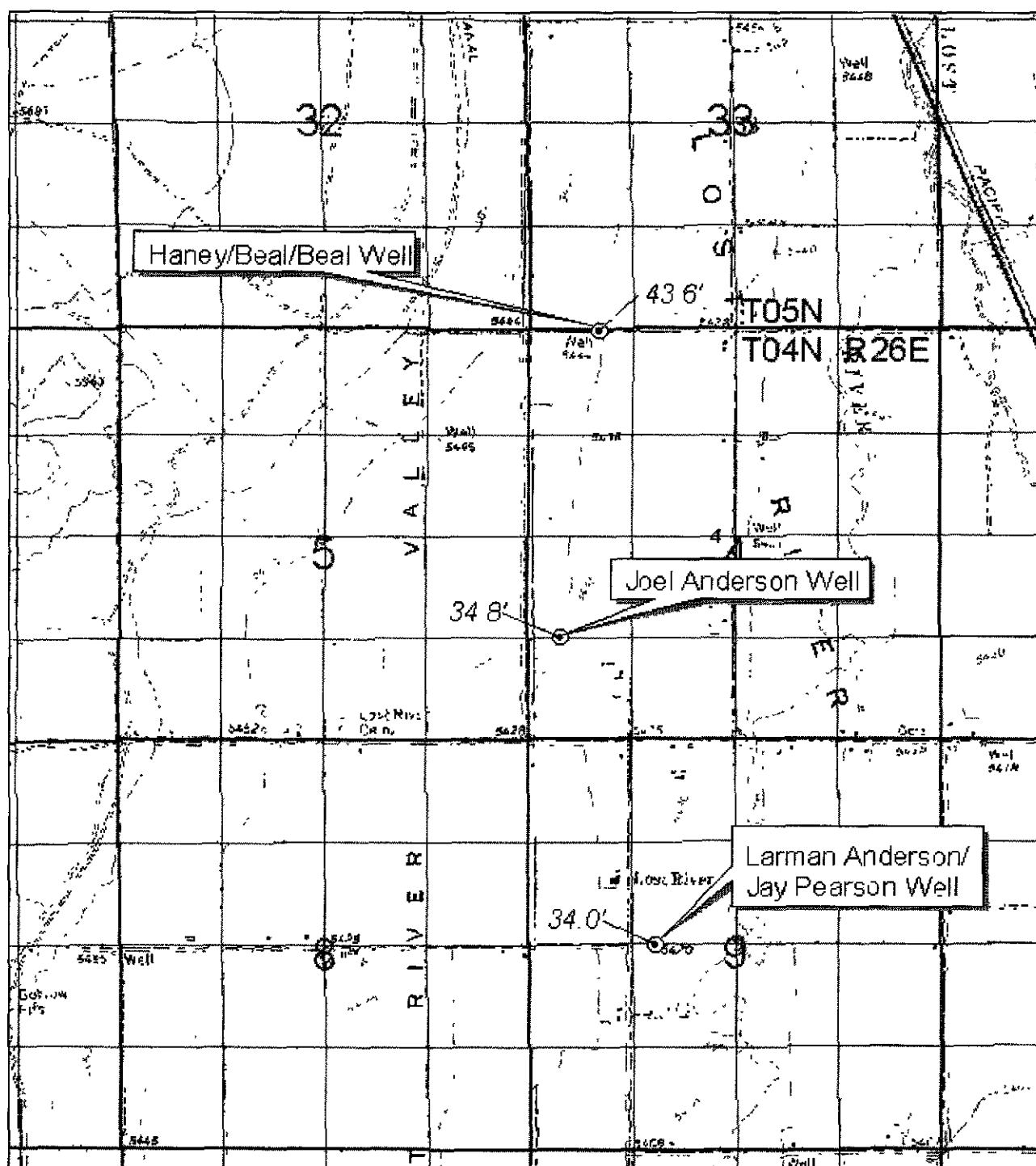
If you have any questions, feel free to give me a call.

--Paul Meyer



anderson wells.jpg

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0.5 0 0.5 1 1.5 Miles

● Measured Wells
34.8' Static Water Level

1:24000

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OCT 11 2001

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IDAHO FALLS, IDAHO 83402

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APR 13 2001

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Department of Water Resources
Eastern Region

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1. Article Addressed to

SHANE ROSENKRANCE

~~RT 1 BOX 25A~~ 5532 BARTON FLAT Rd

MACKAY ID 83251

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OCT 1 1999

2 Article Number (Copy from service label)

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B. Date of Delivery

04-12-01

C. Signature

X

Mimi Rosenkrance

☒ Agent☒ Addressee

D. Is delivery address different from item 1?

☐ Yes

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☐ No

3. Service Type

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EASTERN DISTRICT OFFICE
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IDAHO FALLS, IDAHO 83402

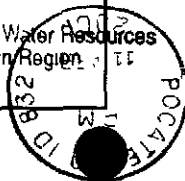
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1 Article Addressed to

JOHN & MATEA MCCRAY
3470 COBBLESTONE LN
IDAHO FALLS ID 83404

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Signature

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MATEA MCCRAY

☐ Agent☐ Addressee

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☐ Yes

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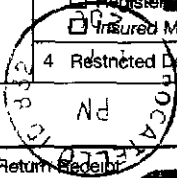
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4 Restricted Delivery? (Extra Fee)

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Eastern Region

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1 Article Addressed to

DOUGLAS ROSENKRANCE
RT 1 BOX 24
MACKAY ID 83251

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OCT 11 1999

COMPLETE THIS SECTION ON DELIVERY

A Received by (Please Print Clearly) B Date of Delivery

04-06-01

C Signature

X *Julie Johnson* ☒ Agent
☐ Addressee

D Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below ☐ No

3 Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ COD

4 Restricted Delivery? (Extra Fee) ☐ Yes

2 Article Number (Copy from service label)

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

APR 19 2001

Department of Water Resources

IN THE MATTER OF APPLICATION)
FOR EXCHANGE OF WATER RIGHTS)
NO. 34-10400 AND 34-12050 IN THE NAME)
OF SHANE AND DOUGLAS ROSENKRANCE)

NOTICE OF
HEARING

On August 21, 2000, Shane and Douglas Rosenkrance filed with the Department of Water Resources Application for Exchange of Water Rights. The application was protested by John and Matea McCray.

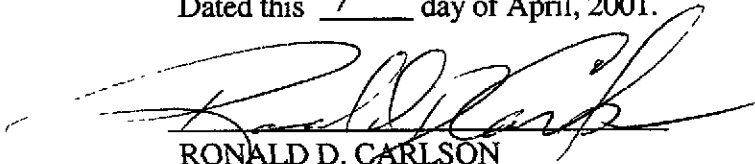
**THE DEPARTMENT HAS NOW SCHEDULED THE MATTER FOR
HEARING ON MAY 10TH, 2001, AT 9:30 A.M., AT THE IDWR
CONFERENCE ROOM IN IDAHO FALLS, ID.**

The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 4th day of April, 2001.


RONALD D. CARLSON
Regional Manager

NOTICE OF HEARING

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OCT 11 2001

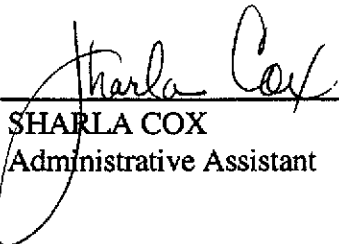
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2001, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

John and Matea McCray
3470 Cobblestone Lane
Idaho Falls ID 83404

Shane Rosenkrance
Rt 1 Box 25A
Mackay ID 83251

Douglas Rosenkrance
Rt 1 Box 24
Mackay ID 83251



SHARLA COX
Administrative Assistant

CERTIFICATE OF SERVICE

MICROFILMED

OCT 11 2001

Mountain Springs
Ranch

Mackay Office

350 Barton Flat Rd

Mackay Id

83251

589-3110

office 588-3086 (208)

Fax 588-2646 (208)

Fax Message to Follow

Date 1-3-00

From Shane Rosentrance

time 12:20 PM

This cover page plus 1 page(s)

Please deliver the following
teletype to:

Name Harold Jones

company IDWR

Department/Title _____

Fax # 525-7177

Comments: Please call back or fax back comments

please call if the teletype you
receive is incomplete or illegible. Thank you.

MICROFILMED

OCT 11 2001

To Harold Jones

Proposed to resolve protest of application for exchange of water right no's 34-10400 and 34-12050

I propose that as long as exchange is in effect that right no 34-12050, "60 inch of 1882" be subordinate to McCray's "9-30-1882" right. This would make their right senior as long as the exchange is in effect. This would also enhance McCray's right by putting more water to their diversion than when it was diverted up stream. Hopefully this proposal is satisfactory to satisfy your needs

Thank you,

Shane Rosenkranz

Mackay Id 83251

588-3086

588-3110

589-3110

MICROFILMED

OCT 11 2001

SRBA

PARTIAL DECREE 34-10400

Issued on 11-24-1997.

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Contact IDWR or the Court for a Certified Copy.

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NAME AND ADDRESS:	SHANE D ROSENKRANCE MIMI L ROSENKRANCE 5532 BARTON FLAT RD MACKAY, ID 83251		
SOURCE:	ALDER CREEK	TRIBUTARY: BIG LOST RIVER	
QUANTITY:	5.00 CFS		
PRIORITY DATE:	05/01/1928		
POINT OF DIVERSION:	T06N R25E S07 LOT 03 (NWNWSW)	Within Custer County	
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	05-01 TO 10-15	5.00
PLACE OF USE:	Irrigation		Within Custer
	T06N R25E S09	SWSW 18.0	SESW 15.0
		SWSE 0.3	
	S16	NWNE 3.7	NENW 35.0
		NWNW 29.0	SWNW 31.0
		NWSW 19.0	SWSW 37.0
		SESW 4.0	
	S17	SENE 8.5	NESE 8.5
		SESE 6.0	
	S20 LOT 01 (NENE)	4.0	
	S21 LOT 03 (NENW)	28.0	LOT 04 (NWNW) 25.0
	272.0 Acres Total		

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

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

Return to SRBA Home Page

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JUL 1 1 2001



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 28, 2000

SHANE ROSENKRANCE
RT 1 BOX 25A
MACKAY ID 83251

RE: Application for Exchange of Water No's. 34-10400 and 34-12050

Dear Mr. Rosenkrance:

Enclosed is a copy of a protest filed against the issuance of the above referenced application. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Idaho Code ' 42-203):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The applicant must be prepared to present evidence and/or testimony addressing each of the six items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

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OCT 11 2001

Page 2

If this office can be of further assistance, please contact us.

Sincerely,


HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: State Office

MICROFILMED
JUL 11 2001



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 28, 2000

DOUGLAS ROSENKRANCE
RT 1 BOX 24
MACKAY ID 83251

RE: Application for Exchange of Water No's. 34-10400 and 34-12050

Dear Mr. Rosenkrance:

Enclosed is a copy of a protest filed against the issuance of the above referenced application. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Idaho Code ' 42-203):

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The applicant must be prepared to present evidence and/or testimony addressing each of the six items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

MICROFILMED

OCT 11 2001

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Page 2

If this office can be of further assistance, please contact us.

Sincerely,


HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: State Office

MICROFILMED
OCT 11 2001



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 28, 2000

JOHN AND MATEA MC CRAY
3470 COBBLESTONE LANE
IDAHO FALLS ID 83404

RE: Application for Exchange of Water No's. 34-10400 and 34-12050

Dear Protestant:

Your protest against approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in their approving or denying the application (Idaho Code ' 42-203) he following are the principle items the Department can consider in either approving or denying the applications for (Idaho Code ' 42-203):

1. Will the proposed use reduce the quantity of water under existing rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

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OCT 11 2001

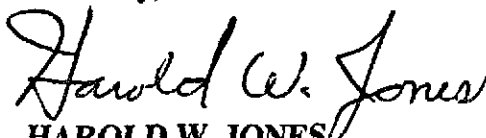
Page 2

The protestant must be prepared to present proof of allegations involving one or more of the six items.

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question.

If this office can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

MICROFILMED
OCT 11 2001

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Ruth E Burchill, representing the
Challis Messenger, a weekly newspaper, pub-
lished at Challis, Idaho, do solemnly swear that
the notice hereto attached and made a part here-
of, was published in the regular and entire issue
of the Challis Messenger for 2
consecutive weeks, commencing with the issue
dated Sept 7 2000 and ending with
the issue dated Sept 14 2000.

Ruth E Burchill

STATE OF IDAHO

COUNTY OF CUSTER

On this 14th day of Sept. in the
year of 2000 before me, a Notary Public,
personally appeared Ruth E Burchill
known or identified to me to be the person
whose name subscribed to the within instru-
ment, and being by me first duly sworn, declared
that the statements herein are true, and ac-
knowledgeed to me that he executed the same.

James J. Wangis
Notary Public for Idaho

Residing at Challis

My commission expires: 4/30/04

NOTICE OF APPLICATION FOR EXCHANGE OF WATER for 34-10400 and 34-12050

Notice is given that the Shane
Rosenkrance, Rt 1 Box 25A,
Mackay ID 83251, owner of right
34-10400 and Douglas Rosen-
krance, Rt 1 Box 24, Mackay ID
83251, owner of right 34-12050,
are applying for an exchange of
water.

Decree No. 34-10400

Source: Alder Creek/Big Lost
River

Amount: 1.20 cfs

Priority: 05/01/1928

Point of Diversion(s): NWNWSW
SEC 7 T06N R25E, CUSTER
COUNTY

The water is used for irrigation
of 272 acres within SEC 9, 16, 17,
20 and 21 T06N R25E, B.M.

Decree No. 34-12050

Source: Alder Creek/Big Lost
River

Amount: 1.20 cfs

Priority: 09/30/1882

Point of Diversion(s): NWNSE
SEC 14 T06N R24E, CUSTER
COUNTY.

The water is used for irrigation
of 162 acres within SEC 12 and
13 T06N R24E, B.M.

Each party will exchange 1.20
cfs of their rights and utilize their
own point of diversion to get this
water. The places of use stay the
same.

The application will be subject
to all prior water rights. Any
protest against approval of the
proposed amendment must be
filed with the Department of Water
Resources, Eastern Region, 900 N
Skyline Dr, Ste. A, Idaho Falls ID
83402 together with a protest fee
of \$25.00 for each application on
or before September 25, 2000. The
protestant must also send a copy
of the protest to the applicant.

Karl J. Driscoll, Director
Pub: Sept 14, 2000

RECEIVED

SEP 15 2000

Department of Water Resource
Eastern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

August 31, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

SHANE ROSENKRANCE
RT 1 BOX 25A
MACKAY ID 83251

RE: Application for Exchange of Water

Dear Applicant:

This office is currently in the process of advertising the application in the Challis Messenger on September 7 and 14, 2000. The advertisement will be published once a week for two consecutive 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.

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

Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W. Jones
Water Right Supervisor

HWJ::sc

MICROFILMED

OCT 11 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

August 31, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

DOUGLAS ROSENKRANCE
RT 1 BOX 24
MACKAY ID 83251

RE: Application for Exchange of Water

Dear Applicant:

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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.

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Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W. Jones
Water Right Supervisor

HWJ::sc

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SEP 1 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

August 31, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

CHALLIS MESSENGER
PO BOX 405
CHALLIS ID 83226

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the dates indicated in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before September 25, 2000.

Respectfully submitted,

Sharla Cox
Administrative Assistant

Enc.



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SEP 1 2000

NOTICE OF APPLICATION FOR EXCHANGE OF WATER
for 34-10400 and 34-12050

Notice is given that the Shane Rosenkrance, Rt 1 Box 25A, Mackay ID 83251, owner of right 34-10400 and Douglas Rosenkrance, Rt 1 Box 24, Mackay ID 83251, owner of right 34-12050, are applying for an exchange of water.

Decree No.: 34-10400 Source: Alder Creek / Big Lost River
Amount: 1.20 cfs Priority: 05/01/1928
Point of Diversion(s): NWNWSW SEC 7 T06N R25E, CUSTER COUNTY
The water is used for irrigation of 272 acres within SEC 9, 16, 17, 20 and 21 T06N R25E,
B.M.

Decree No.: 34-12050 Source: Alder Creek / Big Lost River
Amount: 1.20 cfs Priority: 09/30/1882
Point of Diversion(s): NWNSE SEC 14 T06N R24E, CUSTER COUNTY
The water is used for irrigation of 162 acres within SEC 12 and 13 T06N R24E, B.M.

Each party will exchange 1.20 cfs of their rights and utilize their own point of diversion to get this water. The places of use stay the same.

The application will be subject to all prior water rights. Any protest against approval of the proposed amendment must be filed with the Department of Water Resources, Eastern Region, 900 N Skyline Dr, Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before September 25, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher
Director

Published in the Challis Messenger on September 7 and 14, 2000.

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$\frac{1}{2} \times \frac{1}{2}$