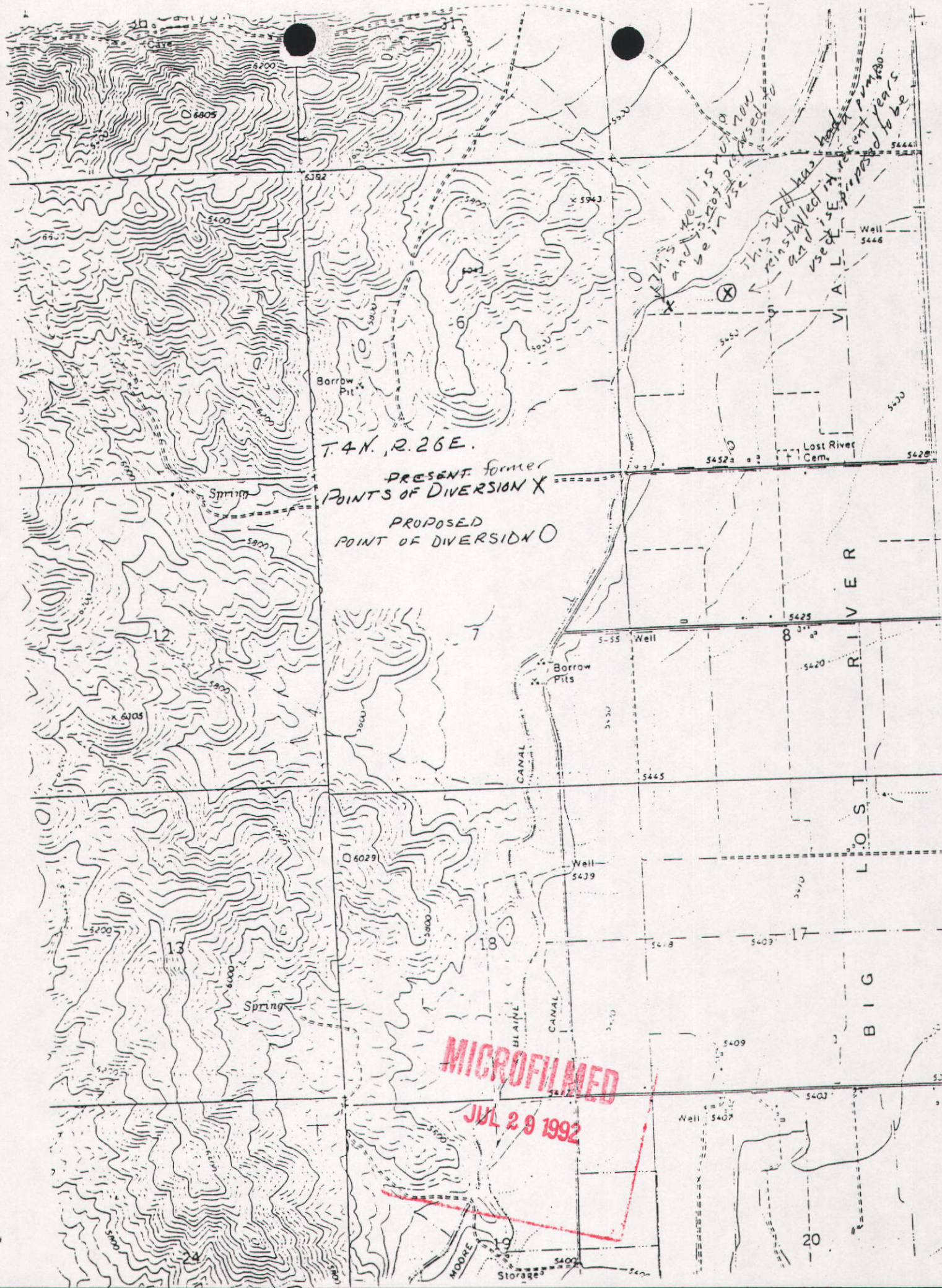




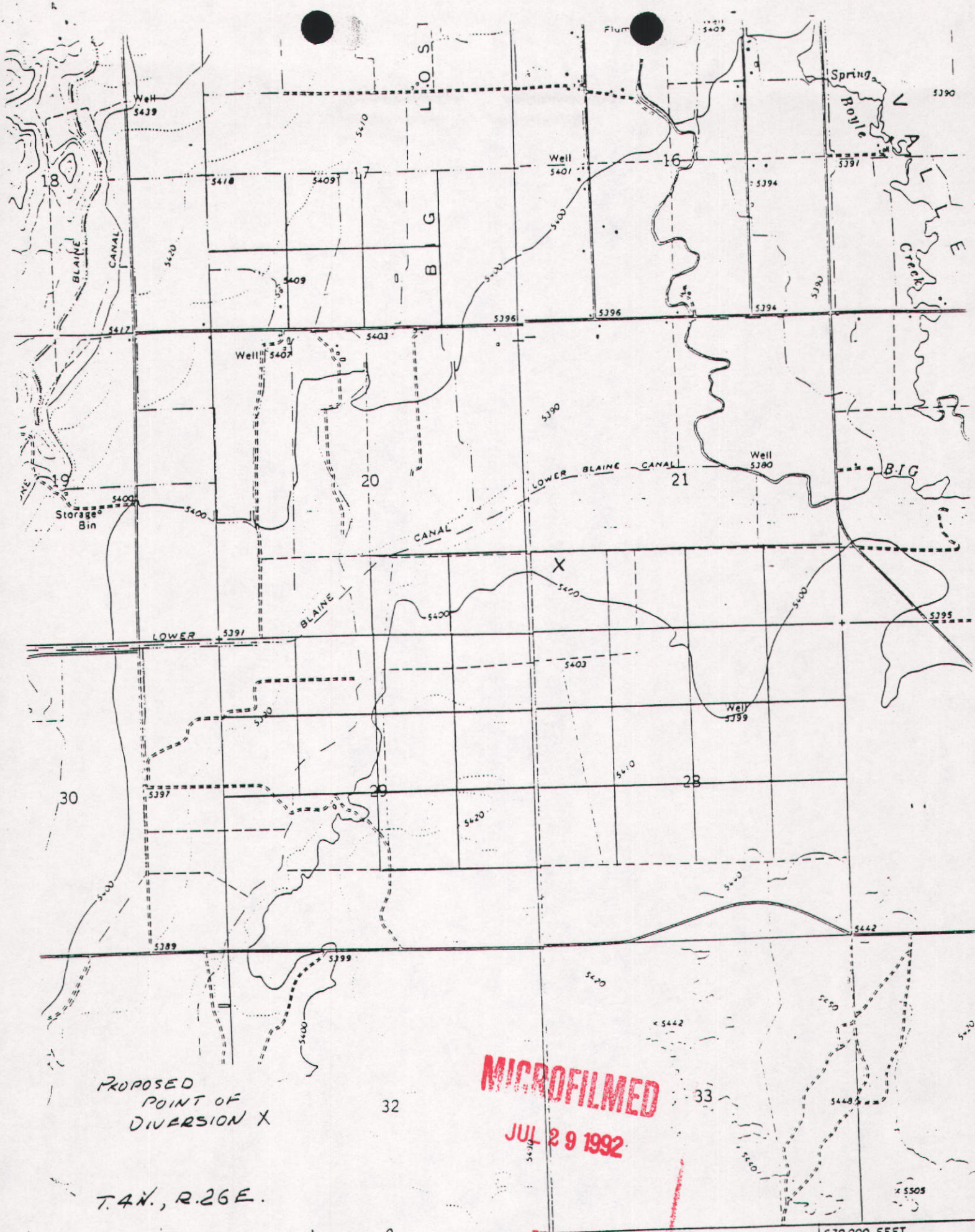
T.4N. R.26E.

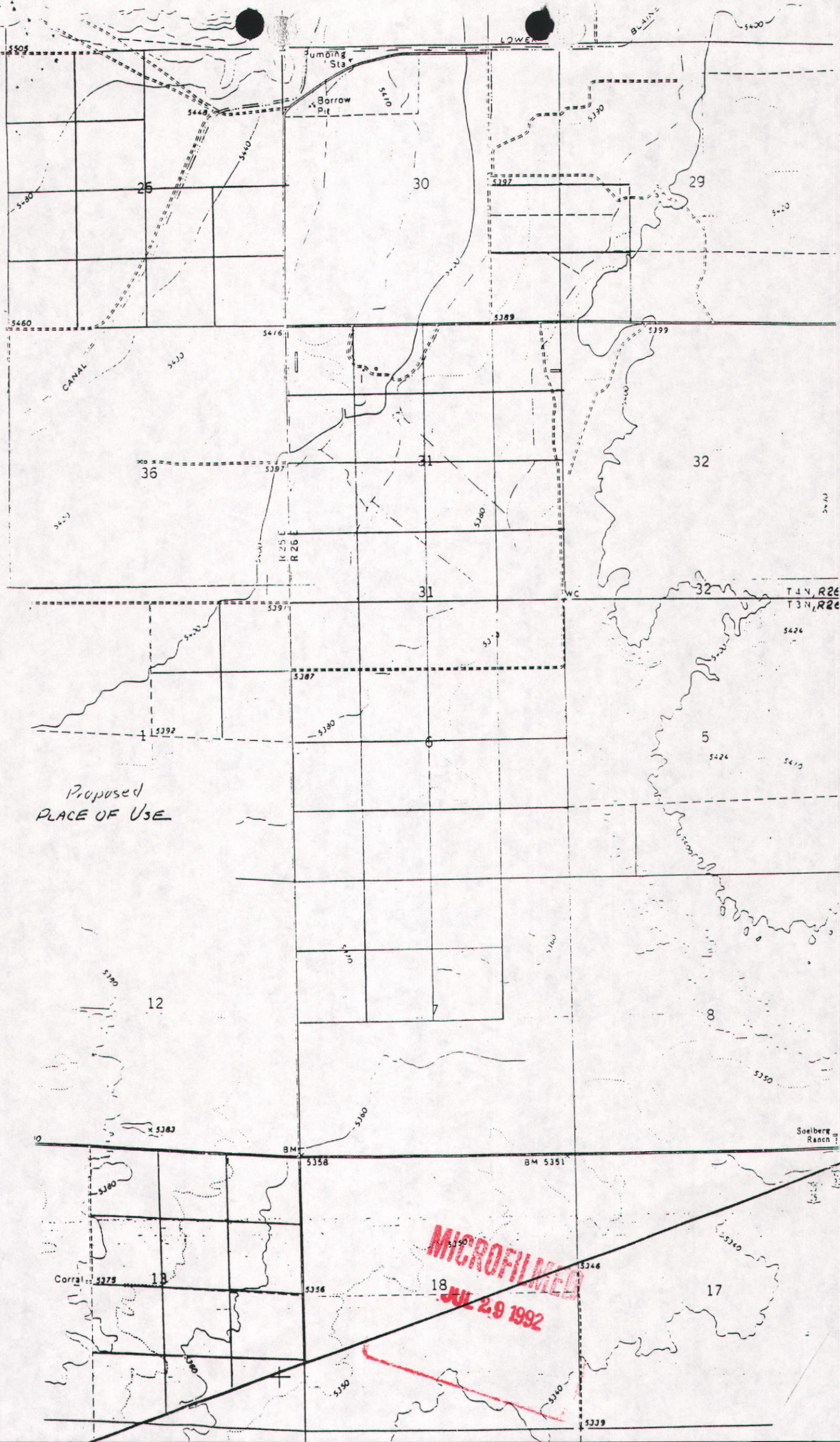
PRESENT former
POINTS OF DIVERSION X

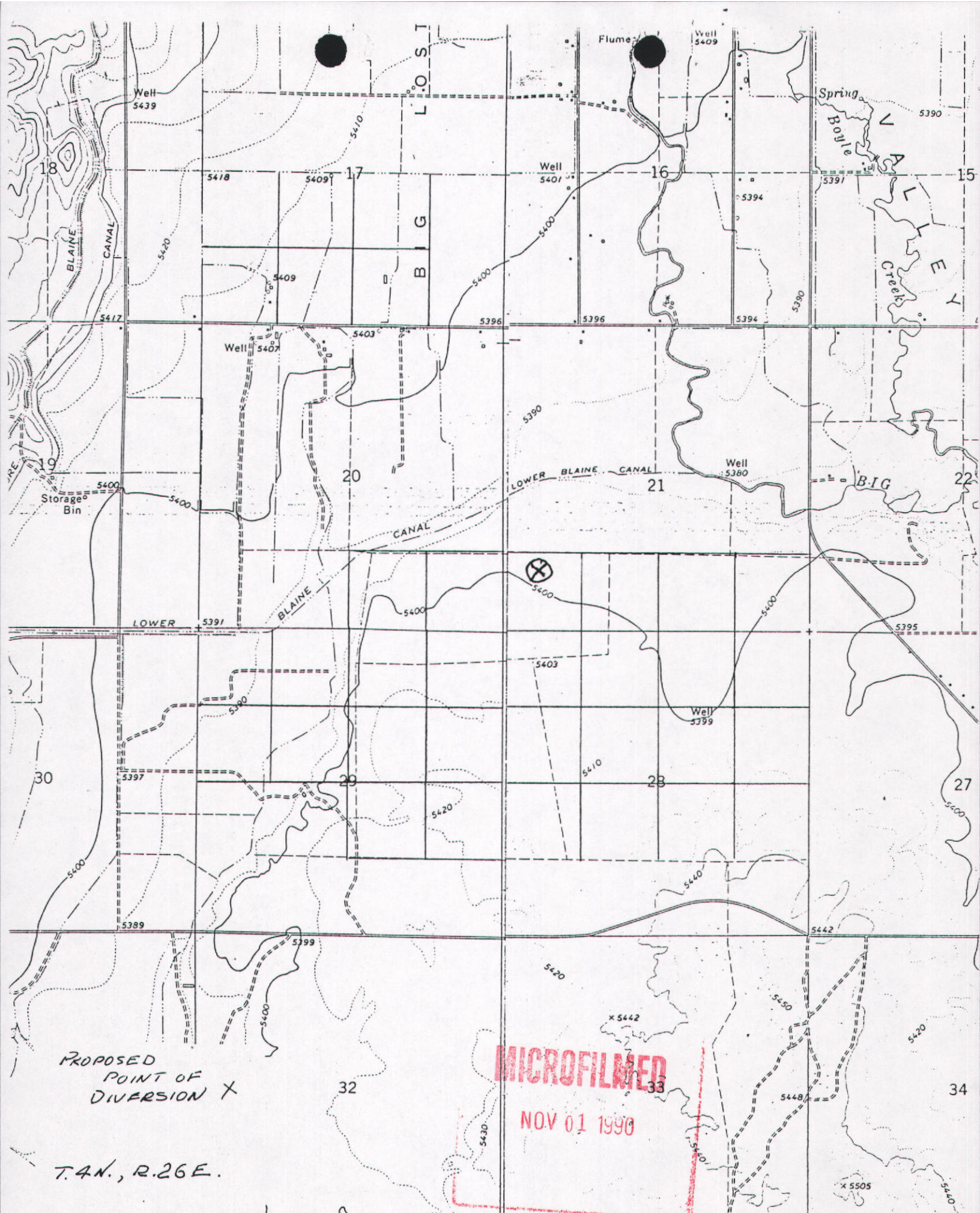
PROPOSED
POINT OF DIVERSION O

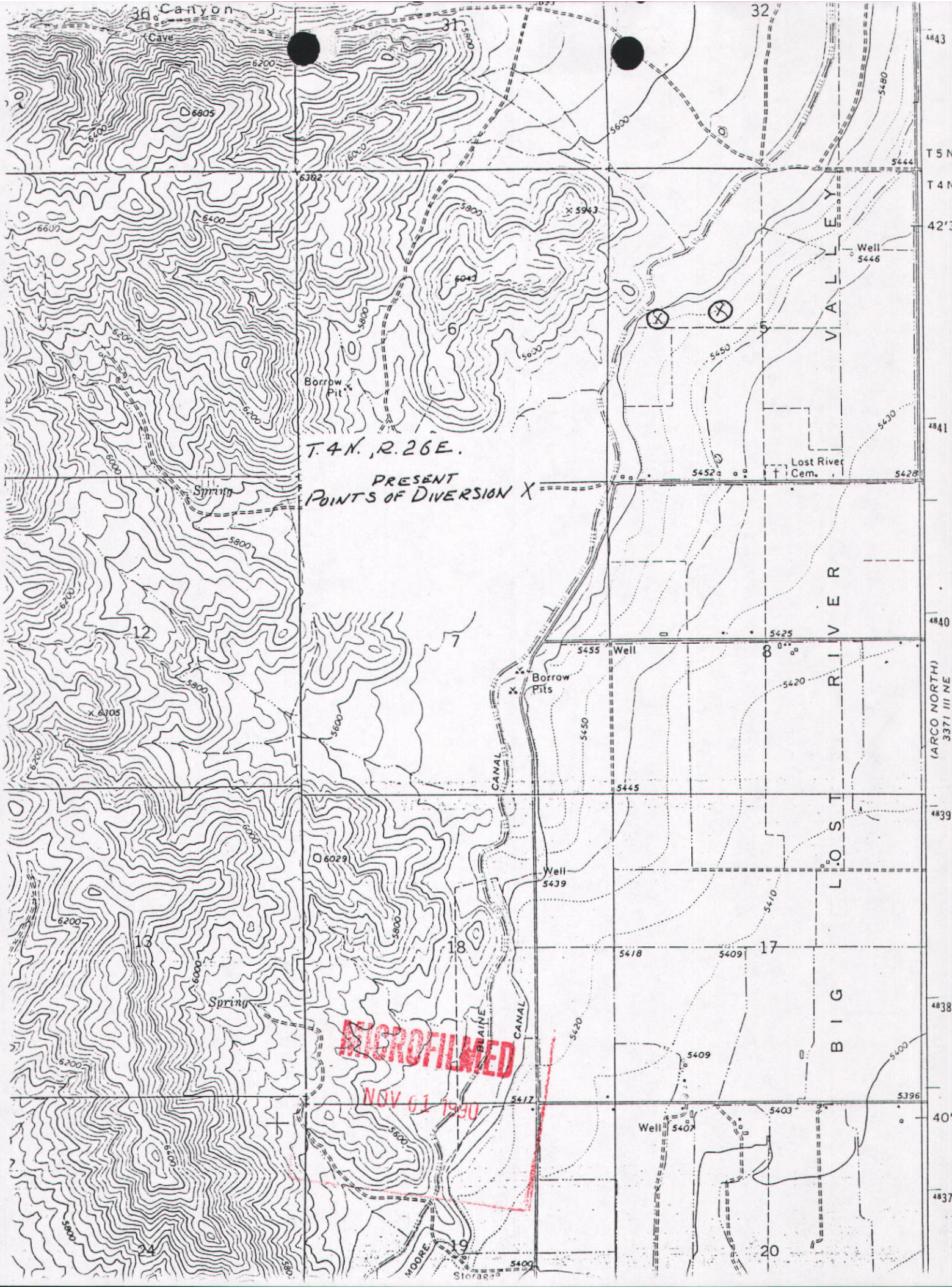
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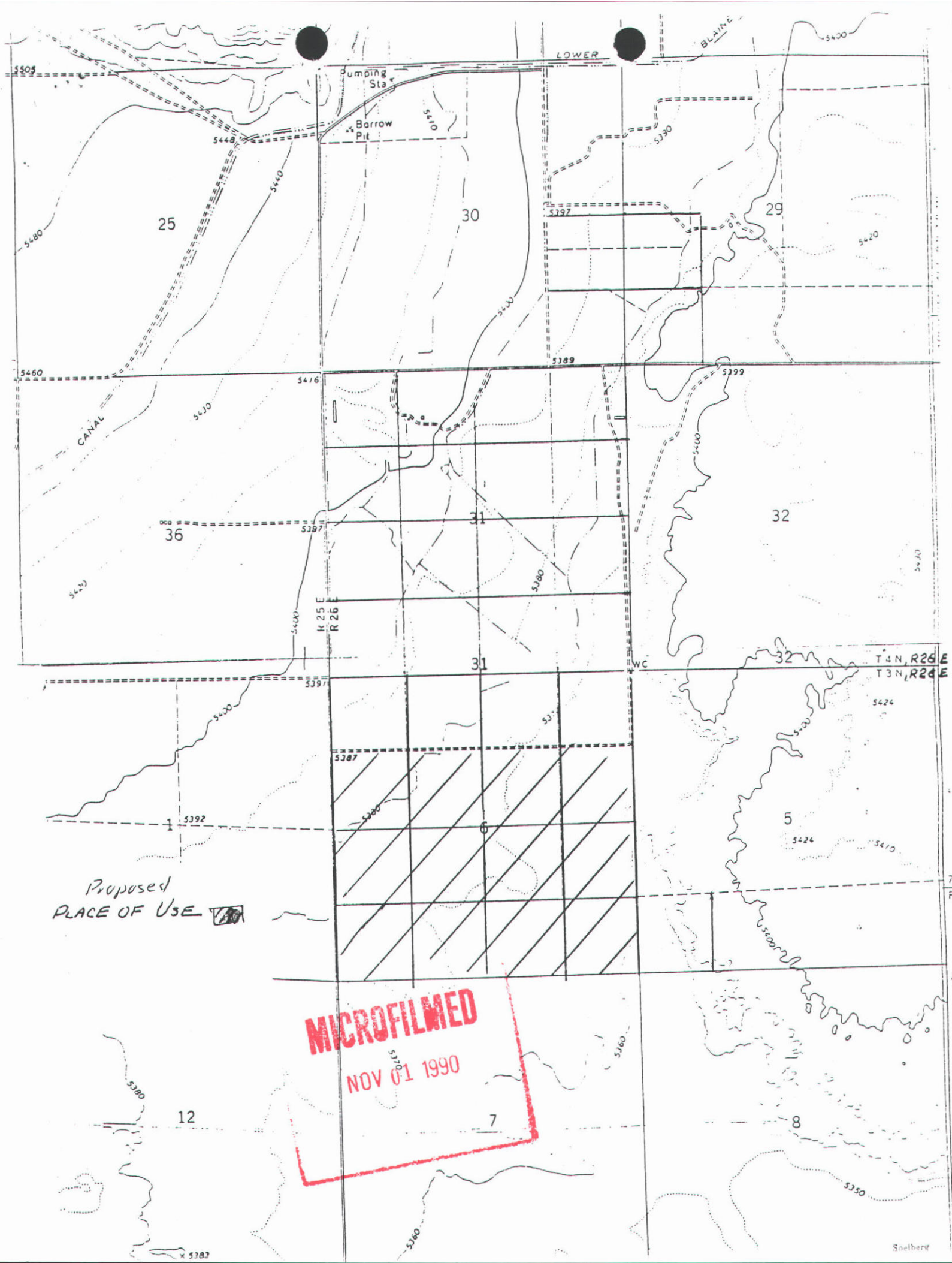


T. 4 N., R. 26 E.

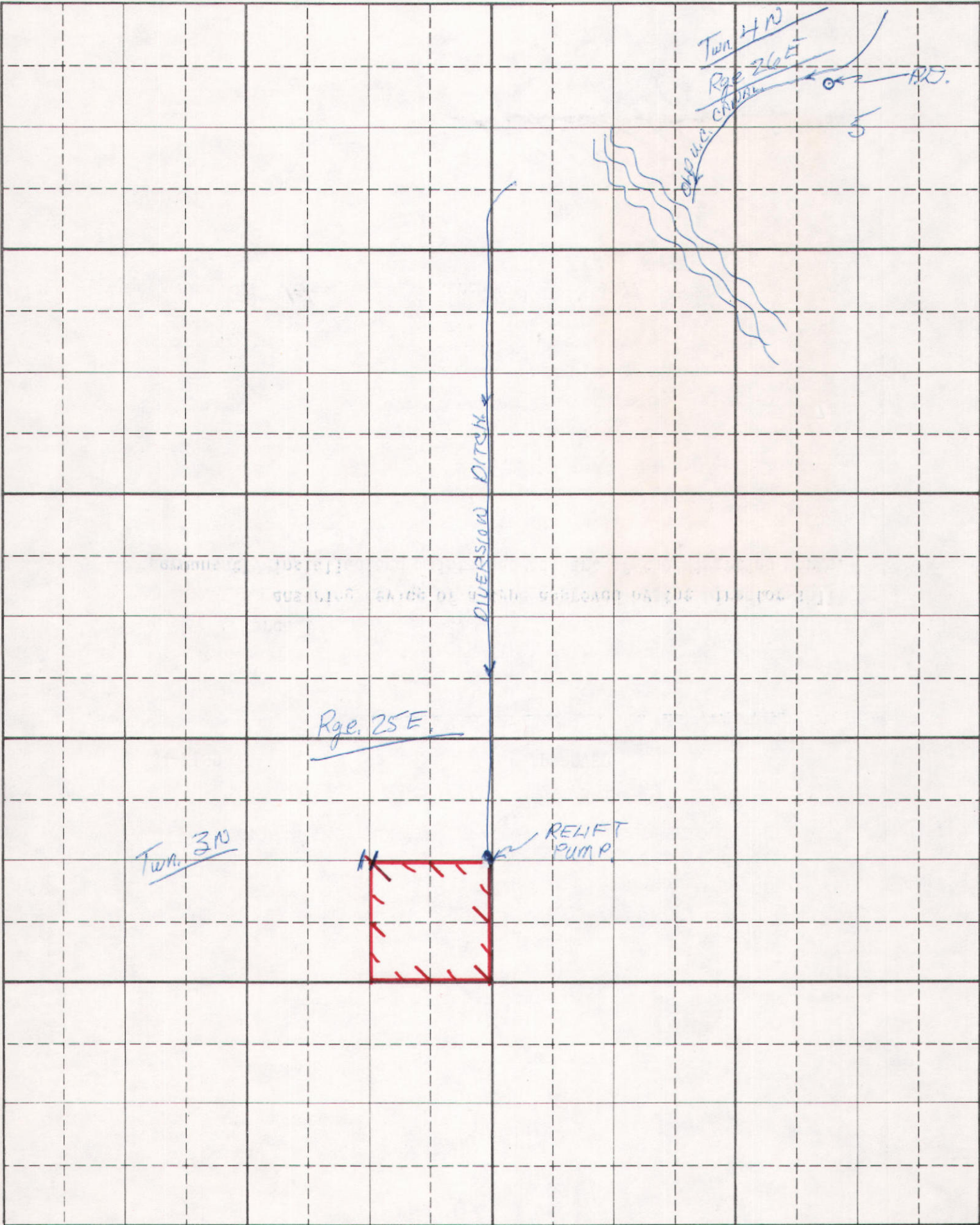
PRESENT
POINTS OF DIVERSION X

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11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Marshall Todd Perkins
(Applicant)

Affidavit of Publication

RECEIVED

FEB 23 1977

Department of Water Resources
Eastern District Office

I, Le Ella Cammack, of the
Arco Advertiser, a weekly newspaper of general
circulation, published weekly at Arco, Idaho, since
March, 1909, do solemnly swear that a copy of
this notice, per clipping attached, was published
weekly in the regular and entire issue of said
newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with

the issue dated 1-13-77

and ending with the issue dated 1-20-77

Le Ella Cammack

Subscribed and sworn to before me this

21 day of Feb, 1977

Robert G. Jones
Notary Public

Residence: Arco, Idaho.

My commission expires 5/14, 1978

PUBLIC NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that
Marshal Todd Perkes, Arco, Idaho,
has on 1-06-77 submitted Ap-
plication No. 34-7169 for a permit to
appropriate 5.32 cubic feet per
second of water from a ground-
water source by means of well and
pump within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 5,
T. 4N, R. 26E, B.M., Butte County.
The water will be diverted through
the Timberdome Canal and
rediverted at a point within the
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, T. 3N, R. 25E,
B.M.; to be used from Apr. 1 to Nov.
1 for the irrigation of 160 acres
within the SE $\frac{1}{4}$, Sec. 11, T. 3N, R.
25E, B.M.

If issued, this permit will be
subject to all prior water rights.
Protests against the granting of the
permit must be filed with the Idaho
Department of Water Resources,
1515 Lincoln Road, Idaho Falls,
Idaho, 83401 on or before January
31, 1977.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser,
Arco, Idaho on January 13 and
January 20, 1977.

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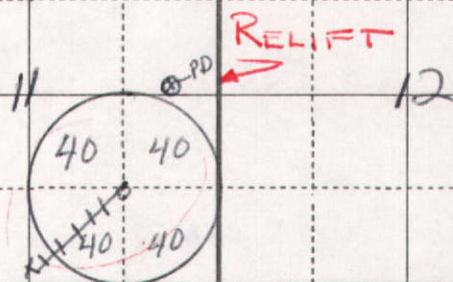


Diagram of System

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3812

APPLICATION FOR TRANSFER OF WATER RIGHT

Department of Water Resources
Eastern District Office

PART 1

Name of applicant M. Todd Perkes and Juel Aikele Phone (208) 523-0620
Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls, ID 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Present place of use for Perkes' rights is in a set aside program; pending application for permit of Aikele for portion of place of use is involved in litigation. This will provide a method for legal diversion of one Aikele well and additional water for other places of use which are short of water because of drought.

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

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|-----------------|-------------------|-----------------------|-------------------|--------------------------|
| <u>34-7080A</u> | <u>09/23/1974</u> | <u>2.67 cfs</u> | <u>Irrigation</u> | <u>April 1 to Nov. 1</u> |
| <u>34-7136</u> | <u>03/26/1976</u> | <u>5.50 cfs</u> | <u>Irrigation</u> | <u>April 1 to Nov. 1</u> |
| <u>34-7169</u> | <u>01/06/1977</u> | <u>4.48 cfs</u> | <u>Irrigation</u> | <u>April 1 to Nov. 1</u> |
| | | | | to _____ |
2. Total amount of water being transferred 12.65 (But see conditions in licenses) cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
		SW	SW	21	4N	26E	Butte	Aikele Well
		SE	NW	5	4N	26E	Butte	Perkes Well

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5. Lands irrigated or place of use:

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Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
3N	25E	1	6.9	6.9	6.9	6.9													27.6
		13	4.2	6.3	7.4	8.4	6.3			6.3	7.8			3.8	8.2	8.4	4.8	1.1	73.0
4N	25E	25					6.9	6.9	6.9	8.4	8.4	6.9	6.9	6.9	8.4	6.9	6.9		87.3
3N	26E	5											3.5						3.5
		6	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	7.3	6.1	8.4	8.4	8.1	5.5	127.8
		7		1.4	4.3			1.0	2.7	.6									10.0
4N	26E	29									7.2	2.2							9.4
		30													8.2			8.2	16.4
		31	7.1	7.3	8.2	8.2	5.7	6.9	8.2	7.8	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	125.0

Total acres 480.0

PART 1**6 General Information**

- a. Description of diversion system Wells and pumps.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
This land is presently in a federal set aside program and is not being irrigated
so there will be no effect for the duration of the lease agreement between
Perkes and Aikele.
- d. Remarks
The three licenses, 34-7080A, 34-7136, and 34-7169, appear to show the two
wells or points of diversion for the three rights in T.3N., R.25E., when, in fact,
the wells are and always have been in T.4N., R.26E.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No 34-07080A/07136/07169
APPROVED
And said application is hereby _____, subject to the following limitations and conditions:
PURSUANT TO FINAL MEMORANDUM DECISION & ORDER DATED _____

Michael J. Higgins
JUL 29 1992

Witness my hand this 27th day of July, 19 92

K. Keith Higgins
DIRECTOR

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1 Right evidenced by

- a. Decree No. _____ Decreed to _____
 in case of _____ vs _____
 dated _____ in _____ county of _____
- b. License No. 34-7080A issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority September 23, 1974

5. Water is used for the following purpose

amount 2.67 cfs for Irrigation purposes from April 1 to Nov. 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right 2.67 cfs cubic feet per second and/or _____ acre-feet per annum
 (But see condition in license)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11	40	40	40	40													160

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Total acres 160

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

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

PART 2
(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 34-7136 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____4. Date or priority March 26, 1976

5. Water is used for the following purpose:

amount 5.5 cfs for Irrigation purposes from April 1 to Nov. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 5.5 cfs cubic feet per second and/or _____ acre-feet per annum
(But see condition in license)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11					40	40	40	40									160

Total acres 160

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

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 34-7169 issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No _____ which produced this right.

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority January 6, 1977

5. Water is used for the following purpose:

amount 4.48 cfs for Irrigation purposes from April 1 to Nov. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 4.48 cfs cubic feet per second and/or _____ acre-feet per annum.
(But see condition in license)

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
3N	25E	11													40	40	40	40	160

MISSOURI
JUL 29 1992

Total acres 160

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

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

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

SEE ATTACHED MAPS FOR CURRENT POINTS
OF DIVERSION AND PLACE OF USE AND FOR
PROPOSED NEW POINT OF DIVERSION AND
PLACE OF USE.

MISSING
JUL 29 1992

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

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

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

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

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

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

Subscribed and sworn to before me this

31 day of December, 19 90.

Paul Allen / M Todd Parker
(Signature of Applicant)

Lynn Wartchow
(Notary Public)

My commission expires

4/28/92

FOR DEPARTMENT USE ONLY

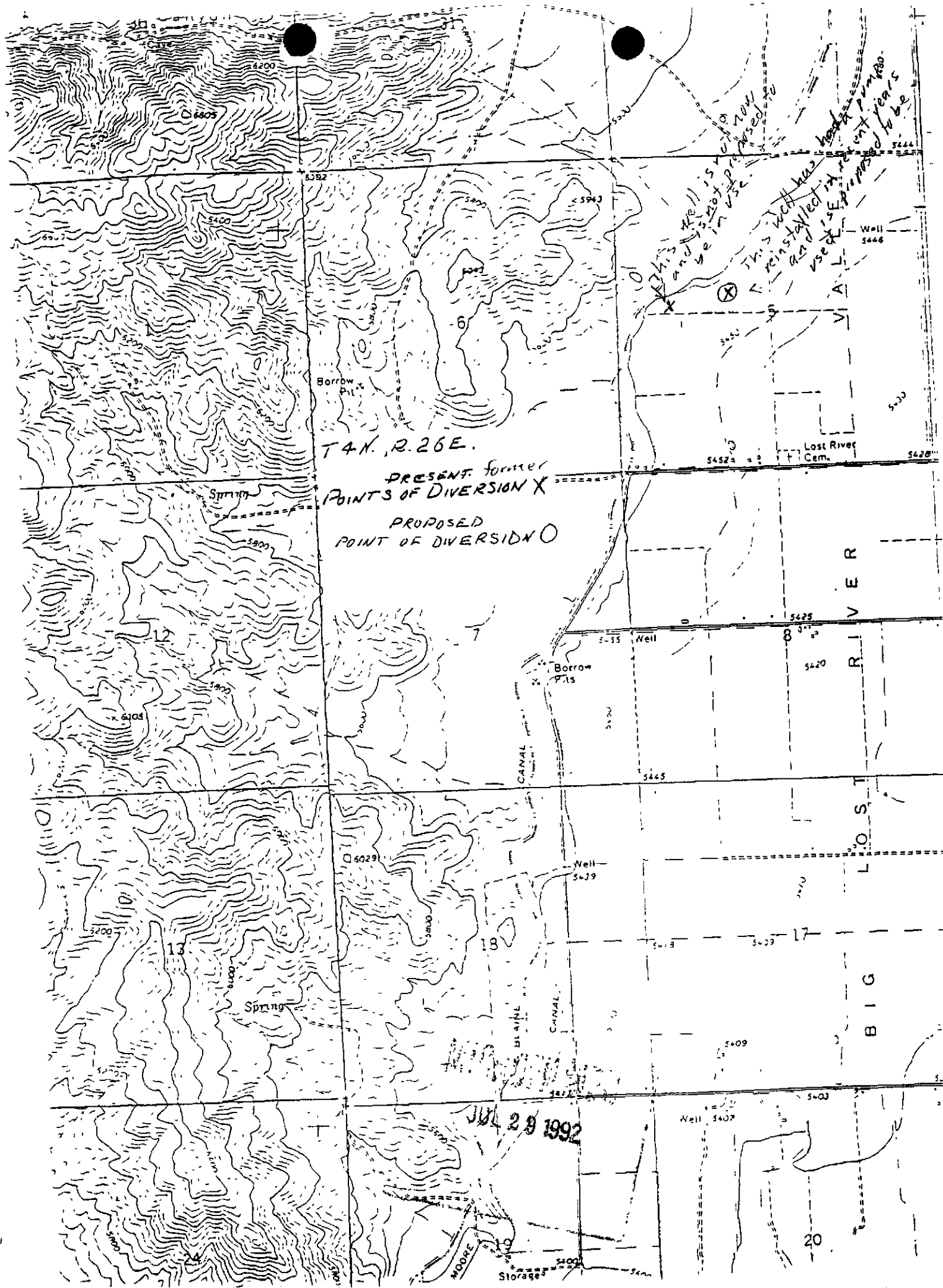
Transfer contains _____ pages and _____ attachments

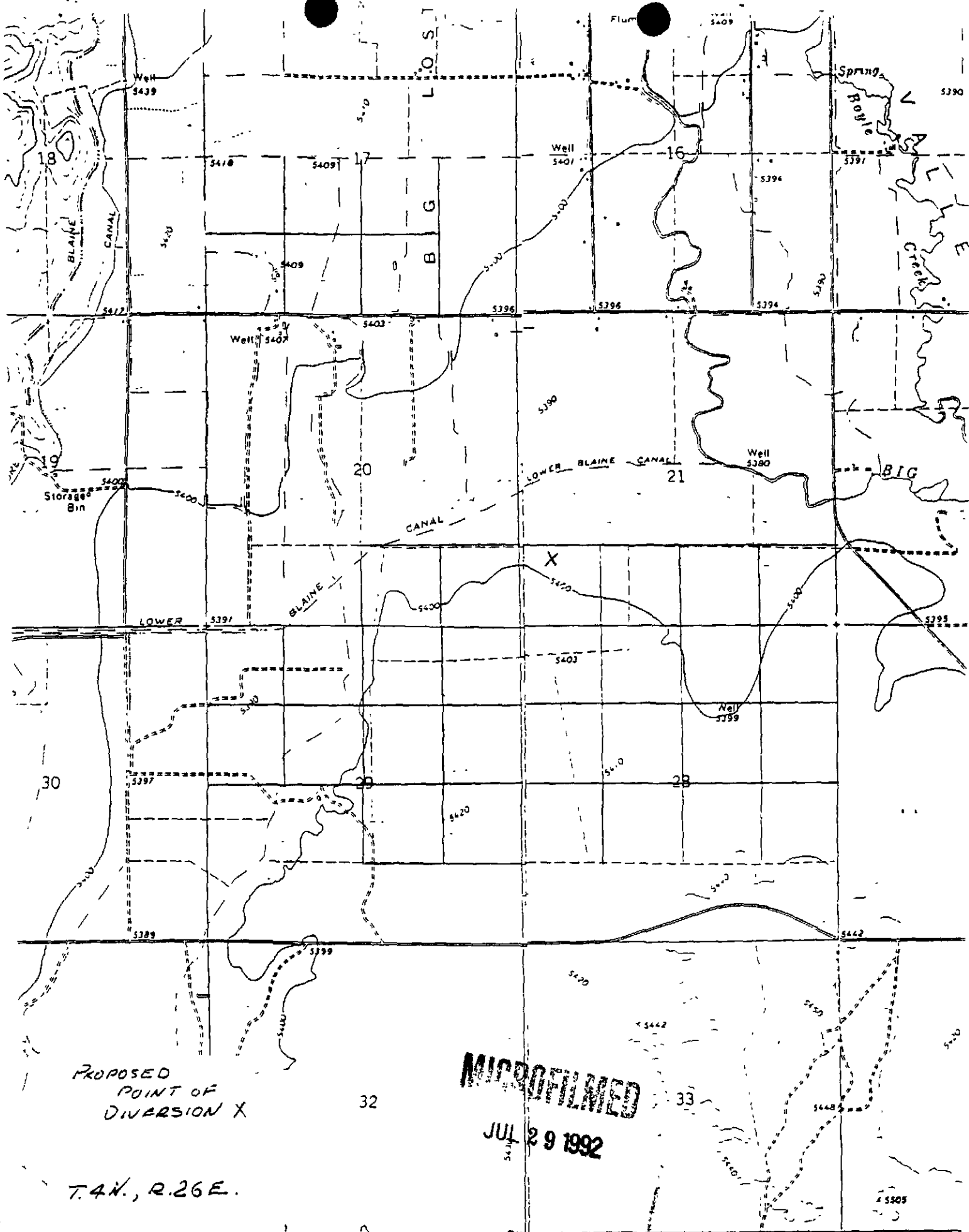
Received by IT Date 1-15-91 Protest filed by _____Prelim. check by KW Fee 50.00Receipted by AWJ #E015603 Date 1-16-91Published in Arco Advertiser - statewide Copies of protest forwarded by _____Pub. dates 3-7 & 14-91 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd _____

Copy of transfer sent to lien holder _____

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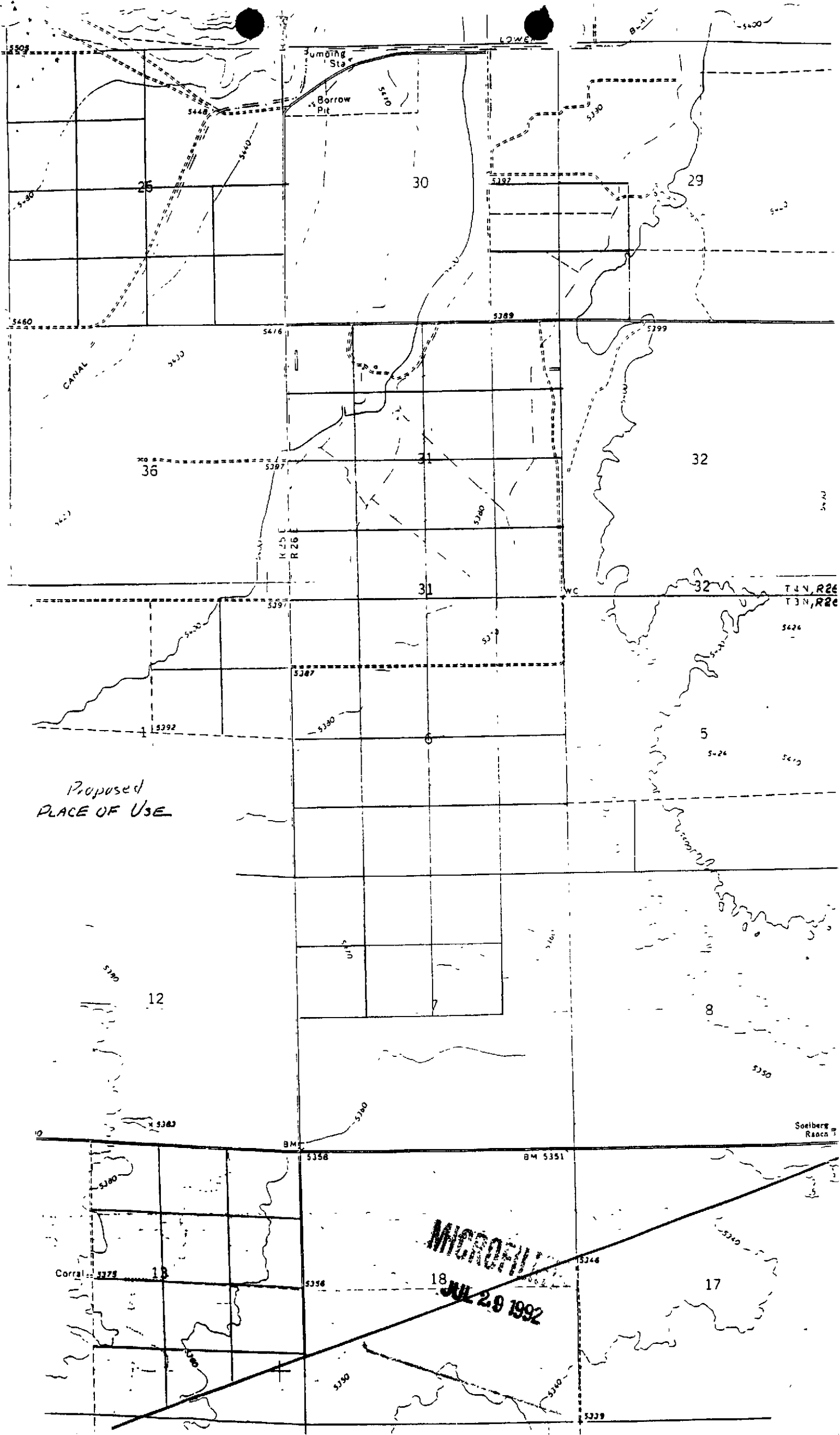


PROPOSED
POINT OF
DIVERSION X

T.4N., R.26E.

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JUL 29 1992



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Transfer No. 3675)
of Water Rights 34-7080A, 34-7136,)
and 34-7169 in the Names of)
M. TODD PERKES, JUEL AIKELE,)
and MICHAEL AIKELE and the)
Cease and Desist Order issued by the)
Department on June 22, 1990)
_____)

MEMORANDUM DECISION AND
ORDER APPROVING APPLICATION
FOR TRANSFER NO. 3675 AND
DENYING ATTORNEY'S FEES

On February 14, 1990, M. Todd Perkes, Juel Aikele, and Michael Aikele ("Applicants") filed application for transfer No. 3675 to change the point of diversion and place of use of water right Nos. 34-7080A, 34-7136, and 34-7169. Approval of the application was protested by the Big Lost Irrigation District ("BLID") and by 138 persons signing a petition delivered to the Idaho Department of Water Resources ("Department") by Mr. Lawrence Babcock.

On June 22, 1990, the Department issued an order to Don A. Aikele, Juel Aikele, and Michael Aikele to cease and desist irrigation of land within the S1/2 of the SW1/4 of Section 6, T3N, R26E, BM until a right to do so is obtained or identified. Subsequent correspondence from Mr. Kent Foster, attorney for the Aikeles, indicated that the order would not be complied with and requested approval of application for transfer No. 3675 which, if approved, would authorize irrigation of the land that is the subject of the order to cease and desist. In response, the Department set a combined hearing to consider the application for transfer and the cease and desist order.

The hearing was held on July 26, 1990, in Arco, Idaho. The Applicants and recipients of the order to cease and desist were represented by Mr. Kent Foster. Protestant BLID was represented by Chairman Lewis Rothwell. Mr. Lawrence Babcock acted as spokesman for the protest petition signers. Other petition signers in attendance were given

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the opportunity to ask questions and present testimony. At the hearing, Mr. Foster entered a motion seeking a ruling from the Department to require the protestants to pay attorney costs of the Applicants alleging that the issues raised by the protestants were frivolous and without merit. This issue was bifurcated from the other issues allowing a schedule to be entered for briefing the issue of payment of attorney costs, while allowing the record to be closed concerning the other issues of the hearing.

On August 9, 1990, the Department issued a Proposed Memorandum Decision and Order in connection with protested application for transfer No. 3675. On August 28, 1990, the Department received exceptions to the proposed decision from the Applicants.

On September 17, 1990, the Department issued a Proposed Memorandum Decision and Order addressing the motion for attorney's fees. No exceptions were submitted in connection with this proposed decision.

The Director has reviewed the exceptions filed in connection with the proposed decision issued August 9, 1990, and responds to the exception to grant an "extension" that the Director is authorized to specify conditions when granting approvals. The intent, of course, was and is to provide a ready mechanism for the benefit of the Applicants for continued use of the water as proposed in the transfer if authorization to use the water is otherwise obtainable in successive years.

In response to the exceptions, the Director has eliminated condition of approval no. 9) shown in the proposed decision issued August 9, 1990. The matter of payment of a penalty for unauthorized diversion and use of water by the Applicants will be pursued by the Department in a separate action.

FINDINGS OF FACT

1) The rights proposed to be changed by application for transfer No. 3675 are recorded with the department as follows:

License No. 34-7080A authorizes the diversion of 2.67 cubic feet per second ("cfs") of ground water from wells located in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T3N, R25E for the irrigation of 160 acres located in the NE1/4 of Section 11, T3N, R25E. The priority date is September 23, 1974.

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License No. 34-7136 authorizes the diversion of 5.50 cfs of ground water from the same wells listed for right No. 34-7080A for the irrigation of 160 acres in the NW1/4 of Section 11, T3N, R25E. The priority date is March 26, 1976.

License No. 34-7169 authorizes the diversion of 4.48 cfs of ground water from the same wells as the above listed two rights for the irrigation of 160 acres in the SE1/4 of Section 11, T3N, R25E. The priority date is January 6, 1977.

Each of the licenses is conditioned that when combined with the other two rights it "shall not provide more than 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of re-diversion located within the SE1/4NE1/4, Section 11, T3N, R25E."

Each of the licenses also has the following condition:

This right in no way grants any right-of-way or easement across the land of another.

Licenses 34-7136 and 34-7080A have the following condition:

This right shall not provide more than 0.02 cfs per acre for the lands identified above.

License 34-7169 is conditioned as follows:

This right shall not provide more than 2.68 cfs or 0.017 cfs per acre for the lands identified above.

2) Applicant Perkes testified that the actual location of the point of diversion for each of the licenses is in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E, and that the location has not been changed from that existing prior to issuance of the licenses. Licensing field examinations in the records of the department agree with the testimony.

3) Application for transfer No. 3675 proposes to change the location of the point of diversion of each of the licenses to the SW1/4SW1/4, Section 21, T4N, R26E, a location approximately 3 miles south and 1 mile east of the present actual point of diversion. The application proposes to divert 12.65 cfs for the irrigation of 480 acres in the S1/2N1/2, S1/2, Section 6, T3N, R26E. The new place of use is approximately 1/2 mile north and 1 and 1/2 mile east of the present place of use for the licenses.

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4) Notice of application for transfer No. 3675 was advertised in the Arco Advertiser and the Challis Messenger on April 19 and 26, 1990. The protests of BLID and the signed petition were timely received prior to the protest date of May 7, 1990.

5) The following issues were raised concerning application for transfer No. 3675:

-Whether other rights will be injured by the change.

-Whether the change will result in an enlargement in use of the rights.

-Whether the change is in the local public interest.

-Whether the change is consistent with the conservation of water resources in the state of Idaho.

-Whether the rights sought to be changed have been confirmed by license and can be changed under Section 42-222, Idaho Code.

6) The following issues were raised concerning the cease and desist order:

-Has the S1/2SW1/4, Section 6, T3N, R26E been irrigated this season without a valid water right?

-Have the Aikele's continued to irrigate the S1/2SW1/4, Section 6, T3N, R26E after service of the order to cease and desist?

-Should the Department seek enforcement of the order to cease and desist?

-Is the proper forum for considering the order the district court?

7) The hearing officer included in the hearing record a letter submitted by David A. Flesher, Acting County Supervisor of Farmers Home Administration, USDA, indicating FmHA holds a lien on the water rights of transfer No. 3675. Mr. Flesher indicates that transfer of the rights from the mortgaged property would be a violation of the loan and security agreement, and he asks that the processing of the transfer be suspended until concurrence of FmHA is received.

8) Applicant Perkes testified that the water rights proposed to be changed by application for transfer No. 3675 were used until two years ago when the lands were placed in a year-to-year federal set-aside program.

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9) Applicant Perkes testified that he owns the water rights to be changed by transfer No. 3675 and the land to which these rights are appurtenant. The Applicants testified that they had entered into an agreement allowing the Aikeles to use the water rights as proposed in transfer No. 3675 on an annual basis with the right to continue on a year-to-year basis.

10) The well to which the rights would be transferred has been used for 8 to 10 years. Juel Aikele testified that less than 12.65 cfs can be diverted from the well as presently constructed.

11) The Big Lost River Basin is in a fourth consecutive season with much below average rain and snowfall. As a result, ground water levels have declined throughout the basin and streamflows have decreased. Information is not currently available to determine the extent to which the operation of specific wells has had an effect upon the streamflow and upon ground water levels.

12) Approval of the application for transfer will not increase the rate or volume of ground water diverted nor increase the acreage irrigated under existing rights.

13) The S1/2SW1/4, Section 6, T3N, R26E, has been irrigated this season without a valid water right and irrigation has continued following service of the order to cease and desist.

14) One or both of the wells from which the water rights are sought to be transferred have been pumped this season for use on land for which the wells are not an authorized point of diversion.

CONCLUSION OF LAW

- 1) Section 42-222, Idaho Code, provides, in part, that:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; except the director shall not approve a change in the nature of use

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from agricultural use where such change would significantly affect the agricultural base of the local area.

2) Approval of application for transfer No. 3675 with appropriate conditions will not result in injury to other rights.

3) Approval of application for transfer No. 3675 with appropriate conditions will prevent an enlargement of the original rights.

4) Approval of application for transfer No. 3675 is in the local public interest and is consistent with the conservation of water in the state of Idaho.

5) Water has been used on the S1/2SW1/4, Section 6, T3N, R26E, without having a valid water right, and the irrigation of this parcel has continued after receipt of an order issued by the Director pursuant to Section 42-351, Idaho Code, to cease and desist.

6) Section 42-351(1), Idaho Code, provides that:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water course or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may file an action seeking injunctive relief or may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's action into compliance with applicable law and with any existing water right.

7) Section 42-352(1), Idaho Code provides that:

Any person who willfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty to be imposed by the director of water resources not to exceed one hundred dollars (\$100) per diversion for each calendar day, or any part of a calendar day, following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to recover said civil penalties.

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8) The issue of whether a transfer of the subject water rights constitutes a violation of the loan and security agreement covering the land from which the rights are being transferred is beyond the authority of the Department to determine. Testimony indicates that the lease of the water rights associated with transfer application No. 3675 is on a year-to-year basis. In the event that the FmHA foreclosed on the mortgage, the Department understands that the water rights, although transferred, would remain part of the property subject to the mortgage.

9) Because of the year-to-year lease of water, the transfer must be conditioned to authorize the change in place of use and point of diversion for a similar period.

ORDER

It is therefore ordered that application for transfer No. 3675 be approved and the same is hereby approved, subject to the following conditions and requirements:

1) Approval is effective until November 1, 1990, unless extended by the director. Upon expiration of this approval or any extension thereof, the place of use and point of diversion for water right Nos. 34-7080A, 34-7136 and 34-7169 shall revert to that existing prior to the approval.

2) During the period of this transfer approval or any extension thereof, the use of water on the lands originally licensed and the diversion of water from the original points of diversion under water right Nos. 34-7080A, 34-7136 and 34-7169 is prohibited.

3) Prior to diverting water under this approval, a measuring device shall be installed and maintained in good working condition as determined by the Department at the point of injection into the canal and another shall be installed and maintained at the point of re-diversion from the canal to the lands to be irrigated. The measuring devices shall be of a type acceptable to the director of the Department.

4) This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.

5) The rate of diversion from the well located in the SW1/4SW1/4, Section 21, T4N, R26E shall not exceed 12.43 cfs and the rate of re-diversion from the canal to the lands irrigated under this approval shall not exceed 8.49 cfs.

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6) The rate of diversion under this approval shall not provide more than 0.02 cfs per acre at the field headgate for the lands actually being irrigated pursuant to this approval when combined with all other rights used on the same land.

7) This approval does not authorize the construction, reconstruction, or modification of any well.

8) The wells in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E from which the rights to the diversion of water are transferred shall be rendered inoperable. The means used by the applicants to render the wells inoperable shall be a method acceptable to the director of the Department. Thereafter, the wells shall not be made operable again until the director acknowledges in writing that a valid right exists to divert water from the wells.

9) The director retains jurisdiction of this matter to extend the expiration date of this approval upon written notice that the lease has been extended; and upon expiration of the approval to order that the rights revert to the points of diversion and places of use existing prior to the approval of transfer No. 3675.

10) Approval of this transfer does not constitute the approval of the FmHA or other entity holding a lien or mortgage on the water rights involved.

11) Violation of the conditions of this approval shall be cause for the director to void this approval.

It is further hereby ordered that the Proposed Order Denying Motion for Attorney's Fees is adopted and issued as the Final Decision and Order regarding the motion for attorney's fees.

DATED this 15TH day of OCTOBER, 1990.


R. KEITH HIGGINSON
Director

RECORDED

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 22nd day of October 1990, true and correct copies of the foregoing MEMORANDUM DECISION AND ORDER APPROVING APPLICATION FOR TRANSFER NO. 3675 AND DENYING ATTORNEY'S FEES was mailed, postage prepaid to:

Marshall Todd Perkes
Route 1, Box 110
Arco, ID 83213

Juel and Michael Aikele
Route 1
Moore, ID 83255

Gary Slette
Nelson, Rosholt, Robertson,
Tolman & Tucker
Box 1906
Twin Falls, ID 83303-1906

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

Lewis Rothwell, Chairman
Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

Lawrence Babcock
Box 66
Moore, ID 83255


RITA L. FLECK
Secretary/Records Manager

FILED

NOV 01 1990

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

IN THE MATTER OF TRANSFER NO. 3675
OF WATER RIGHTS 34-7080A, 34-7136,
AND 34-7169

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Norman C. Young, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

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

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,
2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and
3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

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

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3675 OF)
WATER RIGHT NOS. 34-7080A,)
34-7136, and 34-7169 IN THE)
NAME OF M. TODD PERKES, JUEL)
AIKELE, and MICHAEL AIKELE.)

PROPOSED ORDER
DENYING MOTION
FOR ATTORNEY'S FEES

This proceeding is an action before the Department of Water Resources (IDWR) to transfer the point of diversion and place of use of water right nos. 34-7080A, 34-7136 and 34-7169 in the name of M. Todd Perkes, Juel Aikele and Michael Aikele (applicants). The application for transfer was filed by the applicants and is being processed by IDWR pursuant to the provisions of I.C. § 42-222. The application was protested by the Big Lost River Irrigation District and by 138 persons signing a petition delivered to IDWR by Mr. Lawrence Babcock.

IDWR held a hearing on the protested application for transfer in Arco, Idaho on July 26, 1990. IDWR hearing officer Norman C. Young presided over the hearing. Attorney Kent W. Foster represented the applicants at the hearing. The protestant irrigation district was represented by Chairman Lewis Rothwell. Mr. Lawrence Bobcock acted as spokesman for the signers of the protest petition.

At the hearing, counsel for the applicants moved the hearing officer for an order requiring the protestants to pay the attorney's fees incurred by the applicants for representation at the hearing, alleging that the issues raised by the protestants were frivolous. The hearing officer took the motion for attorney's fees under advisement and

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 1

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invited briefs to be filed by counsel for the parties. Counsel for protestant Lawrence Babcock filed a brief in opposition to the applicants' motion for attorney's fees on August 6, 1990. Counsel for the applicants subsequently filed a brief in support of the motion for attorney's fees.

In support of the motion, applicants assert that the protestants presented no evidence at the hearing to support any of the five grounds for protest and that the protestants had not even engaged in any investigative effort to obtain information in support of the allegations of the protest. The applicants conclude that the apparent reason for the protests is to harass, cause delay, and cause unnecessary expense to the applicants. The applicants consequently seek an award of attorney's fees before IDWR for being compelled to defend against the alleged unmeritorious and unsupported protests filed in this matter.

Applicants argue that the protests are frivolous and without foundation within the meaning of Rule 54(e)(1) of the Idaho Rules of Civil Procedure. Applicants state in their brief that they felt compelled to make a request for attorney's fees before IDWR so as not to be deemed to have waived a claim for attorney's fees in the proceeding before the agency if and when the case is reviewed by the district court on appeal.

Applicants further cite the case of Stewart v. Dept. of Health & Welfare, 115 Idaho 820, 771 P.2d 41 (1989) as authority for an administrative agency such as IDWR to award attorney's fees. The protestants in turn have cited the case of Idaho Power Company v. Idaho Public Utilities Commission, 102 Idaho 744, 639 P.2d 442 (1981) in support of their position that IDWR does not have the authority to award attorney's fees.

The Idaho Power case decided the issue of whether the Idaho Public Utilities Commission (IPUC) has the authority under state law to award attorney's fees in a

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 2

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proceeding before the Commission in connection with the federal Public Utility Regulatory Policies Act of 1978 (PURPA). The Court began its analysis citing the general rule that an administrative agency such as the IPUC or IDWR "has no jurisdiction other than that which the legislature has specifically granted to it." 102 Idaho at 750. The Court also cited with approval a second general rule providing that "attorney fees cannot be recovered in an action unless authorized by statute or by express agreement of the parties." Id. Finding an absence of specific statutory authority for the IPUC to award attorney's fees in the proceeding before it, the Court held that the Commission lacked such authority. Id. at 751.

The applicants in their supporting brief have not cited any statutory authority empowering IDWR to award attorney's fees in a proceeding before it, and the agency is not aware of any such authority. The applicants rely solely upon the holding in Stewart v. Dept. of Health & Welfare, supra, to support their motion for an award of attorney's fees.

The Stewart case began as an action before the Idaho Personnel Commission brought by two employees of the Idaho State School and Hospital who were dismissed from their employment. The Personnel Commission ordered the employees reinstated and also ordered full back pay and the restoration of all employment benefits. In addition, the Commission stated in its order that the employees should be awarded attorney's fees in the action but that the Commission had no authority to make such an award.

The employees thereafter filed an appeal with the district court solely from the portion of the Commission's decision denying them costs and attorney's fees. The district court affirmed the Commission's decision, finding no statutory authority for the Commission to make an award of attorney's fees. The Supreme Court reversed, relying upon a broad construction of the language of I.C. § 12-117 which provides in pertinent part as follows:

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 3

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12-117. Attorney fees, witness fees and expenses awarded in certain instances.-- (1) In any administrative or civil judicial proceeding involving as adverse parties a state agency and a person, the court shall award the person reasonable attorney's fees, witness fees and reasonable expenses, if the court finds in favor of the person and also finds that the state agency acted without a reasonable basis in fact or law.

The Stewart proceeding before the Personnel Commission came within the purview of section 12-117 because the administrative action involved as adverse parties a state agency, i.e., the Department of Health and Welfare, and the two employees discharged from the State School and Hospital. When these circumstances occur, the statute provides that "the court shall award the person reasonable attorney's fees . . . if the court finds in favor of the person and also finds that the state agency acted without a reasonable basis in fact or law."

In construing section 12-117, the three-justice majority was torn by the apparent anomaly presented by the statute which would allow a litigant who lost at the administrative level but won on appeal to be awarded attorney's fees by the court, whereas a litigant who won before the administrative tribunal would not be in a position to be awarded attorney's fees. The majority opinion, therefore, in effect interprets the word "court" in I.C. § 12-117 to mean "court or administrative agency."

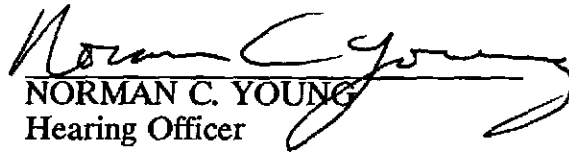
Even applying the Stewart court's broad reading of I.C. § 12-117, IDWR is not authorized to award attorney's fees to the applicants in the present proceeding. The Stewart decision could at most authorize IDWR to award attorney's fees in a proceeding in which at least one of the adverse parties is a state agency and the Director determines that the state agency acted without a reasonable basis in fact or law. None of the protestants in the pending matter before IDWR is a state agency within the meaning of I.C. § 12-117.

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 4

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IT IS, THEREFORE, HEREBY ORDERED that the applicant's motion for an award of attorney's fees before IDWR in this proceeding is denied.

DATED This 17TH day of September, 1990.


NORMAN C. YOUNG
Hearing Officer

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 5

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 18th day of September, 1990, true and correct copies of each of the foregoing PROPOSED ORDER DENYING MOTION FOR ATTORNEY'S FEES were mailed, postage prepaid to:

Marshall Todd Perkes
Route 1, Box 110
Arco, ID 83213

Juel and Michael Aikele
Route 1
Moore, ID 83255

Gary Slette
Nelson, Rosholt, Robertson,
Tolman and Tucker
Box 1906
Twin Falls, ID 83303-1906

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

Lewis Rothwell, Chairman
Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

Lawrence Babcock
Box 66
Moore, ID 83255


JODY I. SCHULTZ
Secretary/Records Manager

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

IN THE MATTER OF TRANSFER NO. 3675)
OF WATER RIGHTS 34-7080A, 34-7136,)
AND 34-7169)

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Norman C. Young, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

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

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,
2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and
3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

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

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

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III.

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

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

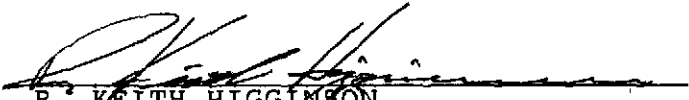
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

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

Dated this 13th day of August, 19 90.


R. KEITH HIGGINSON
Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Transfer No. 3675)
of Water Rights 34-7080A, 34-7136,)
and 34-7169 in the Names of)
M. TODD PERKES, JUEL AIKELE,)
and MICHAEL AIKELE and the)
Cease and Desist Order issued by the)
Department on June 22, 1990)
_____)

PROPOSED MEMORANDUM
DECISION AND ORDER

On February 14, 1990, M. Todd Perkes, Juel Aikele, and Michael Aikele ("Applicants") filed application for transfer No. 3675 to change the point of diversion and place of use of water right Nos. 34-7080A, 34-7136, and 34-7169. Approval of the application was protested by the Big Lost Irrigation District ("BLID") and by 138 persons signing a petition delivered to the Idaho Department of Water Resources ("Department") by Mr. Lawrence Babcock.

On June 22, 1990, the Department issued an order to Don A. Aikele, Juel Aikele, and Michael Aikele to cease and desist irrigation of land within the S1/2 of the SW1/4 of Section 6, T3N, R26E, BM until a right to do so is obtained or identified. Subsequent correspondence from Mr. Kent Foster, attorney for the Aikeles, indicated that the order would not be complied with and requested approval of application for transfer No. 3675 which, if approved, would authorize irrigation of the land that is the subject of the order to cease and desist. In response, the Department set a combined hearing to consider the application for transfer and the cease and desist order.

The hearing was held on July 26, 1990, in Arco, Idaho. The Applicants and recipients of the order to cease and desist were represented by Mr. Kent Foster. Protestant BLID was represented by Chairman Lewis Rothwell. Mr. Lawrence Babcock acted as spokesman for the protest petition signers. Other petition signers in attendance were given

the opportunity to ask questions and present testimony. At the hearing, Mr. Foster entered a motion seeking a ruling from the Department to require the protestants to pay attorney costs of the Applicants alleging that the issues raised by the protestants were frivolous and without merit. This issue was bifurcated from the other issues allowing a schedule to be entered for briefing the issue of payment of attorney costs, while allowing the record to be closed concerning the other issues of the hearing.

The hearing officer, having heard the testimony and having reviewed the exhibits, the hearing record and applicable law, proposes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1) The rights proposed to be changed by application for transfer No. 3675 are recorded with the department as follows:

License No. 34-7080A authorizes the diversion of 2.67 cubic feet per second ("cfs") of ground water from wells located in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T3N, R25E for the irrigation of 160 acres located in the NE1/4 of Section 11, T3N, R25E. The priority date is September 23, 1974.

License No. 34-7136 authorizes the diversion of 5.50 cfs of ground water from the same wells listed for right No. 34-7080A for the irrigation of 160 acres in the NW1/4 of Section 11, T3N, R25E. The priority date is March 26, 1976.

License No. 34-7169 authorizes the diversion of 4.48 cfs of ground water from the same wells as the above listed two rights for the irrigation of 160 acres in the SE1/4 of Section 11, T3N, R25E. The priority date is January 6, 1977.

Each of the licenses is conditioned that when combined with the other two rights it "shall not provide more than 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of re-diversion located within the SE1/4NE1/4, Section 11, T3N, R25E." Each of the licenses also has the following condition:

This right in no way grants any right-of-way or easement across the land of another.

MEMORANDUM

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Licenses 34-7136 and 34-7080A have the following condition:

This right shall not provide more than 0.02 cfs per acre for the lands identified above.

License 34-7169 is conditioned as follows:

This right shall not provide more than 2.68 cfs or 0.017 cfs per acre for the lands identified above.

2) Applicant Perkes testified that the actual location of the point of diversion for each of the licenses is in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E, and that the location has not been changed from that existing prior to issuance of the licenses. Licensing field examinations in the records of the department agree with the testimony.

3) Application for transfer No. 3675 proposes to change the location of the point of diversion of each of the licenses to the SW1/4SW1/4, Section 21, T4N, R26E, a location approximately 3 miles south and 1 mile east of the present actual point of diversion. The application proposes to divert 12.65 cfs for the irrigation of 480 acres in the S1/2N1/2, S1/2, Section 6, T3N, R26E. The new place of use is approximately 1/2 mile north and 1 and 1/2 mile east of the present place of use for the licenses.

4) Notice of application for transfer No. 3675 was advertised in the Arco Advertiser and the Challis Messenger on April 19 and 26, 1990. The protests of BLID and the signed petition were timely received prior to the protest date of May 7, 1990.

5) The following issues were raised concerning application for transfer No. 3675:

-Whether other rights will be injured by the change.

-Whether the change will result in an enlargement in use of the rights.

-Whether the change is in the local public interest.

-Whether the change is consistent with the conservation of water resources in the state of Idaho.

-Whether the rights sought to be changed have been confirmed by license and can be changed under Section 42-222, Idaho Code.

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6) The following issues were raised concerning the cease and desist order:

-Has the S1/2SW1/4, Section 6, T3N, R26E been irrigated this season without a valid water right?

-Have the Aikele's continued to irrigate the S1/2SW1/4, Section 6, T3N, R26E after service of the order to cease and desist?

-Should the Department seek enforcement of the order to cease and desist?

-Is the proper forum for considering the order the district court?

7) The hearing officer included in the hearing record a letter submitted by David A. Flesher, Acting County Supervisor of Farmers Home Administration, USDA, indicating FmHA holds a lien on the water rights of transfer No. 3675. Mr. Flesher indicates that transfer of the rights from the mortgaged property would be a violation of the loan and security agreement, and he asks that the processing of the transfer be suspended until concurrence of FmHA is received.

8) Applicant Perkes testified that the water rights proposed to be changed by application for transfer No. 3675 were used until two years ago when the lands were placed in a year-to-year federal set-aside program.

9) Applicant Perkes testified that he owns the water rights to be changed by transfer No. 3675 and the land to which these rights are appurtenant. The Applicants testified that they had entered into an agreement allowing the Aikeles to use the water rights as proposed in transfer No. 3675 on an annual basis with the right to continue on a year-to-year basis.

10) The well to which the rights would be transferred has been used for 8 to 10 years. Juel Aikele testified that less than 12.65 cfs can be diverted from the well as presently constructed.

11) The Big Lost River Basin is in a fourth consecutive season with much below average rain and snowfall. As a result, ground water levels have declined throughout the basin and streamflows have decreased. Information is not currently available to determine the extent to which the operation of specific wells has had an effect on the streamflow

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and upon ground water levels.

12) Approval of the application for transfer will not increase the rate or volume of ground water diverted nor increase the acreage irrigated under existing rights.

13) The S1/2SW1/4, Section 6, T3N, R26E, has been irrigated this season without a valid water right and irrigation has continued following service of the order to cease and desist.

14) One or both of the wells from which the water rights are sought to be transferred have been pumped this season for use on land for which the wells are not an authorized point of diversion.

CONCLUSION OF LAW

1) Section 42-222, Idaho Code, provides, in part, that:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area."

2) Approval of application for transfer No. 3675 with appropriate conditions will not result in injury to other rights.

3) Approval of application for transfer No. 3675 with appropriate conditions will prevent an enlargement of the original rights.

4) Approval of application for transfer No. 3675 is in the local public interest and is consistent with the conservation of water in the state of Idaho.

5) Water has been used on the S1/2SW1/4, Section 6, T3N, R26E, without having a valid water right, and the irrigation of this parcel has continued after receipt of an order issued by the Director pursuant to Section 42-351, Idaho Code, to cease and desist.

6) Section 42-351(1), Idaho Code, provides that:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water course or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may file an action seeking injunctive relief or may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's action into compliance with applicable law and with any existing water right.

7) Section 42-352(1), Idaho Code provides that:

Any person who willfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty to be imposed by the director of water resources not to exceed one hundred dollars (\$100) per diversion for each calendar day, or any part of a calendar day, following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to recover said civil penalties.

8) The issue of whether a transfer of the subject water rights constitutes a violation of the loan and security agreement covering the land from which the rights are being transferred is beyond the authority of the Department to determine. Testimony indicates that the lease of the water rights associated with transfer application No. 3675 is on a year-to-year basis. In the event that the FmHA foreclosed on the mortgage, the Department understands that the water rights, although transferred, would remain part of the property subject to the mortgage.

9) Because of the year-to-year lease of water, the transfer must be conditioned to authorize the change in place of use and point of diversion for a similar period.

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PROPOSED MEMORANDUM
DECISION AND ORDER - 6

ORDER

It is therefore ordered that application for transfer No. 3675 be approved and the same is hereby approved, subject to the following conditions and requirements:

1) Approval is effective until November 1, 1990, unless extended by the director. Upon expiration of this approval or any extension thereof, the place of use and point of diversion for water right Nos. 34-7080A, 34-7136 and 34-7169 shall revert to that existing prior to the approval.

2) During the period of this transfer approval or any extension thereof, the use of water on the lands originally licensed and the diversion of water from the original points of diversion under water right Nos. 34-7080A, 34-7136 and 34-7169 is prohibited.

3) Prior to diverting water under this approval, a measuring device shall be installed and maintained in good working condition as determined by the Department at the point of injection into the canal and another shall be installed and maintained at the point of re-diversion from the canal to the lands to be irrigated. The measuring devices shall be of a type acceptable to the director of the Department.

4) This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.

5) The rate of diversion from the well located in the SW1/4SW1/4, Section 21, T4N, R26E shall not exceed 12.43 cfs and the rate of re-diversion from the canal to the lands irrigated under this approval shall not exceed 8.49 cfs.

6) The rate of diversion under this approval shall not provide more than 0.02 cfs per acre at the field headgate for the lands actually being irrigated pursuant to this approval when combined with all other rights used on the same land.

7) This approval does not authorize the construction, reconstruction, or modification of any well.

8) The wells in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E from which the rights to the diversion of water are transferred shall be rendered inoperable. The

PROPOSED MEMORANDUM NOV 6 1990
DECISION AND ORDER - 7

means used by the applicants to render the wells inoperable shall be a method acceptable to the director of the Department. Thereafter, the wells shall not be made operable again until the director acknowledges in writing that a valid right exists to divert water from the wells.

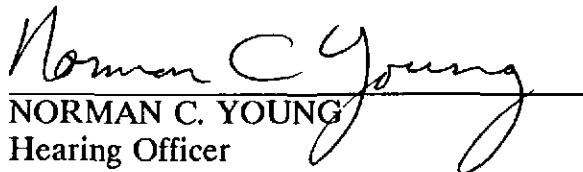
9) Applicants Juel Aikele and Michael Aikele shall pay into the enforcement fund of the Department a penalty of \$100 per day for each day that the well in the SW1/4SW1/4 Section 21, T4N, R26E was operated after receipt of the cease and desist order and prior to the date of the hearing on July 26, 1990. Unless the applicants provide documentation to show otherwise the penalty will be based upon continuous pumping during the period. This transfer approval shall become void unless the penalty due is paid to the Department by August 31, 1990.

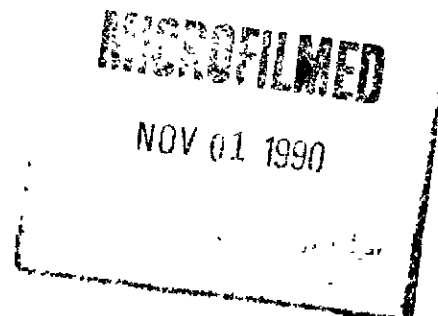
10) The director retains jurisdiction of this matter to extend the expiration date of this approval upon written notice that the lease has been extended; and upon expiration of the approval to order that the rights revert to the points of diversion and places of use existing prior to the approval of transfer No. 3675.

11) Approval of this transfer does not constitute the approval of the FmHA or other entity holding a lien or mortgage on the water rights involved.

12) Violation of the conditions of this approval shall be cause for the director to void this approval.

DATED this 9TH day of August, 1990.


NORMAN C. YOUNG
Hearing Officer



CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 13th day of August, 1990, true and correct copies of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER, were mailed, postage prepaid to:

Marshall Todd Perkes
Route 1, Box 110
Arco, ID 83213

Juel and Michael Aikele
Route 1
Moore, ID 83255

Gary Slette
Nelson, Rosholt, Robertson,
Tolman and Tucker
Box 1906
Twin Falls, ID 83303-1906

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

Lewis Rothwell, Chairman
Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

Lawrence Babcock
Box 66
Moore, ID 83255


RITA I. FLECK
Secretary/Records Manager

MICROFILMED
NOV 61 1990

A. ...

NOV 1 1990

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Margaret Parks, Publisher of the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated April 19 1990 and ending with the issue dated April 26 1990

Margaret Parks

STATE OF IDAHO

COUNTY OF CUSTER

On this 27 day of April in the year of 90, before me, a Notary Public,

personally appeared Margaret Parks, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Mae Kopp
Notary Public for Idaho
Residing at Challis
My commission expires: 11/7/92

APR 26 1990

Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO.

34-7080A/34-7136/34-7169

Notice is hereby given that M. TODD PERKES, JUEL & MICHAEL AIKELE have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidenced by LICENSE NO.'S 34-7080A, 34-7136, & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY

NO. 34-7080A AMOUNT: 2.67 CFS PRIORITY: SEPT. 23, 1974

The water is used to irrigate 160 acres from April 1 to November 1 within the NW1/4 S 11 T 3N R 25E, B.M.

NO. 34-7136 AMOUNT: 5.5 CFS PRIORITY: MARCH 26, 1976

The water is used to irrigate 160 acres from April 1 to November 1 within the NW1/4 S 11 T 3N R 25E, B.M.

NO. 34-7169 AMOUNT: 4.48 CFS PRIORITY: JAN. 6, 1977

The water is used to irrigate 160 acres from April 1 to November 1 within the SE1/4 S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E, and used to irrigate 480 acres within the S1/2N1/2 S 1/2 S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before MAY 7, 1990.

R. Keith Higginson, Director
Pub: April 19 & 26, 1990

MAILED
NOV 01 1990

Page 1 of 10STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3675APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

APPROVED

Name of applicant M. Todd Perkes, Juel Aikele & Michael Aikele Phone (208)523-0620
Post Office address %Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls, ID 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Present place of use of Perkes is in a set aside program; pending application for permit of Aikeles for proposed place of use is involved in a hopeless morass of litigation. This would provide a method for legal diversion of the Aikele well.

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

1. Right Number Priority Amount (cfs/ac-ft) Nature of Use Period of Use
- | | | | | |
|-----------------|-------------------|-------------|-------------------|---------------------------------|
| <u>34-7080A</u> | <u>09/23/1974</u> | <u>2.67</u> | <u>Irrigation</u> | <u>April 1</u> to <u>Nov. 1</u> |
| <u>34-7136</u> | <u>03/26/1976</u> | <u>5.50</u> | <u>Irrigation</u> | <u>April 1</u> to <u>Nov. 1</u> |
| <u>34-7169</u> | <u>01/06/1977</u> | <u>4.48</u> | <u>Irrigation</u> | <u>April 1</u> to <u>Nov. 1</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
2. Total amount of water being transferred 12.65 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SW	21	4N.	26E.	Butte	Aikele Well

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
3N	26E	6			40	40			40	40	40	40	40	40	40	40	40	40	480

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NOV 61 1990

Total acres 480

PART 1

6. General Information:

a. Description of diversion system Well and pump.b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

This land is presently in a federal set aside program and is not being irrigated
so there will be no effect for the duration of the lease agreement between Perkes
and Aikeles.

d. Remarks:

SEE ATTACHMENT "A"

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 34-7080A/34-7136/34-7169
And said application is hereby APPROVED, subject to the following limitations and conditions:
PURSUANT TO MEMORANDUM DECISION AND ORDER APPROVING APPLICATION FOR TRANSFER NO.
3675 AND DENYING ATTORNEY'S FEES.

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NOV 61 1990

Witness my hand this 22nd day of October, 19 90.

L. Glen Taylor
CHIEF, WATER ALLOCATION BUREAU

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 34-7080A issued by the Idaho Department of Water Resources
- c. Claim No _____ on file with the Idaho Department of Water Resources
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority September 23, 1974

5. Water is used for the following purpose:

amount 2.67 cfs for Irrigation purposes from April 1 to Nov. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.67 cfs cubic feet per second and/or _____ acre-feet per annum.
(But see condition in license.)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11	40	40	40	40													160

Total acres 160

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

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

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use

Twp	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

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

2. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use.

Twp	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 34-7136 issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority March 26, 1976

5. Water is used for the following purpose:

amount 5.5 cfs for Irrigation purposes from April 1 to Nov. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 5.5 cfs cubic feet per second and/or _____ acre-feet per annum.
(But see condition in license.)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11					40	40	40	40									160

Total acres 160

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

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

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1 Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 34-7169 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority January 6, 1977

5. Water is used for the following purpose:

amount 4.48 cfs for Irrigation purposes from April 1 to Nov. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 4.48 cfs cubic feet per second and/or _____ acre-feet per annum.
(But see condition in license.)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11													40	40	40	40	160

RECORDED

NOV 01 1990

Total acres 160

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

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

No

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3 Lands irrigated or place of use:

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

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

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

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

SEE ATTACHED MAPS FOR CURRENT POINTS
 OF DIVERSION AND PLACE OF USE AND FOR
 PROPOSED NEW POINT OF DIVERSION AND
 PLACE OF USE.

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NOV 01 1990

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

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

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

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

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

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

M. Todd Perkins Paul Abdul Malik Akale
(Signature of Applicant)

Subscribed and sworn to before me this 14 day of February, 19 80.

Paul D. White
(Notary Public)

My commission expires 11/10/92

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by CW Date 2-14-80 Protest filed by Big Lost River Irrig.

Prelim. check by _____ Fee \$50.00 # 6012101 PETITIONS-

Receipted by HUJ Date 2-20-90

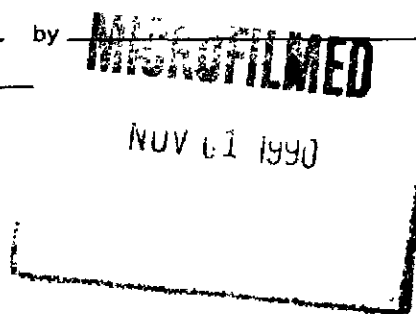
Published in Custer Publishing & Arco Advertiser copies of protest forwarded by _____

Pub. dates 4-19 & 26-90 Hearing held by _____ Date _____

Watermaster recommendation requested on WD #34 Recommended for ☐ approval ☐ denial

_____ rec'd. 5-1-90 by _____

Copy of transfer sent to lien holder _____



ATTACHMENT "A"

The three licenses, 34-7080A, 34-7136 and 34-7169, appear to show the two wells or points of diversion for these three rights in T.3N., R.25E., when, in fact, the wells are and always have been in T.4N., R.26E.

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NOV 01 1990

III.

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

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

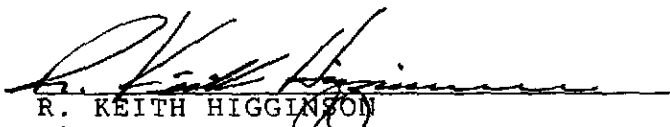
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

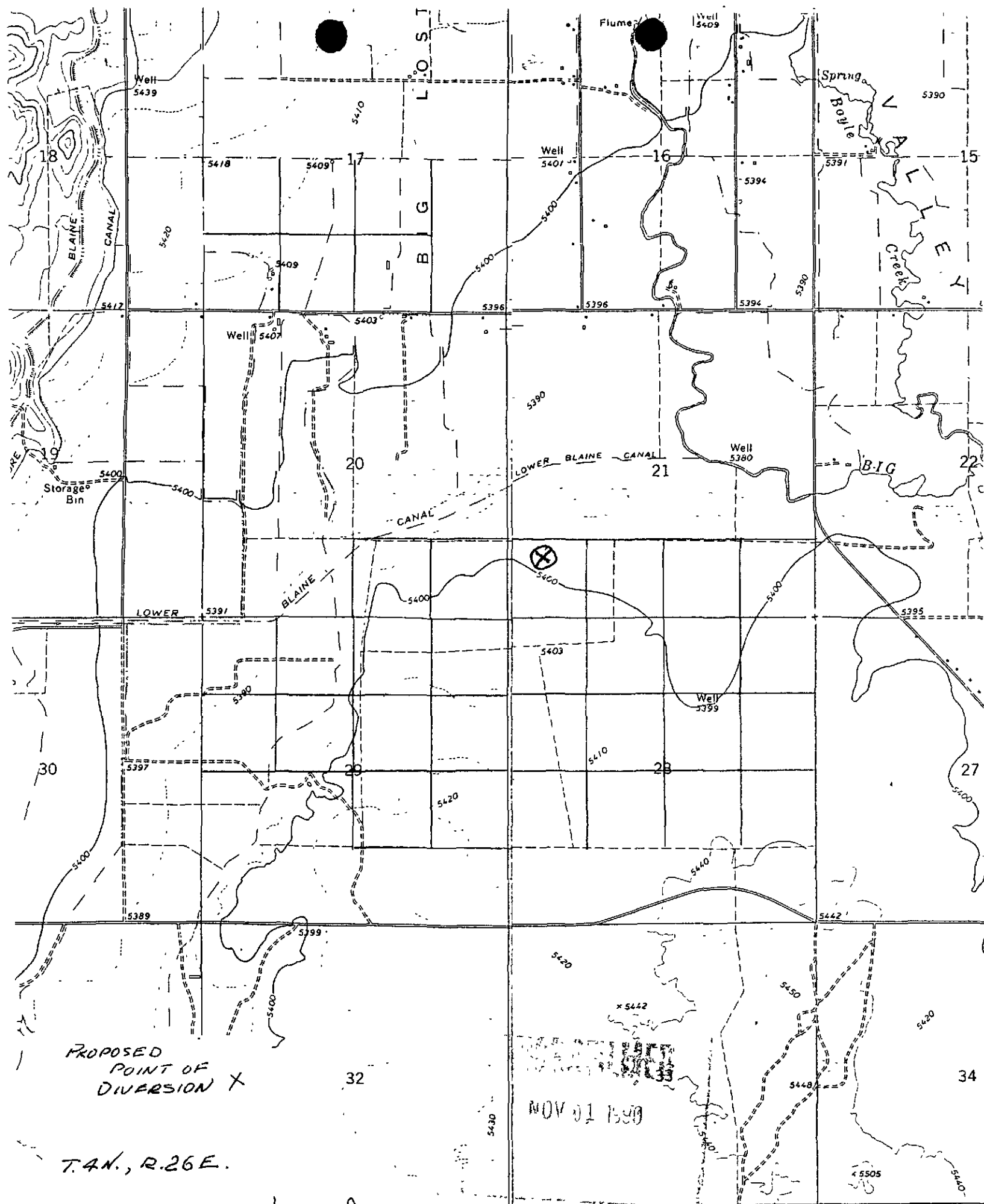
Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

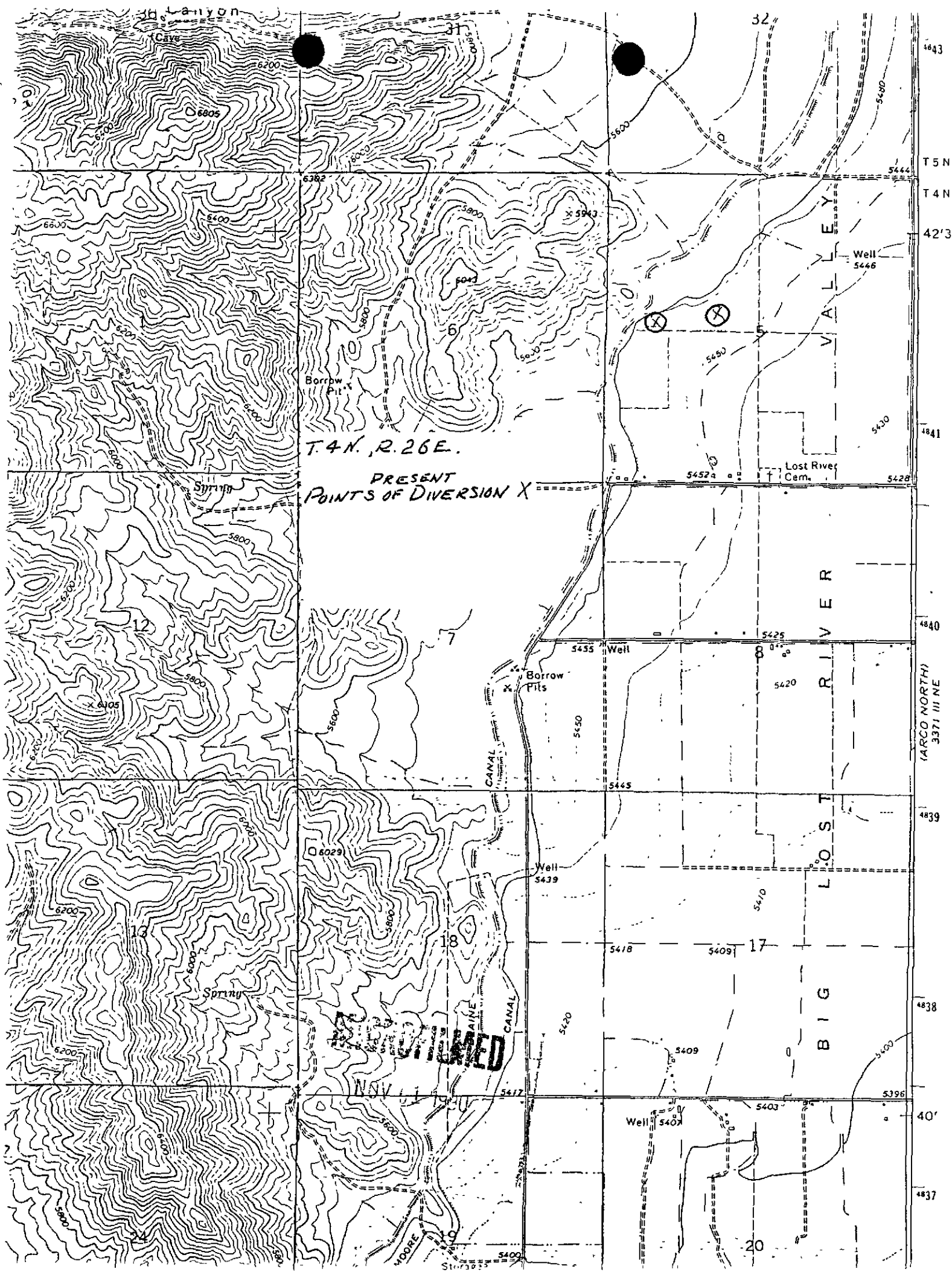
Dated this 18th day of September, 19 90.


R. KEITH HIGGINSON
Director

MICROFILMED

NOV 11 1990





Cave Canyon

Cave

6805

6200

6282

Borrow Pits

T.4N., R.26E.

PRESENT
POINTS OF DIVERSION X

Spring

5800

6105

Well

Borrow Pits

5450

5445

Well

5439

Spring

6000

RETRACTED

18

CANAL

5417

MOORE

5400

32

5443

T.5N

T.4N

42'3

Well

5446

5450

5430

4841

Lost River

Cem.

5428

RIVER

5455

5425

5420

4840

(ARCO NORTH)

3371 MI NE

5445

5410

4839

5418

5409

17

5410

5409

4838

5409

Well

5407

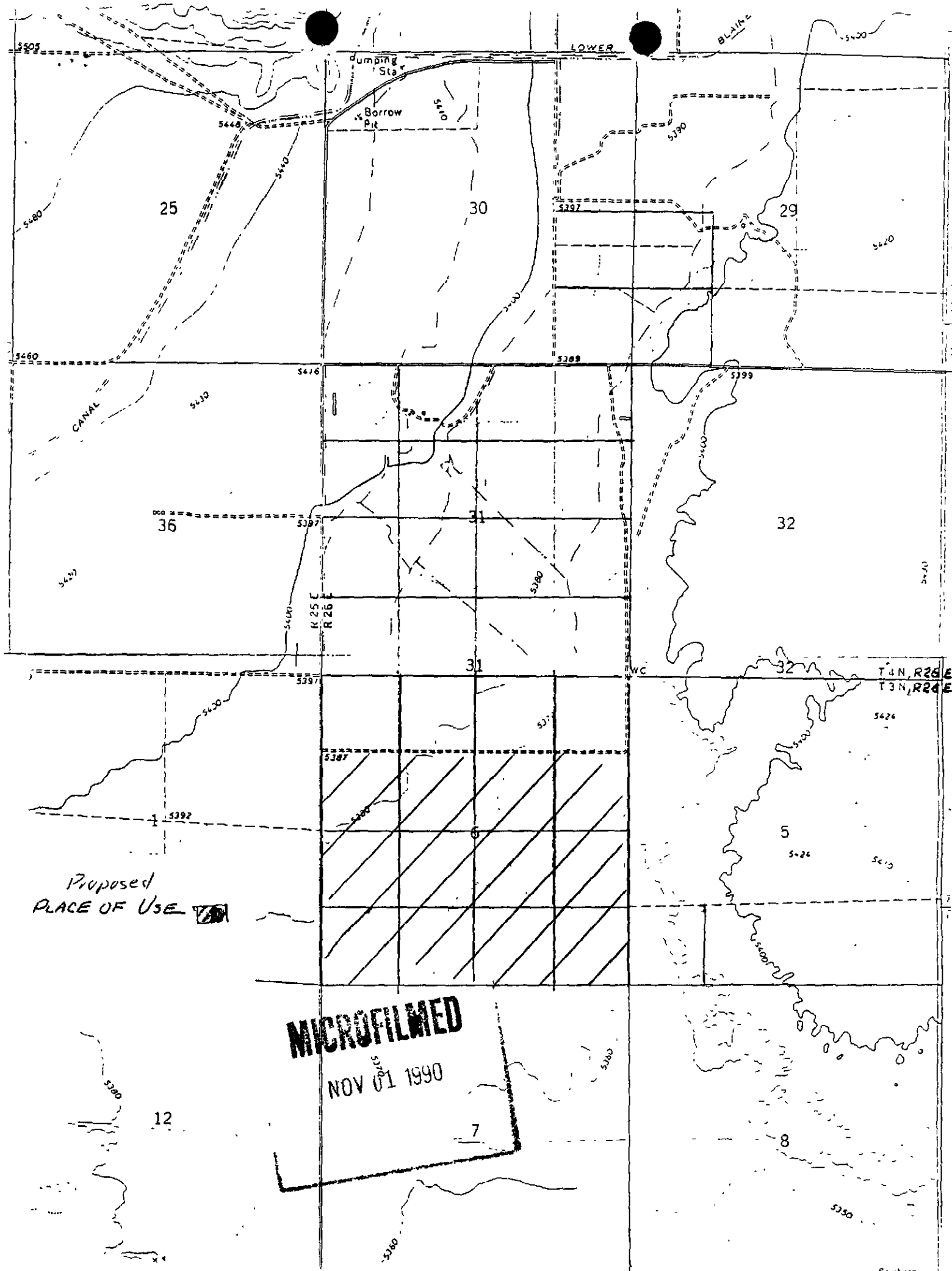
5403

5396

40'

4837

20



State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 34-7169 Priority January 6, 1977 Amount 4.48 cfs

THIS IS TO CERTIFY, that Marshal Todd Perkes
of Arco, Idaho, has complied with the terms and conditions of Permit
No. 34-7169 issued pursuant to Application for Permit dated January 6, 1977,
and has submitted proof to the Department of Water Resources on February 13, 1979,
that he has applied water to a beneficial use, an examination by the Department indicates that the works have a
capacity for the diversion of 12.43 cfs of water from a groundwater source,
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from <u>April 1</u> to <u>November 1</u>	at <u>4.48</u> cfs and	<u>480.0</u> acre feet
	from _____ to _____	_____ cfs and	_____
	from _____ to _____	at _____ cfs and	_____
(both dates inclusive)			

Subject, however, to the condition that no more than 4.48 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confined is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
480.0 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 5,
Twp. 3N, Rge. 25E in the County of Butte

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
3N	25E	11													40	40	40	40	160

Total number of acres irrigated 160

This right when combined with Rights 34-7136 and 34-7080A shall not exceed 12.43
cfs at the points of diversion and shall not exceed 8.49 cfs at the point of
rediversion located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 11, Twp. 3N, Rge. 25E.
This right in no way grants any right-of-way or easement across the land of
another.
This right shall not provide more than 2.68 cfs or 0.017 cfs per acre for the
lands identified above.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use
herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 27TH day of
September, 19 82.

Acting for the Director

Norman C. Young

STATE OF IDAHO

LICENSING

AUG 23 1982

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now Marshal Todd Perkes Phone
of (address) Route #1, Box 110, Arco, Idaho 83213, and represents to the
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho
No. 34-7169, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SW ¼ NW ¼, Section 5, Township 3N, Range 25E, B.M.,
County of Butte. Other points of diversion:
SE ¼ NW ¼, Sec. 5, Twp. 3N, Rge. 25E

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 4.48 for irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:
NO CHANGE

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated =

4. a. Who owns the property at the point of diversion?
b. Who owns the land to be irrigated or the place of use?
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.

NOT NECESSARY

Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Aliso Viejo, this 15 day of August, 19 82
Marshall T. Bell
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by JW Fee = \$20.00
Publication prepared by N/A Date _____
Publication dates _____
Received by eg Date 8-26-82 # 14614
Published in _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, of the Department of Water Resources hereby
APPROVE the above Application for Amendment of Permit No. 34-7169.

Witness my hand this 27TH day of September, 19 82.

Norman C. Young
Acting for the Director

Identification No. 34 7169
Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

- 1 Name of applicant Marshall Todd Perkes Phone 527-3157
post office address Rt. #1, Box 113-B, Arco, Idaho 83213
- 2 Source of water supply ground water which is a tributary of _____
- 3 a Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 5 Township 4N
Range 26E B.M. Butte County, additional points of diversion if any _____

- b If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$
of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 5.32 for Irrigation purpose from Apr. 1 to Nov. 1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- 5 Total quantity to be appropriated
a 5.32 cubic feet per second and/or
b _____ acre feet per annum.
- 6 Proposed diverting works
a Description of ditches, flumes, pumps, headgates, etc well, pump, water to be diverted into
Old U. C. Canal (Timberdome Canal Co.) with relift pump and center pivot

- b Height of storage dam _____ feet, active reservoir capacity _____ acre feet, total reservoir
capacity _____ acre feet, materials used in storage dam _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo Day) (Mo Day)
- c Proposed well diameter is 20 inches; proposed depth of well is 300 feet
- 7 a Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years
b Estimated construction cost is \$ 80,000.00.
- 8 Description of proposed uses
a If water is **not** for irrigation
(1) Give the place of use of water _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated _____ hp under _____ feet of head
(3) List number of each kind of livestock to be watered. _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____
(5) If water is to be used for other purposes describe _____

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b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below

TWP	RANGE	SEC	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
3N	25E	11													40	40	40	40	160

Total number of acres to be irrigated 160

c. Describe any other water rights used for the same purposes as described above. None

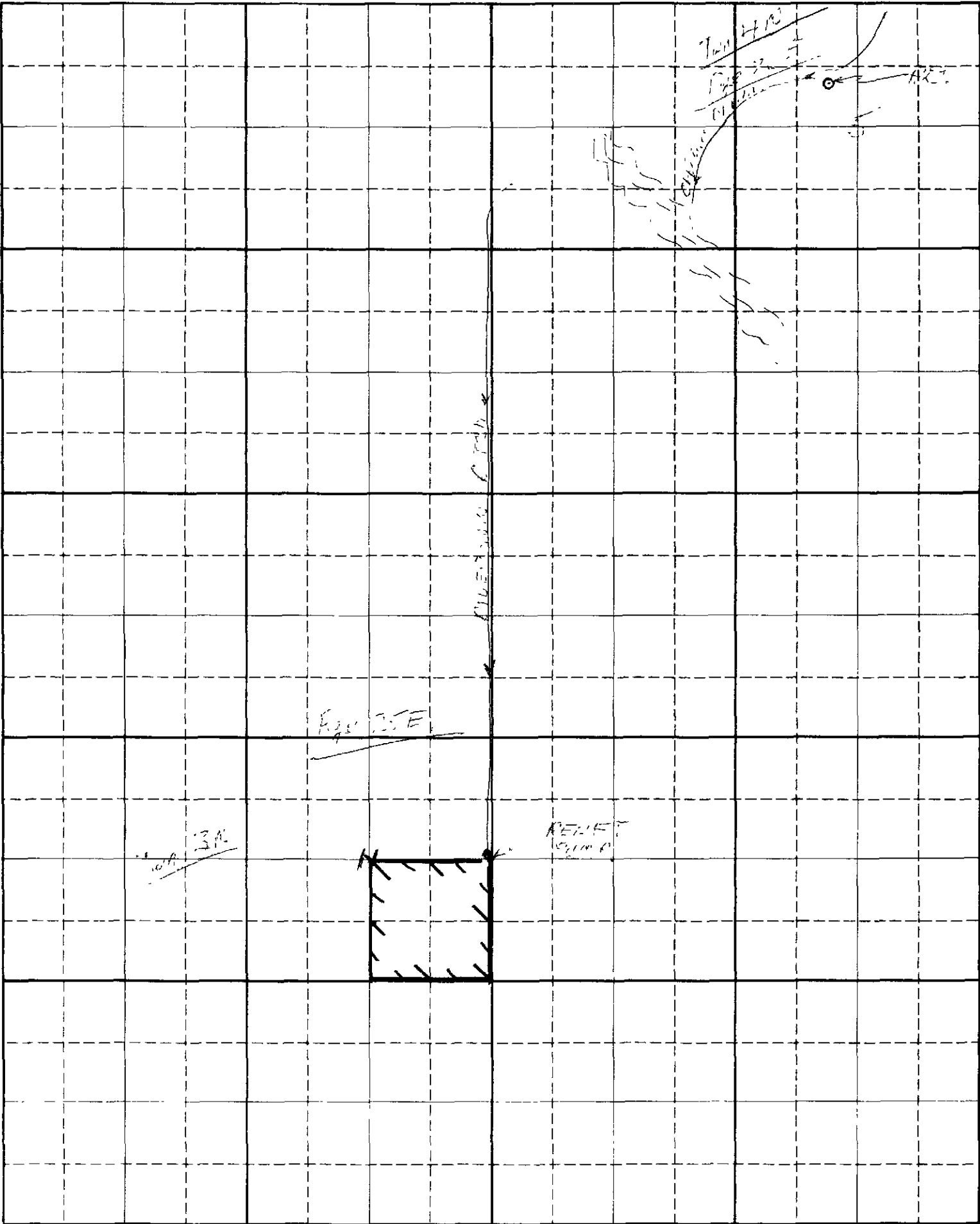
9 a. Who owns the property at the point of diversion Rodney Pearson

b. Who owns the land to be irrigated or place of use Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Applicant has an easement for drilling site.

10. Remarks There is a 40% ditch transportation loss figured into the total amount of 5.32 cfs

11 Map of proposed project show clearly the proposed point of diversion, place of use, section number, township and range number



Scale 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth

Marshall Todd Perkins
(Applicant)

Proposed Priority 1/ 6/77

Received by AW Date 1-06-77 Time 12:00 p.

Preliminary check by EMC Fee \$ 75.00

Receipted by AW Date 1-06-77 #4485

Publication prepared by AW Date 1-06-77

Published in Arco Advertiser

Publication dates January 13 + 20, 1977

Publication approved me Date 2-23-77

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by RDC JG

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

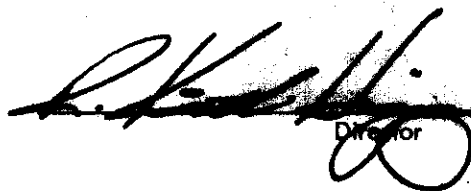
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 34-7169, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before March 1, 1982.
- c. Other: A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.

2. Denial of said application is for the following reasons: _____

Witness my hand this 14 day of March 1977.


Director

Affidavit of Publication

FEB 23 1977

Department of Water Resources
Eastern District Office

I, Leella Cornmaek, of the
Arco Advertiser, a weekly newspaper of general
circulation, published weekly at Arco, Idaho, since
March, 1909, do solemnly swear that a copy of
this notice, per clipping attached, was published
weekly in the regular and entire issue of said
newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with

the issue dated 1-13-77

and ending with the issue dated 1-20-77

Leella Cornmaek

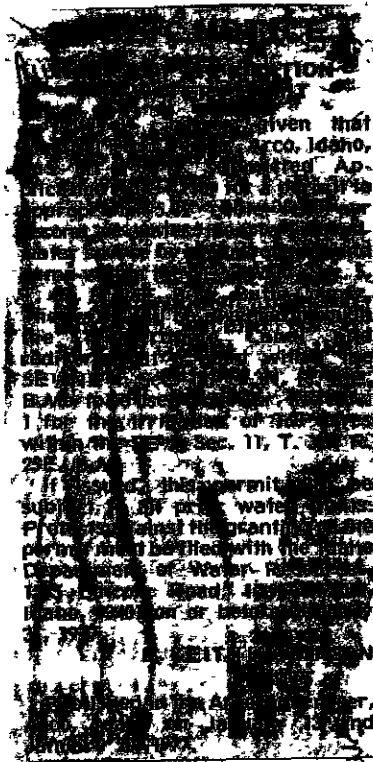
Subscribed and sworn to before me this

21 day of Feb, 1977

Charles G. Jones
Notary Public

Residence: Arco, Idaho.

My commission expires 2/14, 1978



MEMORANDUM

TO: Files 34-7136 and 34-7169

FROM: Sharla

DATE: July 17, 1992

RE: Trans. No. 3812

See file 34-7080 for all correspondence regarding the above referenced transfer.

MIDDOCELMED

JUL 29 1992

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
RANDALL B. REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

January 15, 1991

RECEIVED
JAN 17 1991

Department of Water Resources

Norm C. Young, Administrator
Resources Administration Division
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Dear Mr. Young:

We have recently prepared and filed a number of documents with IDWR regarding water rights for lands owned by Juel, Don and Herman Aikele. Copies of the documents as filed are enclosed with this letter for your information, and this letter is written as an explanation so you will understand how we think they all relate.

You will recall that one of the reasons no water rights were claimed on the S1/2 of the S1/2 of Section 6, Township 3 North, Range 26 East, and the SW1/4 of the SW1/4 of Section 5 of the same township and range was because the record owner of this land was Mike Aikele and the status with respect to the mortgagee had never been settled. That has now been resolved with the mortgagee and Juel Aikele will take over Mike's interests in this land, as well as the land Mike formerly owned in Section 25 of Township 4 North, Range 25 East, and Section 1 of Township 3 North, Range 25 East.

Also, Quitclaim Deeds have now been exchanged between Mike and Don and between Mike and Herman and from Mike to Juel so that the land each is actually farming will also be titled in the correct name.

All of this permits us now to revise the SRBA claims to more accurately reflect actual practices over the past several years. We have enclosed a map which shows approximately how these irrigation practices have occurred for several years near the south portion of Section 6 and the north portion of Sections 7 and 8 in Township 3 North, Range 26 East. The land in yellow

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JUL 29 1992

Norm C. Young, Administrator
January 15, 1991
Page 2

is that which has been irrigated by Mike and Juel with water under Juel's rights. The legal ownership of this land will now all be in Juel. The land in pink is that which has been irrigated by and is now owned by Don, and the land in blue is that which has been irrigated and is now owned by Herman.

We have also prepared and filed a new application for transfer of Water Rights Nos. 34-7080A, 34-7136, and 34-7169 of Todd Perkes. This new application also tries to take into account more nearly what occurred last year, and what is anticipated next year. As you know, many of the wells are not producing up to capacity. Juel's well in Section 21 of Township 4 North, Range 26 East pumped an average of about 8.5 cfs last summer instead of the 12.0 cfs it formerly did. Mike's wells (now Juel's) in Sections 5 and 8 of Township 4 North, Range 26 East which supply the land in Section 25 of Township 4 North, Range 25 East and Section 1 of Township 3 North, Range 25 East were also down by about 4.0 cfs and that is the reason the used pump had been installed in one of Todd's wells also in Section 5 of Township 4 North, Range 26 East. It is expected that operations in 1991 will need to be very similar so this application for transfer attempts to provide for this situation.

We have filed the application for transfer earlier this time and are hopeful that it can be processed in advance of the 1991 irrigation season.

If any of this is unclear, or if you have any suggestions, we would welcome your questions or comments.

Yours very truly,



Kent W. Foster

#3840.00/srs

Enclosure

6. 10. 1991
JUL 29 1992

Other info

with letter dated 1-15-91
in file

34-7436.

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JUL 29 1992

1/2



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 22, 1990

Kent Foster
Holden, Kidwell, Hahn & Crapo
P. O. Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Re: Application for Transfer No. 3675 of Water Right Nos. 34-7080A,
34-7136 and 34-7169 in the names of M. Todd Perkes, Juel Aikele
and Michael Aikele

Enclosed is a copy of the approved Application for Transfer of Water
Right Nos. 34-7080A, 34-7136 and 34-7169 along with a copy of the
Memorandum Decision and Order Approving Transfer No. 3675 and Denying
Attorney's Fees.

Any person who does not agree with the decision of the department may
request a rehearing before the Director within 20 days, or may appeal
directly to the district court within 30 days of the date the decision
is mailed.

If you have any questions concerning this matter, please feel free to
contact this office.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosures

c w/enc.: M. Todd Perkes
Gary Slette
Lewis Rothwell
Juel and Michael Aikele
Lawrence Babcock

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MEMORANDUM

TO: Paul Meyer
FROM: L. Glen Saxton *LS*
RE: MIKE AIKELE WELL - SWSW, Sec. 21, Twp. 4N, Rge. 26E
DATE: August 17, 1990

This memo is in response to your memo dated August 10, 1990.

You are correct that the database does not show a well in the above referenced legal description for Mike Aikele. The well, however, has been identified for potential use on Application for Transfer No. 3675 of Water Right No. 34-7080 34-7136 and 34-7196. This transfer was protested.

On July 26, 1990, the department conducted a hearing in this matter. The proposed decision in this matter was signed on August 9, 1990 and mailed about the 13th of August 1990.

At this point, the proposed decision should be allowed to run its course without other actions associated with the use such as orders to show cause and so on.

I appreciate your work in identifying wells such as this for potential action associated with continued use. Keep up the good work.

NOV 01 1990

1 Gary D. Slette
2 NELSON, RSHOLT, ROBERTSON,
3 TOLMAN & TUCKER
4 P. O. Box 1906
5 Twin Falls, Idaho 83303-1906
6 Telephone: (208) 734-0700
7 0608B/mw/08-02-90

RECEIVED
AUG 6 1990

Department of Water Resources

8 BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

9 * * * * *

10
11 In Re: Transfer No. 3675)
12 pertaining to IDWR Water Rights)
13 Nos. 34-7080A, 34-7136 and 34-7169)
14)

BRIEF IN OPPOSITION
TO APPLICANTS' MOTION
FOR ATTORNEY FEES

15 FACTS

16 The Applicants ("Applicants") in this matter are the
17 owners of the above-numbered water rights, and in this
18 proceeding they have sought to transfer the place of use of
19 those water rights. Lawrence Babcock ("Babcock") and more than
20 100 other individuals (the "Protestants") protested the
21 Applicants' proposed changes pursuant to Idaho Code
22 S42-222(1). At the hearing of this matter conducted on July
23 26, Babcock acted as the lead spokesperson for the Protestants,
24 and the Applicants were represented by their attorney, Kent
25 Foster ("Foster"). By most accounts, the decorum of the
26 hearing deteriorated decidedly from the outset, and heated
27 exchanges occurred between Babcock and Foster. That exchange
28 culminated in Foster's making an oral motion to the hearing
officer for an award of attorney's fees in favor of his clients

1 and against Babcock, allegedly because of Babcock's and the
2 Protestants' filing of a "frivolous protest." The hearing
3 officer afforded Babcock's counsel ten (10) days within which
4 to respond to the oral motion, after which time the Applicants
5 have been permitted a similar ten-day response period.

6 ARGUMENT

7 It is unfortunate that an ad hominem argument evolved
8 in the context of an administrative hearing conducted with
9 regard to the protest of a water right. Quite obviously, the
10 Applicants disliked the notion that protests were filed with
11 regard to their respective proposed transfers. However, in
12 discussing the notice requirement for such an application,
13 Idaho Code §42-222(1) states:

14 Such notice shall advise that anyone who
15 desires to protest the proposed change shall file
16 notice of protests with the Department within ten
(10) days of the last date of publication.
(Emphasis added.)

17 Babcock and his fellow Protestants were well within
18 their legal rights to file a protest to the transfer
19 applications, and to have the matter heard by the Department
20 pursuant to relevant statutes and rules.

21 Applicants' counsel has singled out Babcock to be the
22 unwitting recipient of the frustration of the Applicants.
23 Apparently, that is the price one pays for taking a stand in
24 order to attempt to preserve his rights, and the rights of
25 others. The Applicants have claimed that the protests filed by
26 Babcock and the Protestants were frivolous and that therefore,
27 Babcock alone should be ordered to pay for the Applicants' fees
28

1 incurred relative to the hearing. It is respectfully submitted
2 that the Applicants' motion is devoid of all merit, both
3 legally and substantively, and that it must therefore be denied.

4 Perhaps the most analogous legal precedent addressing
5 the instant issue can be found in the case of Idaho Power
6 Company v. Idaho Public Utilities Commission, 102 Idaho 744,
7 639 P.2d 442 (1981). In that case, the Public Utilities
8 Commission had determined that it had authority to award
9 attorney fees to consumer groups who had intervened in a rate
10 making proceeding. Subsequent to the issuance of the PUC's
11 order, the PUC attempted to assess costs in favor of the
12 intervenors and against the utilities involved in the
13 proceeding. Idaho Power Company and others appealed the
14 decision of the PUC on the basis that "an administrative order
15 may generally be collaterally attacked when the issuing agency
16 lacks jurisdiction over the matter considered" 102 Idaho
17 at 749, citing Utah-Idaho Sugar v. Intermountain Gas Co., 100
18 Idaho 368, 374, 597 P.2d 1058 (1979). In concluding that the
19 PUC had no jurisdiction to award such fees, the Idaho Supreme
20 Court cited Washington Water Power Co. v. Kootenai
21 Environmental Alliance, 99 Idaho 875, 879, 591 P.2d 122, 126
22 (1979) for the following proposition:

23 As a general rule, administrative
24 authorities are tribunals of limited jurisdiction
25 and their jurisdiction is dependent entirely upon
26 the statutes reposing power in them and they
27 cannot confer it upon themselves, although they
28 may determine whether they are it. If the
provisions of the statute are and
compliance is not had with the statute, no
jurisdiction exists. (Emphasis in original). 102
Idaho at 750.

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NOV 01 1990

Continuing, the court said:

This is especially true in light of the general rule that attorney fees cannot be recovered in an action unless authorized by statute or by express agreement of the parties. (Citations omitted). . . . This authorization is for the courts, not the Commission.

The Idaho Legislature has authorized the award of attorney fees in only a few clearly defined circumstances. Idaho Code §§12-120 and 12-121 allow the courts to set attorney fees in civil damage suits under certain conditions. (Emphasis added).

. . .

From the foregoing statutes, it is clear that the Idaho legislature has provided for the award of attorney fees specifically when it so intends, and only when it so intends. Id. at 750-751.

The Idaho Power case makes it abundantly clear that an award of attorney's fees in a matter such as the instant protest is not permissible unless authorized by statute.

Extensive review of the Idaho Rules of Civil Procedure, the Administrative Procedures Act of Idaho (Idaho Code §67-5201, et seq.), and Title 42 of the Idaho Code provide no insight as to the basis that the Applicants might assert with regard to their motion to recover attorney's fees from Babcock. Neither do the Rules and Regulations of Water Appropriation (October 1986), nor the Rules and Regulations of Practice and Procedure (October 1983) promulgated by the State of Idaho Department of Water Resources provide any authority for a hearing officer in an administrative hearing to award attorney fees.

NOV 01 1990

1 Even the Applicants' counsel must concede that there
2 are no statutory authorizations to permit such an award to be
3 made. While the legislature has seen fit to statutorily allow
4 courts to award attorney fees, no such authorization has been
5 granted in administrative hearings. Application of the maxim
6 "expressio unius est exclusio alterius" requires a conclusion
7 that it is impossible to have this administrative tribunal
8 award attorney's fees as requested by the Applicants.

9 The apparently successful motive for the Applicants'
10 motion for recovery of attorney's fees against Babcock was to
11 intimidate other would-be Protestants from testifying at the
12 hearing. When all is said and done, the reader must seriously
13 question the frivolity of the motion made by the Applicants to
14 recover attorney's fees because of a claimed frivolous
15 protest. It seems especially unfortunate now that a layman
16 such as Babcock must resort to the aid of counsel, and the
17 attendant costs, to protect a right vouchsafed to him by the
18 legislature of this state. The oppressive conduct of
19 Mr. Foster should not be condoned or encouraged by
20 consideration of his request for attorney's fees.

21 CONCLUSION

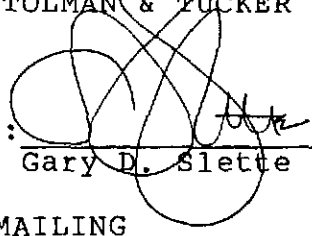
22 Because no statutory authorization exists to permit
23 the hearing officer in this matter to make an award of attorney
24 fees, it must be concluded in accord with Idaho Power Company
25 v. Idaho Public Utilities Commission that the Applicants'
26 motion must be denied.

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NOV 01 1990

1 Respectfully submitted this 3rd day of August, 1990.

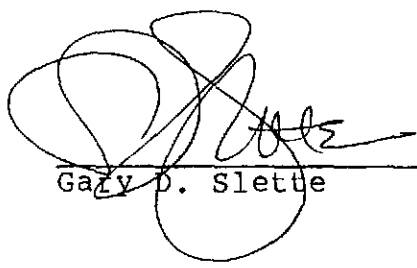
2 NELSON, ROSHOLT, ROBERTSON,
3 TOLMAN & TUCKER

4
5 By: 
6 Gary D. Slette

7 CERTIFICATE OF MAILING

8 I hereby certify that on this 3rd day of August,
9 1990, I served a copy of the foregoing BRIEF IN OPPOSITION TO
10 APPLICANTS' MOTION FOR ATTORNEY FEES, by depositing same in the
11 United States mail, postage prepaid, in an envelope, addressed
12 to the following:

13 Kent Foster
14 Holden, Kidwell, Hahn & Crapo
15 P.O. Box 50130
16 Idaho Falls, ID 83405

17
18
19
20
21
22
23
24
25
26
27
28

Gary D. Slette

RECEIVED

NOV 01 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 27, 1990

CERTIFIED MAIL

Juel and Michael Aikele
Rt. 1
Moore, ID 83255

Marshall Todd Perkes
Rt. 1 Box 110
Arco, ID 83213

33171
33172

RE: Order to Cease and Desist Irrigation of Lands within the
SW1/4NW1/4 and SE1/4NW1/4, SEC. 5, TWP. 4N, RGE. 26E, B.M.

Gentlemen:

Department records indicate that the land in the above referenced 80-acre tract is included in three licensed water right and that the land is in a federal land set aside program. A further review of the Department's records indicate that a transfer of the licensed water rights has not been applied for.

The attached order to cease and desist requires that irrigation on the land not having a recorded water right be stopped until a right authorizing irrigation is obtained to allow irrigation of the land.

You have the right to have an administrative hearing before the department pursuant to Section 42-1701A, Idaho Code, if a request is received by the department no later than 15 days after the service of this order.

Please feel free to contact the department if you have questions.

Sincerely,


NORMAN C. YOUNG
Administrator

NCY:rf

c: Kent Foster
bc: Gary Slette

MICROFILMED

NOV 01 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF)
GROUNDWATER WITHOUT A VALID RIGHT FROM)
WELLS LOCATED IN SW1/4NW1/4 AND SE1/4NW1/4)
SEC. 5, TWP. 4N, RGE. 26E, B.M.)
OWNED AND/OR CONTROLLED BY MARSHALL)
TODD PERKES, AND/OR JUEL AIKELE)
AND/OR MICHAEL AIKELE)

ORDER TO
CEASE AND DESIST

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The Department has issued licenses in connection with water right identification numbers 34-7080A, 34-7136 and 34-7169. The points of diversion for these licenses are two wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. (Perkes wells) and the place of use is within parts of Sec. 11, Twp. 3N, Rge. 25E, B.M.

2. On July 26, 1990, the owner of the wells, Marshall Todd Perkes, testified under oath before the Department that the lands to which the three licensed water rights are appurtenant are in a federal land set aside program and are not being irrigated.

3. Also on July 26, 1990, Juel Aikele testified under oath before the Department that his son, Michael Aikele, had been "loaned" the use of the Perkes well or wells and has been diverting and using water from the well or wells for irrigation purposes.

4. Department records do not show that water diverted from the Perkes wells is appurtenant to any land other than the land in the set aside program which presently is not being irrigated.

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5. The Director of the Department has not given approval to divert groundwater from the Perkes wells onto any land other than the land licensed under the rights.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water source without obtaining a valid right to do so or is applying water not in conformance with the conditions of a valid right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right.

2. Section 42-229, Idaho Code, provides that: "The right to the use of ground water of this state may be acquired only by appropriation."

3. Water diverted for use from the Perkes wells for use on land other than licensed under the rights or otherwise approved by the department is in violation of the statutes of the state of Idaho and Water Appropriation Rule 3,1,1.

4. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. Section 42-352, Idaho Code, provides that:

Any person who wilfully violates any cease and desist order issued under Chapter 3, Title 42, Idaho Code, after the same has been served upon him shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs.

6. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

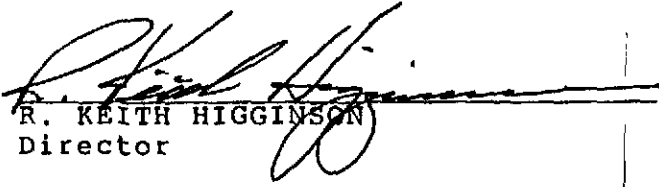
7. The Director should issue a Cease and Desist Order pursuant to the authority of Section 42-351, Idaho Code.

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ORDER

IT IS THEREFORE hereby ORDERED, that Marshall Todd Perkes and/or Juel Aikele and or Michael Aikele immediately CEASE AND DESIST the diversion and use of water from the Perkes wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. for the irrigation of any lands to which the rights are not appurtenant until such approval is obtained from the Director of the Department of Water Resources.

Dated this 27TH day of July, 1990.


R. KEITH HIGGINSON
Director

July 26, 1990

Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Proposed transfer of Groundwater License: 34-7080A
34-7136
34-7169

Dear Mr. Saxton:

It has come to this offices attention that M. Todd Perkes
has proposed to transfer the above mentioned water rights.

Farmers Home Administration (FmHA) currently has a lien on
all of the above water rights (see attachment).

On July 23, 1990, during our telephone conversation, you
stated that transfer applicants must present IDWR with
waivers from all lienholders stating they approve or consent
to the water right transfers.

As of this date, M. Todd Perkes has not applied or requested
from FmHA approval or consent to transfer the above water
rights. Approval or consent has not been given.

The transfer of water rights from FmHA mortgaged property
without approval or consent is a violation of M. Todd Perkes
loan and security agreements.

FmHA is requesting that the application to transfer the
above water rights be suspended. If M. Todd Perkes requests
FmHA concurrence, the request will be considered and a
decision by FmHA will be made at that time.

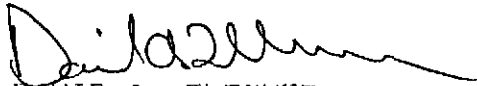
The Arco County Office Address is: FmHA
P.O. Box 656
Arco, Idaho 83213

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If you have any questions, please do not hesitate to contact the Arco County Office at (208) 527-3486.

Sincerely,



DAVID A. FLESHER
Acting County Supervisor

Attachment

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REAL ESTATE MORTGAGE FOR IDAHO

THIS MORTGAGE is made and entered into by M. TODD PERKES and NORMA L. PERKES,
Husband and Wife,

residing in Butte County, Idaho, whose post office address is
Route #1, Box 110, Arco, Idaho, 83213

herein called "Borrower," and:

WHEREAS Borrower is indebted to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, herein called the "Government," as evidenced by one or more promissory note(s) or assumption agreement(s), herein called "note," which has been executed by Borrower, is payable to the order of the Government, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and is described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
March 19, 1979	\$ 7,400.00	8½%	March 19, 1984
March 19, 1979	\$392,600.00	8½%	March 19, 2019

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure the payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949;

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity mortgage to secure the Government against loss under its insurance contract by reason of any default by Borrower.

NOW, THEREFORE, in consideration of the loan(s) and (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provision for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement, Borrower does hereby grant, bargain, sell, convey, mortgage, and assign unto the Government the following property situated in the State of Idaho,

County(ies) of BUTTE :

TRACT 1:

Township 4 North, Range 26 East, Boise Meridian, Butte
County, Idaho:

Parcel 1:

Section 27: A parcel of land in the NW¼ of Section 27, more particularly described as follows: Beginning at the center of Section 27; thence West 1320 feet; thence North 240 feet; thence West 1320 feet; thence South 240 feet; thence East 1320 feet;

ALSO, a parcel of land in the NW¼ of Section 27, more particularly described as follows: Beginning at the center of Section 27; thence West 1320 feet; thence North 840 feet more or

less to the South line of Thomas Perkes property described in deed recorded February 12, 1976, as instrument no. M-4691; thence East 1320 feet; thence South 840 feet more or less to the point of beginning.

The SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ being South and West of the old Moore-Arco Highway.

Section 35: W $\frac{1}{2}$ W $\frac{1}{2}$.

Section 34: ALL

Township 3 North, Range 26 East, Boise Meridian, Butte County, Idaho:

Section 3: NW $\frac{1}{4}$ NE $\frac{1}{4}$ (Lot 2).

Parcel 2:

Township 4 North, Range 26 East, Boise Meridian, Butte County, Idaho:

Section 26: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ being South and West of the Old Moore-Arco Highway.

TRACT 2:

Township 3 North, Range 25 East, Boise Meridian, Butte County, Idaho:

(SEE ATTACHED EXHIBIT "A")

together with all rights, interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein-all of which are herein called "the property";

TO HAVE AND TO HOLD the property unto the Government and its assigns forever in fee simple.

BORROWER for himself, his heirs, executors, administrators, successors and assigns WARRANTS THE TITLE to the property to the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows.

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay to the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by him when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described by this instrument, with interest, shall be immediately due and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of his covenant to pay. Any payment made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

(8) To keep the property insured as required by and under insurance policies approved by the Government and at its cost, to deliver such policies to the Government.

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Section 11: N $\frac{1}{2}$, SE $\frac{1}{4}$.

TOGETHER With all water, water rights, ditch and ditch rights and ground water appurtenant thereto, including, but not limited to, State of Idaho Water Permits #34-7169, 34-7080, 34-7060, 34-7029 and 34-7136.

Together with all irrigation equipment of every kind and character and additions thereto and replacements thereof now owned and hereafter acquired by the borrower, and used in the irrigation of the above premises, especially, but not limited to, the following:

- 1 Pivot, Valley, Mod. 5171 (10 tower), #19132
- 1 Pivot, Valley, Mod. 5171 (10 tower)
- 1 Motor, U.S. Electric, 200 h.p., #C1516-01-58885-02930
- 1 Pump, Aurora, 200h.p.
- 2 Power Panels
- 200' Mainline (buried), Steel 22"
- 3960' Mainline (buried), Steel 8"
- 8 Gunds-Spray, Nelson 100's
- 1 Motor, G.E., Electric 250h.p., #BMJ204115
- 1 Pump, Aurora 250 h.p.
- 1 Power Panel
- 2640' Mainline (buried), Steel 12"
- 1 Motor, U.S. Motors, 200 h.p., #1387258
- 1 Pump, Wellline, 200 h.p., #45957
- 1 Power Panel
- 4 Wheel lines A&M, $\frac{1}{2}$ mile, 5"
- 1 Motor, G.E., Electric 150 hp, #DKJ403172
- 1 Pump, single-Layne Bowle, 150 hp, #45331
- 1 Power Panel, G.E.
- 1 Wheel Line A&M, Mod. 113000, 5", #3462
- 1 Motor, G.E. 250 hp Electric, #KKJ1023116
- 1 Pump, 250 hp
- 1 Power Drive, A&M, #3851
- 1 Power Drive, A&M, #3449

np together With all grazing rights, licenses, leases, permits and privileges, and extensions and renewals thereof, now and hereafter owned, held, controlled or used by the Borrower in the operation of the above premises, including, but not limited to, 94 ~~head~~ ^{hums} of cattle from May 16 to August 15 on George Allotment, administered by the United States Department of the Interior, Bureau of Land Management.

SUBJECT TO:

Right of Way Easement granted to Lost River Electric Cooperative, Inc., by Marshall Todd Perkes, recorded January 2, 1975, as filing no. M-3835, records of Butte County, Idaho.

RECEIVED *RP*

Rights of the public in and to that portion of the above described premises falling within roads or highways.

A Financing Statement executed by M. Todd Perkes in favor of Commodity Credit Corporation, filed December 1, 1978, as instrument no. 3844, records of Butte County, Idaho.

There is an easement and right of way granted to United States along the North side of NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, Township 3 North, Range 25 East, Boise Meridian, by instrument recorded in Book 7 of Contracts, page 195, records of Butte County, Idaho.

Easement for irrigation water between Timberline Beef, Inc., and Marshall Todd Perkes and Norma L. Perkes filed March 29, 1976, as filing no. M-4783, records of Butte County, Idaho.

A Financing Statement executed by Marshall T. Perkes and Norma L. Perkes, husband and wife, in favor of United Denver Leasing Company, filed April 14, 1977, as instrument No. 2932, records of Butte County, Idaho.

Mortgage dated December 1, 1978, executed by M. Todd Perkes and Norma Perkes, his Wife, to LaMar Hult and Betty Hult, his Wife, to secure the payment of \$35,000.00 and interest, recorded December 6, 1978, as filing no. M-7274, records of Butte County, Idaho.

MTP NLP

RECORDED

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner, comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe, and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as mortgagee hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed.

(14) The Government may extend and defer the maturity of and renew and reamortize the debt evidenced by the note or any indebtedness to the Government secured hereby, release from liability to the Government any party so liable thereon, release portions of the property from and subordinate the lien hereof, and waive any other rights hereunder, without affecting the lien or priority hereof or the liability to the Government of Borrower or any other party for payment of the note or indebtedness secured hereby except as specified by the Government in writing.

(15) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan

(16) Default hereunder shall constitute default under any other real estate, or under any personal property or other security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

(17) SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should any one of the parties named as Borrower die or be declared an incompetent, a bankrupt, or an insolvent, or make an assignment for the benefit of creditors, the Government, at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this mortgage, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, (d) foreclose this instrument as provided herein by law, (e) require Borrower to surrender to the Government any and all abstracts of title then owned by Borrower covering all or any part of the property, and (f) enforce any and all other rights and remedies provided herein or by present or future law.

(18) The proceeds of foreclosure sale shall be applied in the following order to the payment of (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. At foreclosure or other sale of all or any part of the property, the Government and its agents may bid and purchase as a stranger and may pay the Government's share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(19) Borrower agrees that the Government will not be bound by any present or future State laws, (a) providing for valuation, appraisal, homestead or exemption of the property, (b) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action may be brought, (c) prescribing any other statute of limitations, (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State laws. Borrower hereby relinquishes, waives, and conveys all rights, inchoate or consummate, of descent, dower and curtesy.

(20) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for him will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, or national origin.

(21) This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(22) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, addressed, unless and until some other address is designated in a notice so given, in the case of the Government to Farmers Home Administration, United States Department of Agriculture, at Boise, Idaho 83702, and in the case of Borrower to him at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown above).

(23) WAIVER: THE BORROWER ACKNOWLEDGES AND AGREES THAT IF HE DEFAULTS A NONJUDICIAL FORECLOSURE OF THE PROPERTY MAY BE CONDUCTED WITHOUT A HEARING OF ANY KIND, THE BORROWER HEREBY WAIVES ANY RIGHTS HE MAY HAVE TO ANY SUCH HEARING. NEVERTHELESS THE REGULATIONS OF THE FARMERS HOME ADMINISTRATION IN EFFECT AT THE TIME SUCH FORECLOSURE IS STARTED MAY PROVIDE A MEETING AND THE GOVERNMENT WILL FOLLOW THESE REGULATIONS.

(24) At the option of the Government this mortgage may be foreclosed by action or advertisement as provided by statute, and Borrower hereby irrevocably vests in the Government the statutory power of sale and constitutes and appoints the Government his agent and attorney in fact to sell the property, after due notice, at public auction to the highest bidder, for cash or secured credit at the option of the Government, and to give the purchaser a warranty deed binding upon Borrower and all claiming under him.

(25) Borrower has assigned or waived or will immediately on request of the Government, assign or waive in favor of the Government all grazing privileges, permits, licenses, or leases appurtenant to or used in connection with said land, and Borrower further covenants and agrees to produce renewals thereof prior to their expiration and to pay all fees and charges and to perform all acts and do all things necessary to keep and preserve all said grazing rights and renewals thereof, and in the event of the failure of Borrower to do any of these things the Government may do so on behalf of Borrower, including advancing such sums as may be necessary for this purpose, and such funds advanced shall be secured by this instrument.

(26) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

IN WITNESS WHEREOF, Borrower has hereunto set Borrower's hand(s) and seal(s) this 19th day of

March, 19 79.

No. 7707

FILED

MAR 18 1979

Ex - 100	✓
Ex - 100	✓
Ex - 100	✓

M. Todd Perkes
M. Todd Perkes

Norma L. Perkes
Norma L. Perkes

BUTTE COUNTY, IDAHO
STATE OF IDAHO

ACKNOWLEDGMENT

COUNTY OF Butte

On this 19th day of March, in the year of 1979, before me, the undersigned,

a Notary Public in and for said State, personally appeared M. TODD PERKES and NORMA L. PERKES,

known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged

to me that they executed the same as their free act and deed for the uses, purposes and consideration therein expressed.

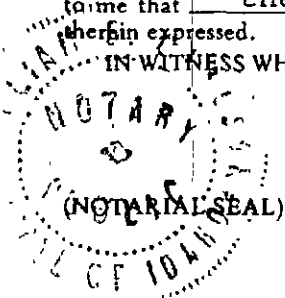
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the said date.

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NOV 11 1980

William G. Carlson
William G. Carlson
Notary Public, residing at Arco, Idaho

My commission expires: Lifetime
Bond expires: 11/2/79



July 23, 1990

Dave Flesher
FmHA
Box 656
Arco, ID 83213

Dear Mr. Flesher:

Re: Water Right Nos. 34-7080A, 34-7136 and ~~34-7169~~
Todd Perkes, Juel Aikele & Michael Aikele

Pursuant to your request, enclosed is a copy of the Application for Transfer of Water Rights and a copy of the Notice of Hearing.

If the department can assist you further, please contact us.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

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NOV 01 1990





State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 13, 1990

RE: Transfer of Water Right Nos. 34-7080A/7136/7169

M. Todd Perkes &/or
Juel &/or Michael Aikele
c/o Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

CERTIFIED MAIL# 33496

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

CERTIFIED MAIL# 33494

SEE FILE 34-2332 for
returned certified
Card

Lawrence Babcock
Box 66
Moore, ID 83255

CERTIFIED MAIL# 33497

Gary Slette
Nelson, Rosholt, Robertson,
Tolman & Tucker
Box 1906
Twin Falls, ID 83301

CERTIFIED MAIL# 33498

Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

CERTIFIED MAIL# 33499

Gentlemen:

Enclosed is a notice setting the time and place for a hearing regarding the above referenced transfer. The Magistrate Courtroom has been reserved for the hearing on July 26, 1990.

If you have any questions concerning this matter, please feel free to contact our office.

Sincerely,

Sharla Curtis

SHARLA CURTIS
Technical Records Specialist

Enclosure

cc: Eastern Region
Douglas Rosenkrance

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NOV 01 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.)
3675 OF WATER RIGHTS 34-7080A,)
34-7136 AND 34-7169 IN THE)
NAME OF M. TODD PERKES, JUEL)
AIKELE & MICHAEL AIKELE AND)
THE CEASE AND DESIST ORDER)
ISSUED BY THE DEPARTMENT ON)
JUNE 22, 1990)

NOTICE OF HEARING

On February 14, 1990, M. Todd Perkes, Juel Aikele & Michael Aikele (applicants) filed application for transfer no. 3675 in connection with water right nos. 34-7080A, 34-7136 and 34-7169. The application was protested by numerous parties in the Big Lost River drainage.

On June 22, 1990, the Department of Water Resources (department) issued a Cease and Desist Order to Don A. Aikele, Juel Aikele and Michael Aikele (applicants) to cease and desist the irrigation of land within the S1/2SW1/4 Section 6, T3N, R26E, BM. Applicants have not ceased to irrigate this land.

The department has set this matter for combined hearing on the protested application for transfer and the cease and desist order. The hearing is scheduled for Thursday, July 26, 1990 at 9:30 a.m. in the Magistrate Courtroom in Arco, Idaho. The civil penalty provided in Section 42-352, Idaho Code, is an issue to be heard.

The hearing will be held in accordance with Chapter 2, Title 42, Section 42-1701A, Idaho Code, and the adopted rules of Practice and Procedure of the department. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 13th day of July, 1990.

L. Glen Saxton
L. GLEN SAXTON, Chief
Water Allocation Bureau

FILED

NOV 1 1990

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
MARIE T. FEELEY
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

July 3, 1990

RECEIVED
JUL 5 1990

Department of Water Resources

Norman C. Young, Administrator
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Order to Cease and Desist Irrigation of Lands within
the S1/2 of the SW1/4 of Section 6, Township 3 North,
Range 26 EBM.

Dear Mr. Young:

We have been asked to respond to your letter and the "Cease and Desist Order" of June 22, 1990, relating to lands being irrigated in the S1/2 of the SW1/4 of Section 6, Township 3 North, Range 26 East. As you know, we represent Mr. Don Aikele and Messrs. Juel and Michael Aikele as well, and this response is intended to be on behalf of all.

As we understand it, it is correct that some irrigation is taking place within this 80 acre tract. Mr. Don Aikele's pivot in the NW1/4 of Section 7 overlaps onto perhaps as much as 15 acres of this land and has done for many years. The larger pivot of Mr. Juel Aikele also covers up to as much as perhaps 30 acres of this land. Our clients are unaware of any technology that would permit them to somehow block out that portion of the sprinkling under the pivots which covers the particular 15 and 30 acre parcels.

We have been very much aware of this problem since the Show Cause Orders and the other activities which began late last summer and continued throughout the fall and winter. As we have understood our clients' version of the facts relating to the drilling and operation of the well under 34-7296 and the installation of this large pivot system, it has appeared to us

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NOV 01 1990

Mr. Norman C. Young, Administrator
July 3, 1990
Page 2

that this situation would give rise to one of the strongest cases for applying the doctrine of estoppel against IDWR in the event of any action in district court to enforce a Cease and Desist Order.

However because our clients would prefer to avoid expensive litigation if possible, pursuant to our recommendations last fall and winter, they went to substantial efforts to try to resolve the problem in another way. Mr. Todd Perkes had approximately 480 acres in Section 11 which he did not plan to irrigate in the near future. This land was supplied with water from two wells in Section 5, Township 4 North, Range 26 East under three water rights, Licenses Nos. 34-7080A, 34-7136, and 34-7169. The Aikeles were able to enter into a lease agreement with Mr. Perkes to lease these water rights so as to have an alternative to an injunction proceeding in district court.

N An application for transfer was filed to transfer the point of diversion for the three Perkes rights to the 34-7296 well, and the place of use from the 480 acres in Section 11, Township 3 South, Range 25 East to a similar number of acres in Section 6, Township 3^NSouth, Range 26 East, particularly including the 80 acres referred to in your June 22nd letter and order. When the application was filed we virtually begged IDWR to expedite the processing and we see two subsequent letters in our file to IDWR again expressing our sense of urgency regarding the processing.

Because of the unique facts of this matter (portions of the land is under the pivots) this order potentially affects several hundred acres, not just the 80 you refer to. It seems to us that the processing of the pending application for transfer makes much more sense than an injunction proceeding to enforce a Cease and Desist Order which we must defend, at least in part, on an estoppel theory.

We realize that many protests have been filed, but that should not be too surprising considering the status of water rights issues in this basin. At least we do not think the issue of supplemental or secondary versus primary water rights, or the issue of direct interference with some other specific ground or surface water right is involved here. The licenses in question have been used to irrigate land further west and

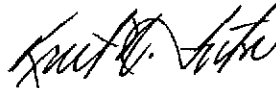
NOV 01 1990

Mr. Norman C. Young, Administrator
July 3, 1990
Page 3

south of this 80 acres and the well from which the water is withdrawn is 3 to 4 miles further south than the wells previously used. We are not talking about taking more water from the aquifer than the licensed rights allow or at some location that creates any greater impact (in fact probably less of an impact) than when the wells in Section 5 are pumped. We see no significant issues of injury, expansion or local public interest raised by the pending application for transfer or the protests filed thereto. We would guess it would be a relatively simple matter to complete the processing and resolve the problem which we have all known about for many months.

If we can provide additional information, please feel free to call upon us at your convenience.

Your very truly,



Kent W. Foster

0022C/srr



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

June 22, 1990

Don A. Aikele
Rt. 1, Box 60
Moore, Idaho 83255

Juel and Michael Aikele
Rt. 1
Moore, Idaho 83255

RE: Order to Cease and Desist Irrigation of Lands within the S $\frac{1}{2}$
of the SW $\frac{1}{4}$, T3N, R26E, B.M.

Gentlemen:

Department records indicate that the land in the above referenced 80 acre tract is included in two applications pending before the department seeking authorization to irrigate the land from a ground water source. These two applications (34-7296, Michael and Juel Aikele, and 34-7482, Don A. Aikele) have not been approved and diversion and use of water is not authorized pursuant to the applications. A further review of the department records did not indicate that other approved rights or claims authorize irrigation of the land in this 80 acre tract.

The attached order to cease and desist requires that irrigation on the land not having a recorded water right be stopped until a right authorizing irrigation is obtained to allow irrigation of the land.

You have the right to have an administrative hearing before the department pursuant to section 42-1701A, Idaho Code, if a request is received by the department no later than 14 days after the service of this order.

Please feel free to contact the department if you have questions.

Sincerely yours,

Norman C. Young

NORMAN C. YOUNG
Administrator

by Jodi Schultz

NCY:js

cc: Kent Foster
Gary Slette

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NOV 01 1990

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF UNAUTHORIZED USE OF)
WATER TO IRRIGATE IN THE S1/2SW1/4,)
SEC. 6, TWP. 6N, RGE. 26E B.M.)
(DON A. AIKELE, JUEL AIKELE AND)
MICHAEL AIKELE))

ORDER TO
CEASE AND DESIST

The Director of the Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The above named persons have submitted applications for permit to irrigate all or part of the land in the S1/2SW1/4, Sec. 6, Twp. 3N, Rge. 26E, B.M. located in Butte County, Idaho. Land in this 80-acre tract is located in the requested place of use for Application No. 34-7296 (Juel and Michael Aikele) and Application No. 34-7482 (Don A. Aikele).
2. The Director of the department has not completed processing of these applications to appropriate water and has not authorized diversion and use of water as proposed in the applications.
3. Field investigation by personnel of the department on June 21, 1990, determined that water was being used for irrigation of growing crops on all or part of the land in the S1/2SW1/4, Sec. 6, Twp. 3N, Rge. 26E, B.M.
4. Authorization to irrigate the land in the S1/2SW1/4, Sec. 6, Twp. 3N, Rge. 26E, B.M. is not included in any other water right of record in the department nor has any right to divert and use water on this tract of land been claimed in the Snake River Basin Adjudication.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department

ORDER TO CEASE AND DESIST -- PAGE 1

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of water resources may file an action seeking injunctive relief or may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right.

2. Section 42-229, Idaho Code, provides that: "The right to the use of ground water of this state may be acquired only by appropriation."

3. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

4. Section 42-352, Idaho Code, provides that:

Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty to be imposed by the director of the department of water resources not to exceed one hundred dollars (\$100) per diversion for each calendar day or any part of a calendar day following service of the cease and desist order in which the illegal diversion or use of water occurs.

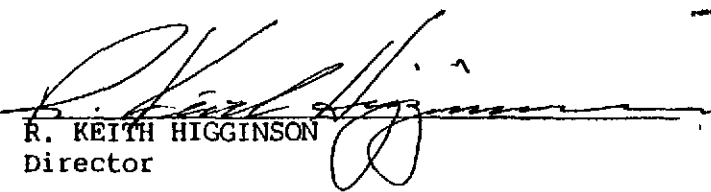
5. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

6. Issuance of a Cease and Desist Order by the Director is appropriate to assure that diversion and use of water does not occur as proposed in the above captioned applications in violation of the provisions of Section 42-351, Idaho Code.

ORDER

IT IS HEREBY ORDERED, that upon service of this order that the applicants CEASE AND DESIST the irrigation of the lands for which the right to irrigate does not exist until such approval is received from the Director to appropriate or otherwise use water for the irrigation of the lands.

DATED this 27th day of June, 1990.


R. KEITH HIGGINSON
Director

NOV 1 1990

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169 PERKES & AIKELE
No. 34-0170/0556 HILLCREEK PROP.

Mr. Lawrence Babcock
Box 66
Moore, ID 83255

Dear Mr. Babcock:

On May 7, 1990, you brought to our office signed petitions protesting the above referenced water right transfers. You have been selected to represent the individuals on these petitions. Therefore, any correspondence concerning these applications will be directed to you. We are asking that you keep these individuals notified of any proceedings concerning these transfers. For your convenience, I have enclosed copies of the petitions submitted.

This letter also acknowledges receipt of the protests filed against the above referenced application for transfers. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?
2. Does the change constitute an enlargement in the use of the original rights?
3. Will the proposed use under these transfers conflict with the local public interest?

The protestants must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

We appreciate your support in this matter. If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

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NOV 01 1990

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169 PERKES & AIKELE
No. 34-0170/0556 HILLCREEK PROP.

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Box 66
Moore, ID 83255

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1. Are other water rights injured by the transfers?
2. Does the change constitute an enlargement in the use of the original rights?
3. Will the proposed use under these transfers conflict with the local public interest?

The protestants must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

We appreciate your support in this matter. If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

RECEIVED

NOV 1 1990

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169
M. TODD PERKES, JUEL AIKELE & MICHAEL AIKELE

Mr. Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Enclosed please find copies of protests filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the three items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169
PERKES & AIKELE

Rita M. Lundy
Assistant Secretary-treasurer
Big Lost River Irrigation District
P.O. Box 205
Mackay, ID 83251

Dear Ms. Lundy:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?
2. Does the change constitute an enlargement in the use of the original rights?
3. Will the proposed use under these transfers conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

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MAY 11 1990

Department of Water Resources
Eastern District Office

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 34-7080A/34-7136/34-7169

WATER DISTRICT 34

WATERMASTER Aug Rosenhance

DATE: 4/26/89

COMMENTS: I have no information on these
Wells so I can not recommend this at
this time.

☐ I do endorse approval of this change.

☐ I do not endorse approval of this change.

I recommend the following conditions of approval:

Aug Rosenhance
Watermaster

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NOV 11 1990

Big Lost River Irrigation District

P. O. Box 205
MACKAY, ID 83251

April 28, 1990

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MAY - 2 1990

Department of Water Resources
Eastern District Office

Idaho Dept. Water Resources
150 Shoup Avenue
Idaho Falls, Id. 83401

To whom it may concern:

We wish to protest #-34-7080A/34-7136/34-7169 M. Todd Perkes,
Juel and Michael Aikele application for a change of a water right.

The stated reasons are as follows: Idaho Code Section 42-222- not in the
public interest-the well it is being transferred to is under a cease and
desist order.

We also wish to protest #-34-00170/34-00556 Hillcreek Properties.
Stated reasons: Idaho Code 42-222 not in the public interest-

Yours truly



Rita M. Lundy
Assistant Secretary-treasurer
Minutes of 4/25/1990

CC: Lewis Rothwell
Chairman of the Board

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NOV 01 1990

Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

Dear Mr. Higginson:

We, the undersigned, do hereby protest the attached applications for transfer for at least, but not limited to the following reasons;

1. No. 34-7080A, 34-7136, & 34-7169 are apparently permit numbers only, and suggest that final department approval has not been granted on the point of diversion.
2. There is an apparent expansion of water rights.
3. An injury to prior rights is a *distinct* possibility.
4. We have an over-appropriation of the total water supply in the basin.
5. These transfers are against the Public interest.

NAME

ADDRESS

Oral Smith	Rt #1 Box 22	Moore, Idaho 83255
Vigil & Hail	Box 454	Moore Idaho 83255
Clara D. Hail	Box 454	Maau Id. 83255
WALTER BROWN		arco Ida 83213
Clover Brown		arco Ida 83213
David Speck		Moore Id 83255
Albert C Babcock		Moore, Idaho 83255
May H Babcock		Moore, Idaho 83255
Wendy Thorngren		Moore, Idaho 83255
Lidia Thorngren		Moore, Id. 83255
Juan McAffee		Moore, Idaho 83255
Alvin J. Roesser		Moore, Idaho 83255
Hesterude Roesser		arco, Idaho 83213
William S. Dyer		arco Ida 83213
Claudene Dyer		arco, Id. 83213
Lorin B. Lutscher		arco Idaho 83213
Bonnie F. Lutscher		arco, Id. 83213
Diana L. Cronquist		Moore, Id. 83255
Dick Buerland		Moore Id 83255
Jessie E. Buerland		Moore Id 83255
Michael J. Buerland SR.		Moore, Id. 83255

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

Notice is hereby given that M. TODD PERKES, JUEL & MICHAEL AIKEL have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidence by LICENSE NO'S 34-7080A, 34-7136 & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW 1/4 S 5 T 3N R 25E, BUTTE COUNTY

NO. 34-7080A

AMOUNT: 2.67 CFS

PRIORITY: SEPT. 23, 1974

The water is used to irrigate 160 acre from April 1 to November 1 within the

NEW S 11 T 3N R 25E, B.M.

NO. 34-7136

AMOUNT: 5.5 CFS

PRIORITY: MARCH 26, 1976

The water is used to irrigate 160 acre from April 1 to November 1 within the

NW 1/4 S 11 T 3N R 25E, B.M.

NO. 34-7169

AMOUNT: 4.48 CFS

PRIORITY: JAN. 6, 1977

The water is used to irrigate 160 acre from April 1 to November 1 within the

SE 1/4 S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the

SWSW 1/4 S 21 T 4N R 26E and used to irrigate 480 acre within the S 1/4 NW 1/4 S 6 T 3

R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson

Director

Published in the ARCO ADVERTISER

on APRIL 19 & 26, 1990.

Paul D. H. L. L. L.	Moore Id
Theresa G. L. L.	Moore Id
Donald R. J.	Moore Idaho
Pam Jensen P.O. Box 321 Butte City	
Lloyd E. Jensen	Moore
Phyllis J. Jones	Moore, Id.
Beyon Wheelan	Moore, ID.
Earl Keller	moore
Louise Keller	moore
Cary E. Korte	Moore Ida
Rebbie Scutten	Moore, ID
Bonnie Larson	Moore Id
Chir A. Stays	Moore, ID.
Phil Knapp	Moore, ID
Elizabeth Knapp	Moore, ID

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MAY - 1 1990

Department of Water Resources
Eastern District Office

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NOV 01 1990

Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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3. An injury to prior rights is a *distinct* possibility.
4. We have an over-appropriation of the total water supply in the basin.
5. These transfers are against the Public interest.

NAME

ADDRESS

LENN B. Guthrie BOX 319 ARCO, ID. 83213

G. L. Nuttre Arco

W. G. McKnight Mackay

Ray S. Sutton Arco

Edythe Moore Arco

Wm. T. McKinley Arco

Donald L. Davis Arco

Jessie A. Davis Arco

Louis Lyons Arco

Dave Gray Idaho Arco, Idaho

Kenneth Flood - Arco Idaho

Shirley L. Jackson Arco, Id.

Lee Ray Byington Arco Idaho

Lella Byington Arco Idaho

Glenn H. Gray Arco

James B. Hochstetler Arco

Edna Hata Hochstetler Arco

Wanda Holt Arco

Dyanne Hoff Arco

Lynn H. Thomas Arco

Glenn H. Thomas Arco

Glenn H. Thomas Arco

Glenn H. Thomas Arco

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

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POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY NO. 34-7080A

AMOUNT: 2.67 CFS

PRIORITY: SEPT. 23, 1974

The water is used to irrigate 160 acres from April 1 to November 1 within the NE 1/4 S 11 T 3N R 25E, B.M.

NO. 34-7136

AMOUNT: 5.5 CFS

PRIORITY: MARCH 20, 1978

The water is used to irrigate 160 acres from April 1 to November 1 within the NW 1/4 S 11 T 3N R 25E, B.M.

NO. 34-7169

AMOUNT: 4.48 CFS

PRIORITY: JAN. 8, 1977

The water is used to irrigate 160 acres from April 1 to November 1 within the SE 1/4 S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the SWSW S 21 T 4N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson

Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

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Department of Water Resources
Eastern District Office

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MAY 01 1990

Cathryn Lee	Moore	83255
Janice M. Burch	Moore	83255
James E. Burch	Moore	83255
Judy Crowley	Moore	83255
Wesley H. Henry	Moore	83255
W. Shore Henry	Moore	83255
David Winston	Moore	83255
Henry Winston	Moore	83255
Sam A. Jackson	Moore 2d	83255
Renee Jackson	Moore 2d	83255
Patsy Brooker	Moore 2da	83255
Nora DeBuck	Moore 2da	

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MAY - 1 1990

Department of Water Resources
Eastern District Office

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Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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4. We have an over-appropriation of the total water supply in the basin.
5. These transfers are against the Public interest.

NAME

ADDRESS

Laurie Babcock	Moore, Idaho
Gerald Stewart	Moore Idaho
Jill Stewart	Moore Idaho
Craig Stewart	Moore, Idaho
Ellen Reynolds	Moore Idaho
Lisa Jean Reynolds	Moore Idaho
Raymond Noble	Moore Idaho

**NOTICE OF PROPOSED
CHANGE OF A WATER RIGHT**

NO. 34-7080A/34-7136/34-7169

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NO. 34-7080A

AMOUNT: 2.67 CFS

PRIORITY: SEPT. 23, 1974

The water is used to irrigate 160 acres from April 1 to November 1 within the NE¼ S 11 T 3N R 25E, B.M.

NO. 34-7136

AMOUNT: 5.5 CFS

PRIORITY: MARCH 26, 1976

The water is used to irrigate 160 acres from April 1 to November 1 within the NW¼ S 11 T 3N R 25E, B.M.

NO. 34-7169

AMOUNT: 4.48 CFS

PRIORITY: JAN. 8, 1977

The water is used to irrigate 160 acres from April 1 to November 1 within the SE¼ S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the SW¼ S ¼ S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson

Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

Box 66

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NOV 01 1990

MAY - 1 1990

Department of Water Resources
Eastern District Office

Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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NAME

ADDRESS

Lewis Rothwell Rt 1 Box 405 Arco, Ida
Dany Hendrick Rt #1 Box 82 Moore, Ida
Erwin Mathews Box 553 Idaho Falls
Ed R. Walker Box 32 Arco, Idaho
Verna Mathews Box 553 Arco, Idaho
Billy Stewart Box 408 Arco, Ida
Dorothy Stewart " "
Ed Schulte Box 6 Arco, Ida
Long Fitzmaurice Box 392 Arco, Ida
Hart Hammer Box 144 Arco
Larry Rothwell Box 133 Moore
Cesar Rolland Clement Box 637 Arco Idaho
Luther Winger Box 341 Arco Idaho
Merlin L Phillips Rt Box 442 Arco Idaho
Anthony E. Madson Rt #1 Box 446 Arco, Idaho
Curtis E. Beay Box 313 Arco, Id. 83213
Ed Hamilton Box 211 Arco, Id. 83213-0211
Watt Westermeyer
Du Maynard P.O. Box 293 Arco Id 83213
Eileen Maynard P.O. Box 293 Arco, Ida. 83213
Theron L. Anderson P.O. Box 258 Arco Idaho 83213
Frances A. Anderson Rt 1 Box 258 Arco, Id. 83213

**NOTICE OF PROPOSED
CHANGE OF A WATER RIGHT**

NO. 34-7080A/34-7136/34-7169

Notice is hereby given that M. TODD PERKES, JUEL & MICHAEL ARCELE have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidenced by LICENSE NO.'S 34-7080A, 34-7136, & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY
NO. 34-7080A

AMOUNT: 2.67 CFS

PRIORITY: SEPT. 23, 1974

The water is used to irrigate 160 acres from April 1 to November 1 within the NE 1/4 S 11 T 3N R 25E, B.M.

NO. 34-7136

AMOUNT: 5.5 CFS

PRIORITY: MARCH 28, 1976

The water is used to irrigate 160 acres from April 1 to November 1 within the NW 1/4 S 11 T 3N R 25E, B.M.

NO. 34-7169

AMOUNT: 4.48 CFS

PRIORITY: JAN. 6, 1977

The water is used to irrigate 160 acres from April 1 to November 1 within the SE 1/4 S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the SW 1/4 S 21 T 4N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson

Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

MAY - 1 1990

Department of Water Resources
Eastern District Office

NOV 01 1990

Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

Dear Mr. Higginson:

We, the undersigned, do hereby protest the attached applications for transfer for at least, but not limited to the following reasons;

1. No. 34-7080A, 34-7136, & 34-7169 are apparently permit numbers only, and suggest that final department approval has not been granted on the point of diversion.
2. There is an apparent expansion of water rights.
3. An injury to prior rights is a *distinct* possibility.
4. We have an over-appropriation of the total water supply in the basin.
5. These transfers are against the Public interest.

NAME

ADDRESS

<i>Earl Pearson</i>	<i>area Idaho 83213</i>
<i>W. Kenzie Ramsey</i>	<i>Moore Idaho 83213</i>
<i>Robert D. Izagah</i>	<i>ARCO Idaho 83213</i>
<i>J. M. Longalo</i>	<i>ARCO Idaho 83213</i>
<i>Frank S. Barnett</i>	<i>Moore Idaho 83255</i>
<i>Jim Hunter</i>	<i>Moore Idaho 83255</i>
<i>Jay Stewart</i>	<i>Moore Idaho 83255</i>
<i>Wendell J. Andersen</i>	<i>PO Box 2 ARCO IDAHO 83213</i>
<i>Mattie E. Andersen</i>	<i>area Id 83213</i>
<i>Curtis Ray</i>	<i>PO BOX 313</i>
<i>John S. Anderson</i>	<i>ARCO Id 83213</i>
<i>Leonard D. Trecker</i>	<i>Moore, Id 83255</i>
<i>Al Wheeler</i>	<i>Moore Idaho</i>
<i>Norman A. Anderson</i>	<i>Moore, Idaho 83255</i>

**NOTICE OF PROPOSED
CHANGE OF A WATER RIGHT**

NO. 34-7080A/34-7136/34-7169

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NO. 34-7080A

AMOUNT: 2.67 CFS

PRIORITY: SEPT. 23, 1974

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NO. 34-7136

AMOUNT: 5.5 CFS

PRIORITY: MARCH 26, 1978

The water is used to irrigate 160 acres from April 1 to November 1 within the NW 1/4 S 11 T 3 N R 25 E, B.M.

NO. 34-7169

AMOUNT: 4.48 CFS

PRIORITY: JAN. 8, 1977

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TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4 N R 26 E and used to irrigate 480 acres within the SW 1/4 S 11 T 3 N R 26 E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson

Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

MICROFILMED

NOV 01 1990

MAY - 7 1990

Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, Idaho 83401

MAY - 7 1990

Idaho Dept. of Water Resources
150 S. Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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1. No. 34-7080A, 34-7136, & 34-7169 are apparently permit numbers only, and suggest that final department approval has not been granted on the point of diversion.
2. There is an apparent expansion of water rights.
3. An injury to prior rights is a ^{distinct} ~~distinct~~ possibility.
4. We have an over-appropriation of the total water supply in the basin.
5. These transfers are against the Public interest.

NAME

ADDRESS

Lester Braswell
Donnis Braswell
Ludely Braswell
Dan Braswell
John M. Morgan
Linda Morgan
George Stonhill
Lorris Corradelli
Adell Corradelli
Nancy Hughes
Barbara Hester
Robert Thornton
Chad Leland
Edith Hochman
P. H. Reichman
Wesley F. Waters
Huson W. Merrell
Glen A. Whitehead
Lynn V. Licit
Sharon Larsen
Paul Larson
Tom Thornton
Helen D. O'Leary

Arco Idaho
Arco Idaho
Arco Idaho
Arco Idaho
Rt. 1 Box 219 - Arco, Idaho
Rt 1 Box 219, Arco, Idaho 83213
Rt 1 Box 220 Arco ID.
Box 209 Arco, Id.
Route 1 Box 209 Arco Id.
Rt 1 Box 193 Arco, Id.
Rt 1 Box 207 Arco, Id.
Rt 1 Box 207 Arco, Idaho
Box 83 Arco Idaho
Box 513 Arco Idaho
Box 513 Arco, Idaho
Box 54 Arco, ID.
Rt 1 Arco, Id.
RR #1 Box 262 Arco, ID.
Box 306 Arco Id.
Rt. 1 Box 289 Arco, Id.
Rt 1 Box 289 Arco Id.
Rt 13, Arco Idaho
Box 300 Arco Idaho

**NOTICE OF PROPOSED
CHANGE OF A WATER RIGHT**

NO. 34-7080A/34-7136/34-7169

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PRIORITY: SEPT. 23, 1974

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R. Keith Higginson

Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

19-Apr-1990

Douglas Rosenkrance
Water Master #34
P.O. Box 24
Mackay, ID 83251

RE: Application for Transfer No. 34-7080A/34-7136/34-7169, &
34-00170/34-00556,

Dear Watermaster:

Please find enclosed a copy of the above referenced application.
Please review the application and complete the form, returning
them to this office as soon as possible.

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold Jones
Water Rights Supervisor

HJ/rb
Enclosure

MICROFILMED

NOV 6 1990

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

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S 6 T 3N R 26E, B.M.

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R. Keith Higginson
Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

✓

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

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MICROFILMED

NOV 01 1990

TO BE CHANGED AS FOLLOWS:

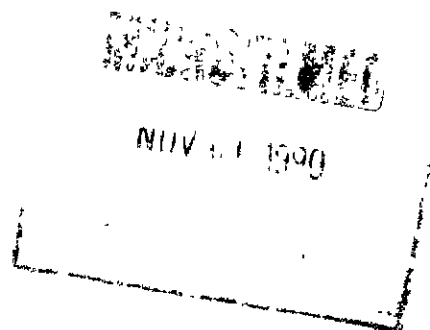
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R. Keith Higginson
Director

Published in the Custer Publishing Co. on APRIL 19 & 26, 1990.



LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
MARIE T. FEELEY
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

April 2, 1990

APR - 2 1990

Department of Water Resources
Eastern District Office

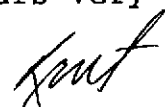
Keith C. Wilson, Senior Resource Agent
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Dear Mr. Wilson:

We are again returning the Perkes--Aikele Application for Transfer. We have also prepared a new map which we think has been properly colored this time to reflect only the 480 acres shown on page 1. Apparently the coloring of the extra 40 acres was our mistake and we apologize for it. We have also enclosed a new page 1 prepared exactly as the one we sent to Harold Jones on February 16th, just in case you need a clean page.

We have requested from Todd Perkes copies of his tax notices which we will forward to you as soon as we receive them. We have been unable to reach him by telephone, but will continue to try in order to get them to you as soon as possible. This matter was a dire emergency when it was submitted in mid-February. If there is anything that can be done while you are waiting for the tax notices to come from Todd Perkes, we would very much appreciate it if you would do that.

Yours very truly,


Kent W. Foster

#3840.00/srr

Enclosure

RECEIVED

NOV 01 1990

27 March 1990

Kent Foster
C/O Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, Idaho 83405

RE: Application for permit for Idaho Gold Corporation
Transfer for Todd Perkes, Juel & Michael Aikele

Dear Mr. Foster:

Enclosed are copies of the application for permit and application for transfer that you submitted to this office. To facilitate making any corrections I have indicated those items that need to be changed. After reviewing these copies please contact me as some of the changes and additions can be made over the phone.

Your prompt response will be appreciated.

Sincerely,

Keith C. Wilson
Senior Resource Agent

RECEIVED

NOV 01 1990

27 March 1990

Kent Foster
C/O Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, Idaho 83405

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Keith C. Wilson
Senior Resource Agent

157043373
157043373

157043373

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

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WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

February 16, 1990

RECEIVED

FEB 16 1990

Harold W. Jones, Water Resource Supervisor
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Department of Water Resources
Eastern District Office

RE: Perkes--Aikele Application for Transfer

Dear Harold:

We are returning the Perkes--Aikele Application for Transfer and the \$50.00 filing fee, together with a new page 1 showing a specific 480 acres which you may use in place of the original first page if you prefer. We have also enclosed a new map and Attachment "A".

Although we assumed that it would be possible to place a condition on the transfer which could mathematically avoid the theoretical expansion issue, we will try to comply with your thoughts.

However, we do not wish to try deceive anyone about the actual facts, which are that the water from this well is placed into a ditch system with the water from all other sources and it is impossible to tell where, within the entire 1730 acres that the ditch system serves, this specific water may end up or exactly how much of the water diverted from this particular well may be evapotranspired by the plants that end up using it.

If anything else needs to be revised, please let us know as soon as possible since we are anxious to expedite this matter in every way possible.

Yours very truly,



Kent W. Foster

#3840.00/srr

Enclosure

LAW OFFICES
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R. VERN KIDWELL, OF COUNSEL

February 14, 1990

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

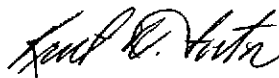
Gentlemen:

We are enclosing with this letter an Application for Transfer together with our client's check in the amount of \$50.00 for the filing fee.

Our clients are most anxious to have this transfer processed as rapidly as possible and anything that can be done to expedite this matter would be greatly appreciated. If there are questions or problems, we would appreciate it if you would call us as soon as possible so that we can assist in every way appropriate to have this application processed promptly.

Thank you for your kind attention to this matter.

Yours very truly,



Kent W. Foster

#3840.00/srr

Enclosure

MICROFILMED

NOV 01 1990

RECEIVED

FEB 16 1990

Department of Water Resources
Eastern District Office

RECEIVED

FEB 14 1990

Department of Water Resources
Eastern District Office

WATER RIGHT NUMBER 34-7169

OWNER LAST NAME - PERKES
ADDRESS LINE 1 - RT. 1 BOX 110
ADDRESS LINE 3 -

FIRST NAME - MARSHALL TODD

ORIG OWNER -

ADDRESS LINE 2 -

CITY - ARCO

STATE - ID ZIP CODE - 83213

SOURCE - GROUNDWATER

TRIBUTARY OF -

STAGE - LICENSE

STATUS -

PRIORITY - 01-06-1977 COUNTY - BUTTE

TOTAL DIV. RATE - 4.4800 -CFS

TOTAL DIV. VOLUME - 480.00 AFA TRFR/AMEND -

WATER DIST. - DLE/CAREY ACT -

RIGHT BASIS -

DIVERSION POINT - SWNW 05 03N 25E LOT REDIV -

0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0

SENE 05 03N 25E LOT REDIV -

0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0

SENE 11 03N 25E LOT REDIV - R

0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0

FROM - 04-01 TO - 11-01 USE - IRRIGATION

USE DIV. RATE - 4.4800 CFS USE DIV. VOLUME - 480.00 AFA

USE - IRRIGATION

PLACE OF USE - TWN 03N RNG 25E SEC 11 TRACT NESE LOT AC 40 TRACT NWSE LOT AC 40

TRACT SWSE LOT AC 40 TRACT SESE LOT AC 40

TOTAL ACRES 160

DECREE NAME -

REMARKS - THIS RIGHT WHEN COMBINED WITH RIGHTS 34-7136 AND 34-7080A SHALL
NOT EXCEED 12.43 CFS AT THE POINTS OF DIVERSION AND SHALL NOT
EXCEED 8.49 CFS AT THE POINT OF REDIVERSION LOCATED WITHIN THE
SENE, SEC. 11, T 3N, R 25E. THIS RIGHT IN NO WAY GRANTS ANY
RIGHT-OF-WAY OR EASEMENT ACROSS THE LAND OF ANOTHER. THIS RIGHT
SHALL NOT PROVIDE MORE THAN 2.68 CFS OR 0.017 CFS PER ACRE FOR
THE LANDS IDENTIFIED ABOVE. ✓

NON IRRIG USE -

OTHER RIGHTS FOR SAME USE -

PROOF DUE - 03-01-1982 PERMIT/DENIED - 03-14-1977 PROTESTED -

PROOF MADE - P FLD EXAM - COND. OF APPROVAL - 16 ✓

DIVERSION MEANS - WELL, PUMPS, CANAL & SPRINKLERS.

HEARING -

OLD NO. -

RECEIVED FEB 03 1985

October 4, 1982

RE: Permit Nos. 34-7080A, 34-7136 and 34-7169

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

Enclosed herewith are copies of your water right licenses issued on the above-referenced permits along with copies of your approved applications for amendment. Also enclosed is Departmental Receipt No. 24614 in the amount of \$60.00.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ/kw
Enclosures

August 20, 1982

RE: Permit Nos. 34-7080 A, 34-7156 and 34-7169

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

On July 9, 1982, we forwarded amendments to you to be completed to amend these permits to correspond with the findings of the field examiner so that we could issue these licenses.

As of this date, we have not received these amendments. If we do not receive them within fifteen (15) days, we will assume you no longer have any interest in these permits and cancellation proceedings will begin.

If you have any questions, please contact us.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

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

July 9, 1982

RE: Permit No. 34-7169

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83218

Dear Mr. Perkes:

A representative of this Department made an examination of the works covered by your Permit No. 34-7169 and has found the following:

Amount of water that can be recognized as beneficially used under
Idaho law: 4.48 cfs Source: groundwater

The maximum quantity diverted shall not exceed 480.0 acre feet
per year.

Point of diversion: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 5, Twp. 3N, Rge. 25E, Butte County

Beneficial use: Irrigation of 160 acres within the SE $\frac{1}{4}$, Sec. 11, Twp. 3N,
Rge. 25E

Priority date established: January 8, 1977

In order for the Department to issue the above license, it will be necessary for you to amend the permit to correspond with the findings of the field examiner. We are enclosing a partially completed amendment form for your use in this matter.

Please sign the amendment application and return it to this office along with a \$20.00 filing fee within 30 days in order that we might issue your license as set forth above. If you do not concur with these findings or have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw
Enclosure

MEMO

TO: Files *file* 34-7169, 34-7136 and 34-7080A

Date: 3/12/1982

FROM: Jim Johnson

RE: Conveyance system used to deliver water from the point of diversion to the point of rediversion.

On this day I called Rita Lundy, Secretary for the Big Lost River Irrigation District to determine the amount of water normally flowing in the Timber Dome Canal during the irrigation season so that amount of water lost between the said diversion points could be determined and reflected on the licensed water right.

She informed me that there is presently a lawsuit pending disputing ownership of the Timber Dome Canal. The Timber Dome Canal as it is called on Right 34-7169 and 34-7136 is called the Blaine Canal or U.C. Canal by the Big Lost River Irrigation District.

According to Ms. Lundy the Big Lost River Irrigation District charges an user fee to water right owners and share holders using the Irrigation District Canals.

The permit holder uses the said canal to deliver his groundwater source to the place of use. The Big Lost River Irrigation District feels that this canal belongs to them and has charged the permit holder and other users a fee for the use of the canal. In turn, several of the users have filed suit against Big Lost River Irrigation District contesting their authority over said canal.

The above information has little to do with the issuance of the water right except that Ms. Lundy has requested that instead of identifying the canal used as the Timber Dome Canal that we use the name of Blaine Canal or U.C. Canal.

In reference to capacity of the canal, it appears that its capacity is much greater than what is actually diverted into the canal because the canal is also used for flood control diversions. When first constructed it was designed to supply water for 50,000 to 100,000 acres; however, it appears that much of the land was never developed.

As to the loss to groundwater, the irrigation district will vary the amount depending on yearly climate conditions. For example, normally the district assesses a 30% loss however in 1977 the district charged 50% loss.

SUMMARY:

The capacity of the Timber Dome Canal is much larger than the amount of water being diverted into it. The capacity of the canal is not known therefore the Moritz Formula cannot be used to determine water losses.

The litigation over canal right-of-way should not impact the amount of water used under this license except that if the Big Lost River Irrigation District obtains control they will assess a 30% loss, in some years 50% loss to the permit holder.

DEPARTMENT OF WATER RESOURCES
FIELD REPORT

1. Name of permit holder Marshall Todd Perkins
 Post office address Rt 1, Box 110 Orco, Id Phone 527-3157
 Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☒ Surface water ☐ _____
 (name spring, stream, etc)
 Tributary to _____

3. Water will be used for the following purposes

Amount 5.32 c.f.s. for irrigation
 _____ AF/Annum (nature of use)

Period of Use from 4-1 to 11-1
 (mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
 _____ AF/Annum (nature of use)

Period of Use from _____ to _____
 (mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
 _____ AF/Annum (nature of use)

Period of Use from _____ to _____
 (mo.-day) inclusive (mo.-day)

Other uses _____

Permit No. 54-7169
 Examination for
 FEB 21 1979
 Department of Water Resources
 Eastern District Office
6/16

4. Total amount to be appropriated:

Max Rate of Diversion 5.32 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion

Township 4N N/S, Range 26E E/W, B M, Section 5, Subdivision SE 1/4 NW 1/4 Butte
 _____ County

Township _____ N/S, Range _____ E/W, B M, Section _____, Subdivision _____ 1/4 _____ 1/4,
 _____ County

Township _____ N/S, Range _____ E/W, B M, Section _____, Subdivision _____ 1/4 _____ 1/4,
 _____ County

Other Points of Diversions. Relift PD. SENE Sec 11 T3N R25E

Description of diverting works: 26" x 350', 250 HP pump

Measuring device required: yes ☒ no ☐

6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
3N	25E	11													40	40	40	40	160

TOTAL ACREAGE 160

R 25 E

T
3
N

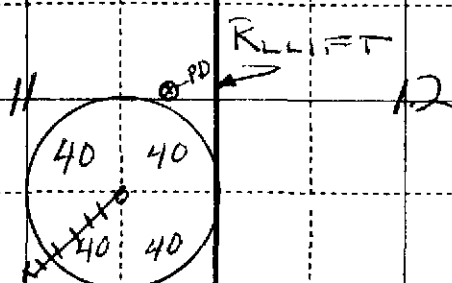


Diagram of System

DATE OF EXAM 6-26-79

ACREAGE
Found 160 ✓✓✓
Recommended 160 ✓✓✓

Irrigation Requirement 3.0 ✓ Ac Ft/Ac

USE
Irrigation Q = 3.20 c.f.s. V = 480 AF/Ann. from Apr. 1 to Nov. 1
Domestic Q = _____ c.f.s. V = _____ AF/Ann. from _____ to _____
Livestock Q = _____ c.f.s. V = _____ AF/Ann. from _____ to _____

Is water co-mingled? yes X no _____

Name source Timberdome canal ✓
twp 4 N/S, Rge 26 E/W, B.M., Sec. 5 Sub. SE 1/4 NW 1/4 Butte County

Exchange? yes _____ no _____

Name source exchanged with: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____ Sub. _____ 1/4 _____ 1/4 _____ County

Point of injection: N/A
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____ Sub. _____ 1/4 _____ 1/4 _____ County

Point of exchange N/A
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____ Sub. _____ 1/4 _____ 1/4 _____ County

Total Q measured 7.26 CFS Method of measurement ANNUBAR 7.981" ✓

Total Q recommended 3.20 Meter No. 67C 80" Type Eagle Eye Condition N.E.W.
Total V recommended 480.0 AF/YR McCROMETER AT P.D.
76-12-2016

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None NONE

MEASUREMENT CALCULATION:

Relift → ANNUBAR READING = 24" = 120.3 gpm = 3.68 cfs
P.D. TIMED FLOW = 60 seconds = 601433.6 = 7.26 CFS Capacity
V = 3.20 X 214 X 1.9835 = 1358.3 AF/YR 3.0 X 160 = 480 AF/YR
filled 3.26 cfs

SYSTEM DESCRIPTION:

RD. ← MOTOR - G.E. TRI CLAD 250hp 5K6286XH74A, SN. BMJ 204115
Pump - AURORA VERTILINE No. SN.
SN. BNS 423
Relift ← MOTOR - G.E. TRI CLAD 100hp 5K6257XH501A, No. 2 U.S. H₂ Thrust 200hp ID# C-1516-01-588-85-02930
Pump - No. 1 JOHNSTON V.T. 45948 No. 2, AURORA VERTILINE No. 5TV.

REMARKS:

SYSTEM SHOWN & DESCRIBED BY MR. PERKINS
THIS SYSTEM SHARES COMMON RELIFT STATION WITH PERMIT 34-7136
BY-7080. Groundwater is located in SENECA CO. 4N 26E 9 open
use large intake and conveyed by the timberdome canal and
relifted by a pump in the SENECA CO. 3N 25E

Examiner's Signature Looney C. Foster Date 11-28-79
Checked by Anthony R. Hylton Date 3-9-80
Approved by Jim Date 1/22/82

NO OVERLAPPING WATER RIGHTS FOUND Jim

WRD417

WATER RIGHTS PROOF READING REPORT

10/05/82

PAGE 1

WATER RIGHT NUMBER 34-7169

OWNER LAST NAME - PERKES

FIRST NAME - MARSHALL TODD

ORIG OWNER -

ADDRESS LINE 1 - RT. 1 BOX 113B 110

ADDRESS LINE 2 -

ADDRESS LINE 3 -

CITY - ARCO

STATE - ID ZIP CODE - 83213

SOURCE - GROUNDWATER

TRIBUTARY OF -

STAGE - PERMIT

STATUS -

PRIORITY - 01-06-1977 COUNTY - BUTTE

TOTAL DIV. RATE -

4.48

5.3200 -CFS

TOTAL DIV. VOLUME - 480 .00 AFA TRFR/AMEND -

WATER DIST. -

DLE/CAREY ACT -

RIGHT BASIS -

DIVERSION POINT - SENW 05 04N 26E LOT

REDIV -

0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0

FROM - 04-01 TO - 11-01 USE - IRRIGATION

USE DIV. RATE - 4.48 5.3200 CFS

USE DIV. VOLUME - 480 .00 AFA

USE - IRRIGATION

PLACE OF USE - TWN 03N RNG 25E SEC 11

TRACT NESE LOT

AC 40 TRACT NWSE LOT

AC 40

TRACT SWSE LOT

AC 40 TRACT SESE LOT

AC 40

DATE -

TOTAL ACRES

160

DECREE NAME -

REMARKS - see file for Licensing conditions.

NON IRRIG USE -

OTHER RIGHTS FOR SAME USE -

PROOF DUE - 03-01-1982 PERMIT/DENIED - 03-14-1977 PROTESTED -

HEARING -

OLD NO. -

PROOF MADE - P FLD EXAM - COND. OF APPROVAL - 01 16 03A

DIVERSION MEANS - WELL, PUMPS, CANAL & SPRINKLERS.

Also Rediversion pt.

ACT
IONN OWNER LAST NAME - PERKES
N ADDRESS LINE 1 - RT. 1 BOX 113B

FIRST NAME - MARSHALL TODD

CITY - ARCO

STATE - ID ZIP CODE - 83213

N SOURCE - GROUNDWATER

N STAGE - PERMIT

PRIORITY - 01-06-1977

COUNTY - BUTTE

TOTAL DIV. RATE -

5.3200CFS

N DIVERSION POINT - SENW 05 04N 26E

N FROM - 04-01 TO - 11-01 USE - IRRIGATION

USE DIV. RATE - 5.3200CFS

N USE - IRRIGATION

PLACE OF USE - TWN 03N RNG 25E SEC 11 TRACT NWSE

AC 40 TRACT NWSE

AC 40

TRACT SWSE

AC 40 TRACT SESE

AC 40

N PROOF DUE - 03-01-1982 PERMIT/DENIED - 03-14-1977

N COND. OF APPRVL - 01

N DIVERSION MEANS - WELL, PUMPS, CANAL & SPRINKLERS.

IDENT. NO. 34-7169

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT
DATA ENTRY LOG

[illegible]

WATER RIGHT ANALYSIS FORM

- DATA ENTRY -

Identification No. 134-7169
Old No. New No.

Record

1. Original Owner: Marshal Todd Perkes

Present Owner: _____

2. Address: Rt. 1 Box 113 B3. City: Arco State: ID Zip: 832134. A. Source of Water: GW

B. Tributary of: _____

5. A. Stage (A,P,L,D,S,J): P

B. Status (D,L,R,C,A,I,F - leave blank if valid): _____

C. Priority Date: 1-6-1977D. County: 23E. Total Diversion Rate: 5.32

F. Total Diversion Volume: _____

G. Transfer/Amendment (P,T of A or blank): _____

H. Water District: _____

I. DLE/Carey Act (D,C or blank): _____

J. Right Basis (for adjudication claims A,B,C only): _____

	Tract	Sec.	Twp.	Rge.	Gov't Lot	Rediv.
6. A. Point of Diversion	<u>SE NW</u>	<u>5</u>	<u>4N</u>	<u>26E</u>		
	<u>4</u>					

7. Period of Use, Use, Diversion Rate/Volume:

from 4-1 to 11-1 for A purposes. Amount 5.32
(cfs or AC-FT/yr)

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

8. Use Code: *A*

[illegible]

9. A. Decree Name:

B. Decree Date:

10. Remarks: A.
B.
C.
D.
E.

11. Other Uses (Non-irrigation explanatory information):

12. Other Rights for Same Use:

13. A. Proof Due Date: 3-1-1982

B. Date Permit Approved or Denied: 3-14-1977

C. Protested Date:

D. Hearing Date:

E. Old Number:

F. Proof Made (P or blank):

G. Field Exam Made (P,R,F or blank):

H. Conditions of Approval: 0

14. Diversion Means (brief narrative): Well, pumps, canal & sprinklers.

C/A

4-16-79



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address
Statehouse
Boise, Idaho 83720
(208) 384-2215

February 16, 1979

Marshal Todd Perkes
Route 1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

Re: Permit Nos. 34-7060, 34-7080 (part), 34-7136 and 34-7169

We acknowledge receipt of the affidavit submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this Department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our regional office in Idaho Falls.

Sincerely,

RITA FLECK
Water Rights

RECORDED
INDEXED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
**PROOF OF APPLICATION
OF WATER TO BENEFICIAL USE**

RECEIVED

FEB 27 1979

Department of Water Resources

1. a) Name of permit holder Marshall Todd Perkes

b) Post office address RT # 1 Box 110, NECO, Idaho 83243

2. Permit number # 34-7169

3. Date of priority that you are prepared to establish March 1977

4. a) Source from which water was appropriated ground Source

b) Location of the point of diversion: SE 1/4 NW 1/4, Section 5

Township 4N, Range 26 E Boise Meridian. Other points of diversion: _____

5. a) The amount of water and use to which the water has been applied:

Amount 5.32 for Irrigation purposes from April 1 to Nov 1 incl.
(cfs &/or acre-feet per annum) (month-day) (month-day)

Amount _____ for _____ purposes from _____ to _____ incl.
(cfs &/or acre-feet per annum) (month-day) (month-day)

Amount _____ for _____ purposes from _____ to _____ incl.
(cfs &/or acre-feet per annum) (month-day) (month-day)

b) Total amount appropriated _____ cfs and/or acre-feet per annum.

c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement:

Weir, rectangular

6. If the means of diversion and conveyance are owned by someone other than the permit holder:

a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use:

Timberdome Canal Co. 7 miles to place of use

b) Describe the agreement of understanding by which you take water from the works: Own Share

of Company

7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch):

pump size 250 horse power, 20" well, 250' deep

b) Describe the provision for making a measurement which you have at your point of diversion: (i.e., installed measuring device, access port, other)

rectangular weir

REPROFILMED

c) Give well driller's name and address and the date the well was completed: Lambert Well
Drilling, P.O. Box 301, Mackay Idaho 83213 1977

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use:

9. Irrigation uses: describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision:

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	11													40	40	40	40	160

Total number of acres irrigated 160

10. Remarks: There is a ditch Transportation 1055 involved.

The above information is a true statement of the extent to which the above numbered permit has been developed.

Feb. 12 1979
(Date)

Marshall Todd Perkins
(Signature)

State of Idaho)
County of Butte) ss.

On this 12th day of February, 19 79, personally appeared before me the
signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

William H. Carlson
Notary Public
Residing at Arco, Idaho

My commission expires Lifetime
Band Expires: 11/2/79

March 21, 1977

State of Idaho
Department of Water Resources

RECEIVED

MAR 22 1977

RE: Application for Permitt #34-7169

Department of Water Resources
Eastern District Office

Dear Lay H Johnson:

Enclosed is the easement contract between myself and the
owners of the land where the well is to be drilled.

Sincerely,
Marshal Todd Perkes

MICROFILMED

RECEIVED

MAR 22 1977

EASEMENT FOR IRRIGATION WATER

Department of Water Resources
Eastern District Office

THIS AGREEMENT, Made this 10th day of January, 1977, by and between TIMBERLINE BEEF, INC., an Idaho Corporation with its principal office in Moore, Butte County, Idaho, hereinafter called "Grantor", and MARSHAL TODD PERKES and NORMA L. PERKES, his Wife, of Butte County, Idaho, hereinafter called "Water User";

W I T N E S S E T H

For Value Received, Grantor hereby grants, bargains sells and conveys to Water User, an Easement and Right-of-Way, the description and uses of which are as follows:

An easement and right of way for the construction, repair, reconstruction, maintenance and operation of a well, pump, motor and associated accessory equipment in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Section 5, Township 4 North, Range 26 East of the Boise Meridian, which well-site is located approximately 500 feet North of the South boundary of said SE $\frac{1}{4}$ NW $\frac{1}{4}$, and 300 feet South of the Timberdome Canal Company Canal, the precise location of which well-site will be agreed upon between the parties, prior to drilling of the well; together with a right of ingress and egress thereto for the above purposes.

An easement and right of way for the construction, maintenance and operation of an approximate 300 foot long buried mainline from the above well, northwesterly to the Timberdome Canal; thence along the said canal to the North boundary line of the Southwest Quarter (SW $\frac{1}{4}$), Section 5, Township 4 North, Range 26 East, Boise Meridian, for the purpose of carrying 500 miner's inches of water.

It is understood and agreed that Water User shall be responsible for, and obligated to pay all costs of construction, repair, reconstruction, maintenance and operation for the said uses, and will indemnify and save harmless Grantor for any loss or cost in connection therewith.

This Easement and Right-of-Way shall be perpetual, and shall inure to the benefit of and be deemed appurtenant to the following lands of Water User:

TOWNSHIP 3 NORTH, RANGE 25 EAST, BOISE MERIDIAN:

SECTION 11: The North Half (N $\frac{1}{2}$) and the Southeast Quarter (SE $\frac{1}{4}$).

MICROFILMED

IN WITNESS WHEREOF, The parties have set their hands
this ____ day of January, 1977.

"GRANTOR"

TIMBERLINE BEEF, INC.,

By

Rodney A. Pearson
Its President

ATTEST:

Elida S. Pearson
Its Secretary

"WATER USER"

Marshal Todd Perkes 1/21/77
Marshal Todd Perkes

Norma L. Perkes 1/28/77
Norma L. Perkes

STATE OF IDAHO

)

: ss.

County of Butte

)

On this 25th day of ^{February} ~~January~~, 1977, before me, the undersigned, a Notary Public in and for said State, personally appeared RODNEY A. PEARSON and ELIDA S. PEARSON, known to me to be the President and Secretary, respectively, of TIMBERLINE BEEF, INC., the Corporation that executed the instrument, or the persons who executed the instrument on behalf of said Corporation, and acknowledged to me that the said Corporation executed the same.

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

(SEAL)

Mary E. Price
Notary Public for Idaho,
Residing at Arco, Idaho.

STATE OF IDAHO

)

: ss.

County of Butte

)

On this 21st day of January, 1977, before me, the undersigned, a Notary Public in and for said State, personally appeared MARSHAL TODD PERKES and NORMA L. PERKES, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL)

William J. Carlin
Notary Public for Idaho,
Residing at Arco, Idaho

MICROFILMED

March 21, 1977

Re: Permit No. 34-7169

Marshal Todd Perkes
Route #1, Box 113-A
Arco, ID 83213

Dear Mr. Perkes:

Enclosed is a copy of your approved Application for Permit No. 34-7169. We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

Enclosure: Copy of permit

MICROFILMED

January 31, 1977

C
RE: Application for Permit No. 34-7167 HONE
" " " No. 34-7168 HONE
" " " No. 34-7169 HONE

O
Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notices were to be published in your paper on January 13 and January 20, 1977.

Y
Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDWR - State Office

MICROFILMED

Called
2-27-77
Aw
2-14-77
Aw

January 7, 1977

RE: Application for Permit No. 34-7169

Marshal Todd Perkes
Rt. #1, Box 113-B
Arco, Idaho 83213

Dear Mr. Perkes:

This Department is currently processing the above referenced application. However, it is noted that the point of diversion location is owned by someone other than yourself. Therefore, it will be necessary to have a copy of the right-of-way easement allowing you access to drill on this land.

If have any questions concerning this matter, please feel free to contact this office.

Very truly yours,

LOY H. JOHNSON
Senior Water Resource Agent

LHJ:cw

RECEIVED
JAN 10 1977

January 7, 1977

RE: Application for Permit No. 34-7167 HONE
No. 34-7168 HONE
No. 34-7169 PERKES

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

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

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

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

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted 2-23-77 by CW

RDC:CW

Enc: Legal Notice (3)

PUBLIC NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Marshal Todd Perkes, Arco, Idaho, has on 1-06-77 submitted Application No. 34-7169 for a permit to appropriate 5.32 cubic feet per second of water from a ground-water source by means of well and pump within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 5, T. 4N, R. 26E, B.M., Butte County. The water will be diverted through the Timberdome Canal and rediverted at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, T. 3N, R. 25E, B.M.; to be used from Apr. 1 to Nov. 1 for the irrigation of 160 acres within the SE $\frac{1}{4}$, Sec. 11, T. 3N, R. 25E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before January 31, 1977.

R KEITH HIGGINSON
Director

Published in the Arco Advertiser,
Arco, Idaho on January 13 and
January 20, 1977.

NOTICE OF APPLICATION FOR WATER PERMIT

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Arco, Idaho

has on 1-06-77 submitted Application No. 34-7169
for a permit to appropriate 5.32 cubic feet per second ~~acre feet per annum~~ XXXXXXXXXXXXXXXXXXXXXX
of water from a ground-water source
by means of well and pump
within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 5, T. 4N, R. 26E, B.M., Butte County. The water
will be diverted through the Timberdome Canal and rediverted at a point within
the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, T. 3N, R. 25E, B.M.;
to be used from Apr. 1 to Nov. 1
for the irrigation of 160 acres

within the SE $\frac{1}{4}$, Sec. 11, T. 3N, R. 25E, B.M.

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R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho
on January 13 and January 20, 1977

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item Initial Date

Marsha / Todd Perks

Application No. _____

☒ Source
☒ Point of Diversion
☒ County
☒ Quantity of Water and Period of Use
☐ Description of Diverting Works
☐ Time required for B/U of water
☐ Place of Use or Acres Irrigated
☒ Map
☒ Signature
☒ Fee

(1) *SAJ* *1/6/77*

In form to receipt *yes*

(2) *"* *"*

Send Copies to:

☐ Idaho State Health Department
☐ Idaho Fish and Game Department
☐ Bureau of Land Management

(3) *"* *"*

☒ *Need copy of agreement.*
☐ Request Special Use Permit from U.S.F.S.
☐ Request Easement from B.L.M.
☐ Request Information from Applicant

(4) *"* *"*

In form for advertising *yes*

(5) *"* *"*

Platted on Map No. *4N-26E.*

(6) *"* *"*

Located within Water District No. *34 - Basin 34*

(7) *"* *"*

Critical groundwater area: yes ☐ no ☒

(8) *"* *"*

Groundwater levels: *No near Obs Wells*

☐ Declining, ☐ Stable, ☒ Increasing

(comment) *Obs Wells North & South indicate increase in water levels Bulletin #27*

(9) *"* *"*

Other rights on the same place of use *None.*

(10) *"* *"*

Comments: *No known conflicting water rights*
There is getting to be a heavy concentration of wells within this section. Sec. 5, 4N, 26E
Affidavit of Publication received (date) *Feb. 23, 1977*

(11) *CW* *2-23-77*

(12) *CW* *2-23-77*

Final date for protests _____

Protests received: yes ☐ no ☒

(13) *"* *"*

All requested information received from agencies or applicant: yes ☐ no ☐

(14) *"* *"*

Action recommended:

☒ Approve ☐ Deny

1/26/77 Proposed Priority

☐ Reason for Reduction _____

☐ Measuring device required

☐ See attached sheet for other conditions of approval

☐ No special conditions for approval

(15) District _____ By *SAJ* Date *1/23/77*