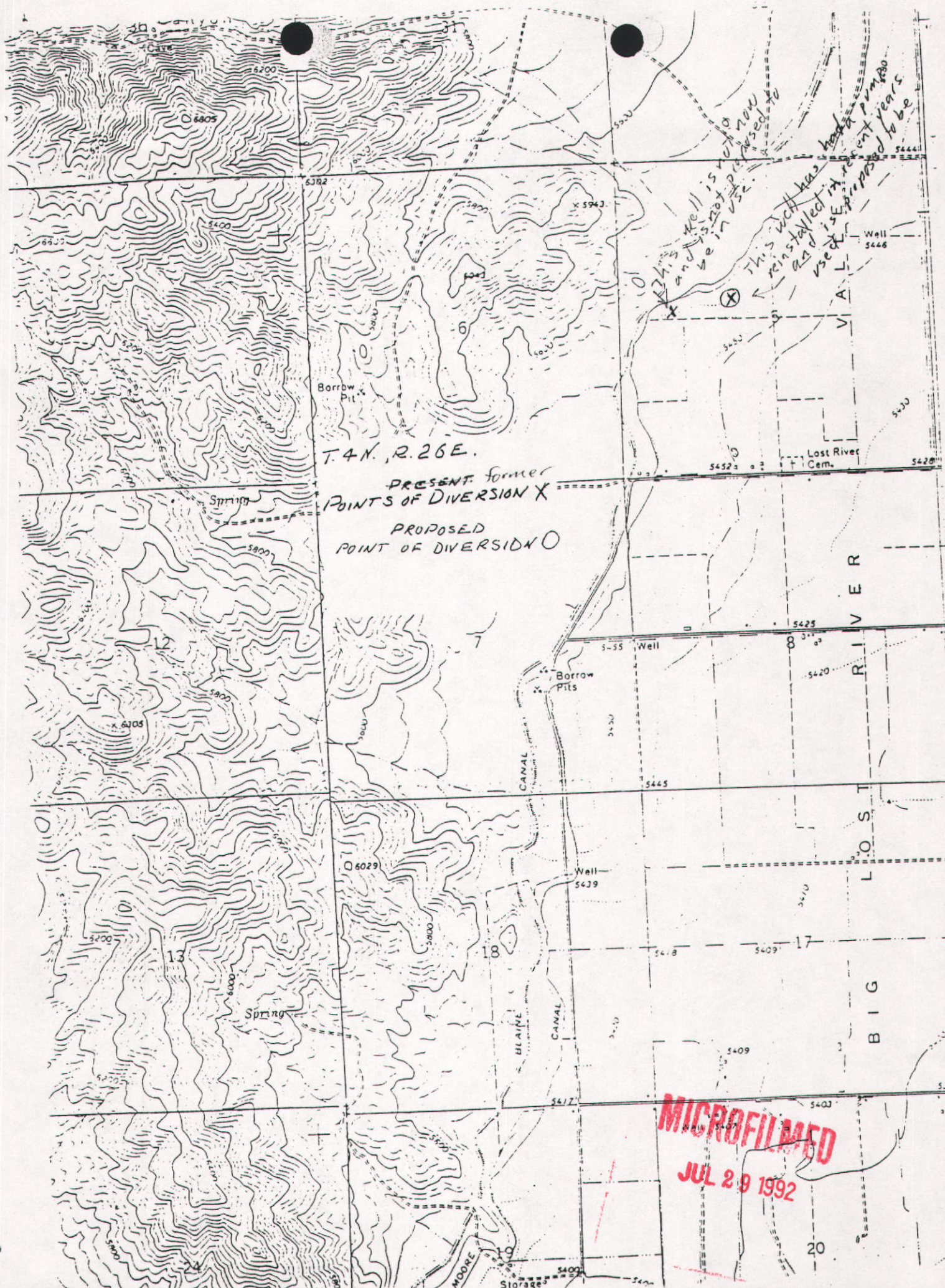
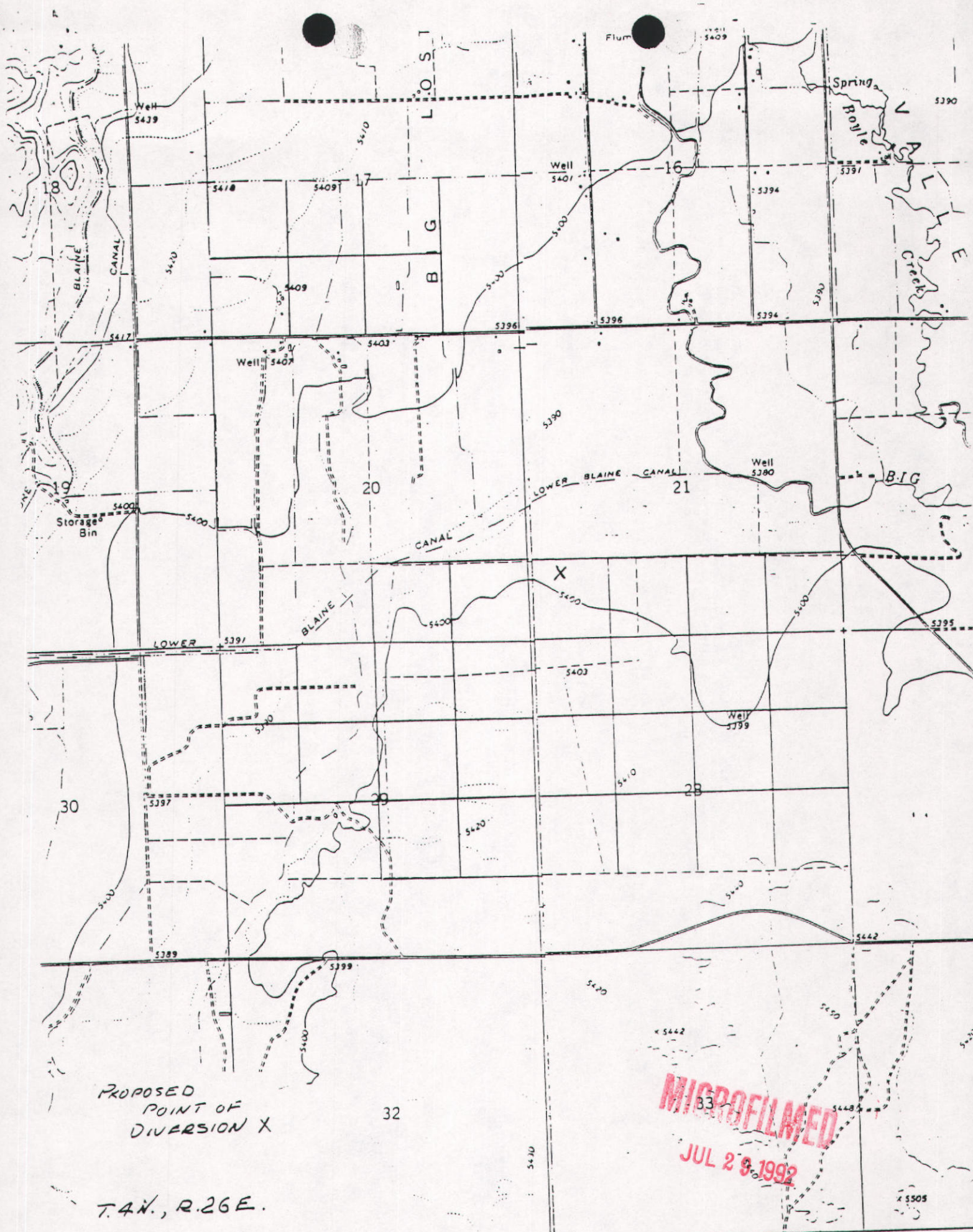




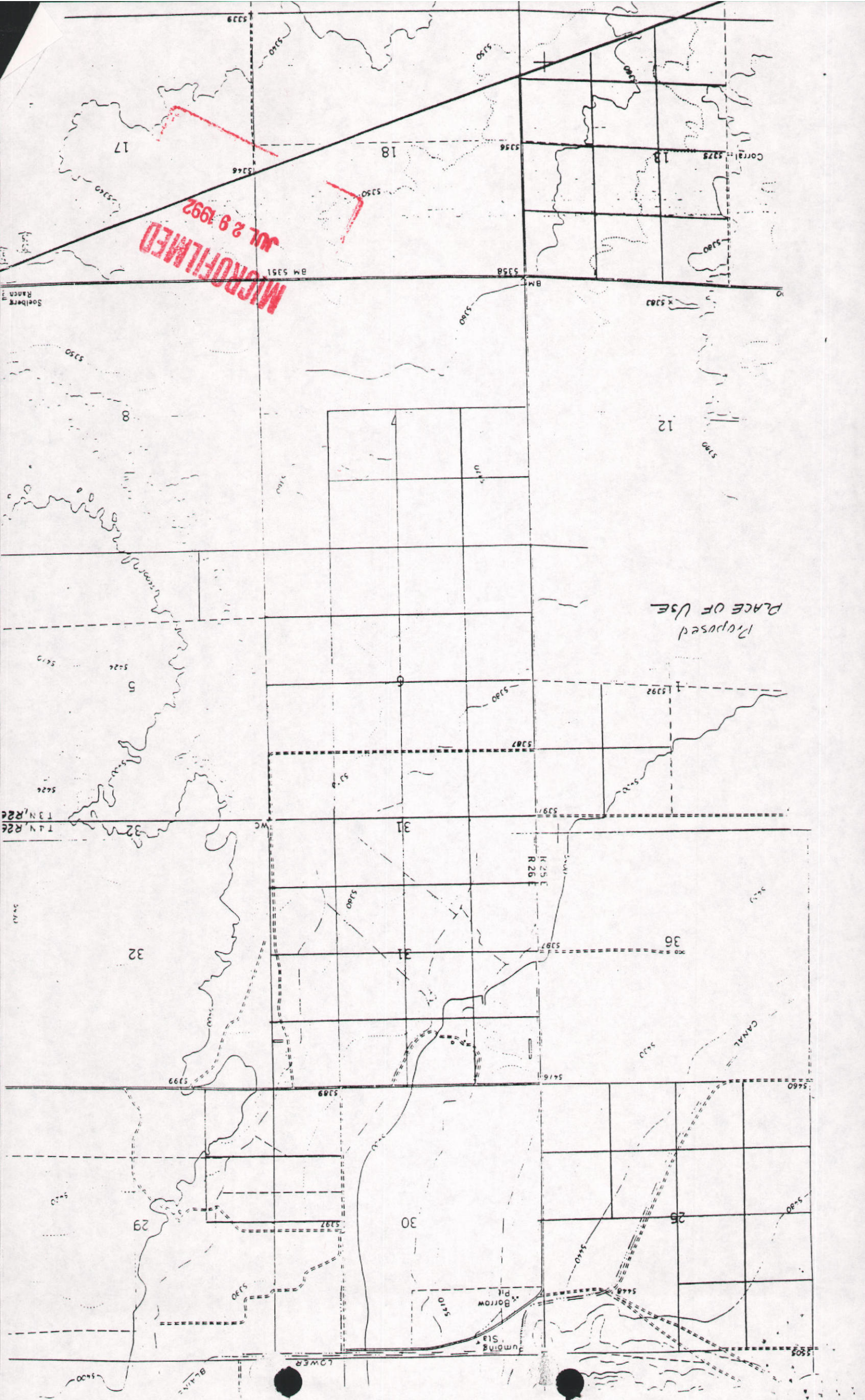
T.4N., R.26E.

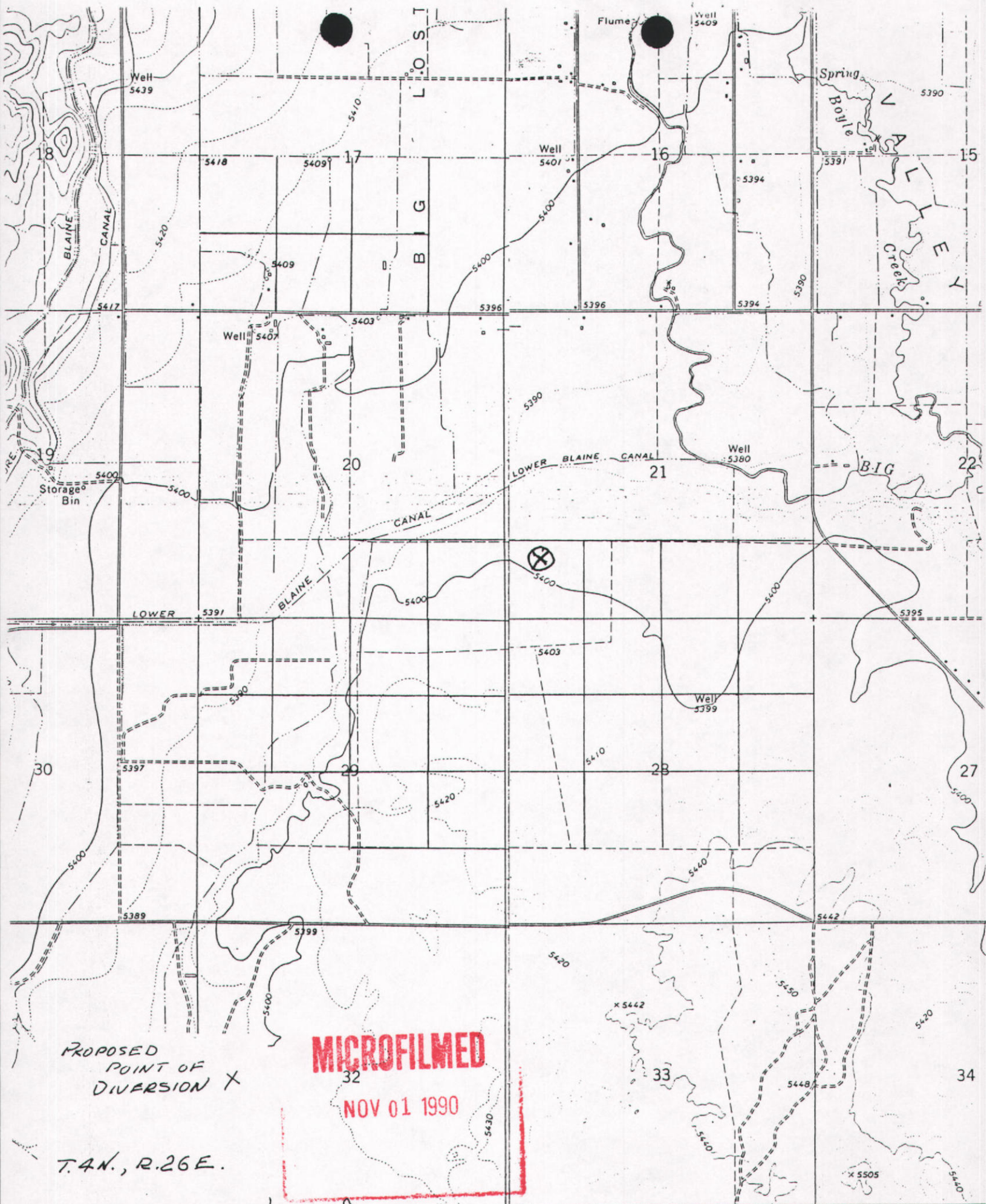
PRESENT former
POINTS OF DIVERSION X
PROPOSED
POINT OF DIVERSION O

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JUL 29 1992



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JUL 29 1992



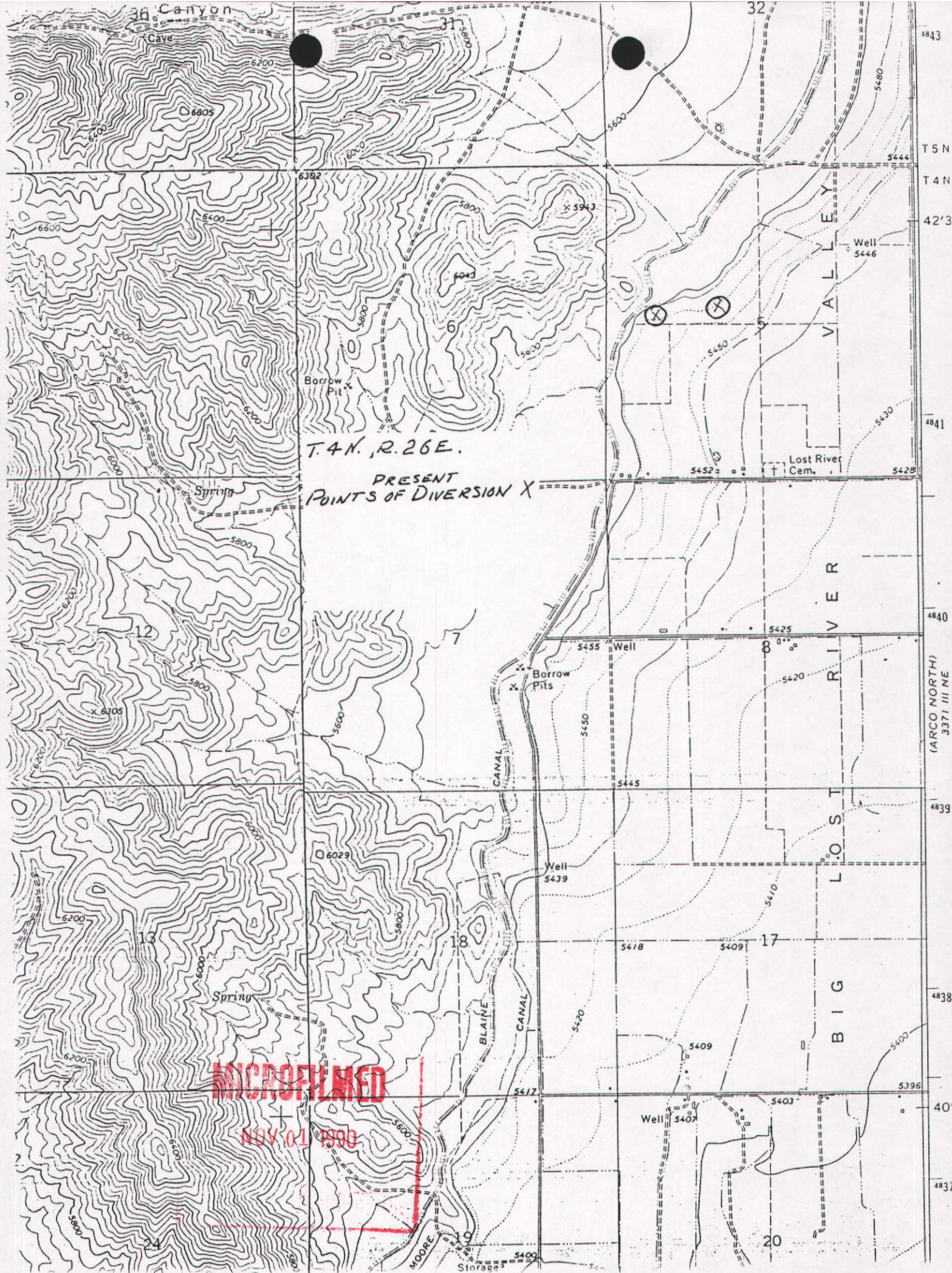


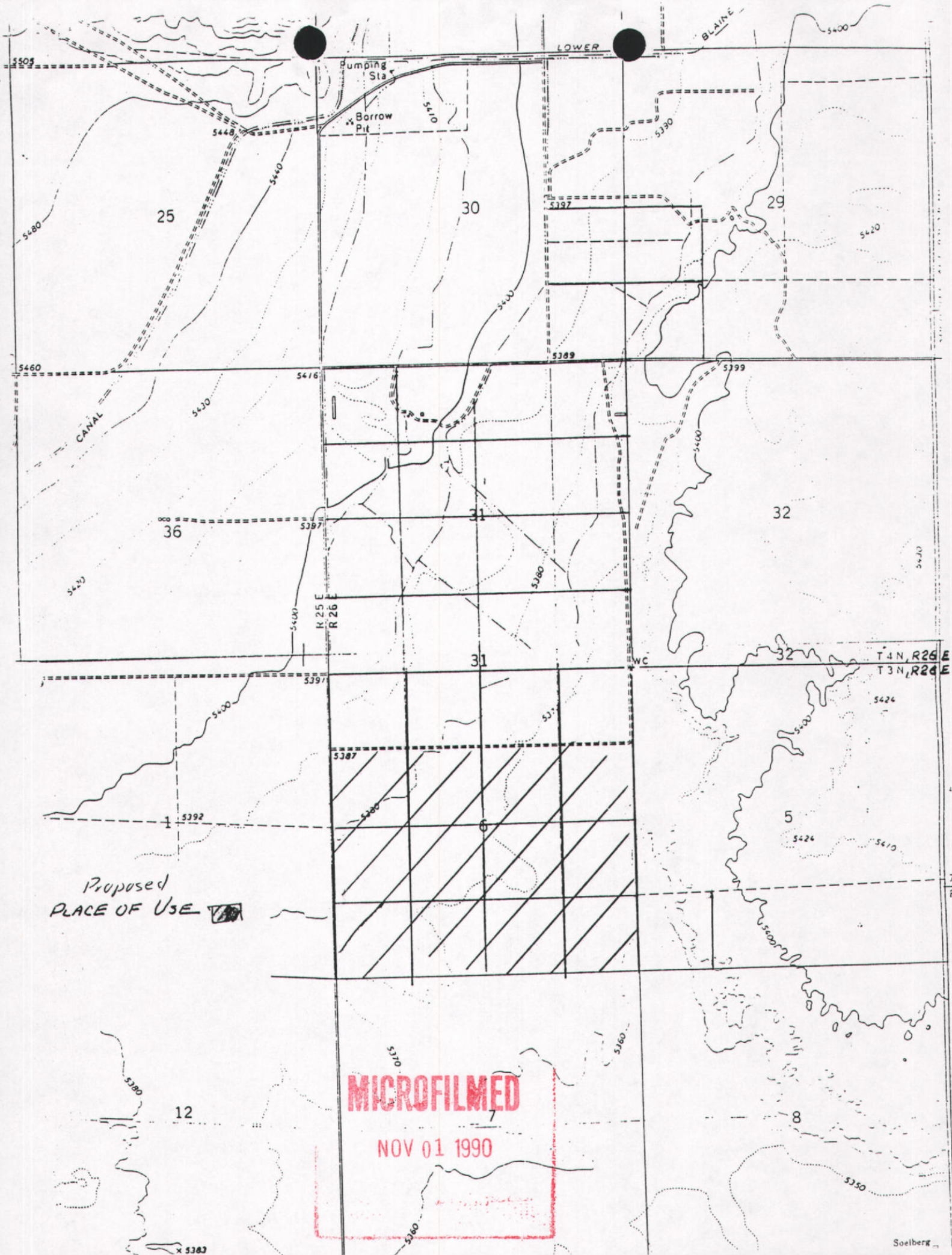
PROPOSED
POINT OF
DIVERSION X

T.4N., R.26E.

MICROFILMED

NOV 01 1990





MICROFILMED

NOV 01 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.

Maec Kopp
Notary Public for Idaho

Residing at Challis

My commission expires: 11/7/92

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 S1/2 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 I. - nson, Director
Pub: April 19 & 26, 1990.

RECEIVED

NOV 01 1990

RECEIVED

AFFIDAVIT OF PUBLICATION

APR 30 1990

I, Colleen Babcock Department of Water Resources
Eastern District Office

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 April 19, 1990

and ending with the issue dated

April 26, 1990
Colleen Babcock

STATE OF IDAHO }

COUNTY OF BUTTE }

On this 27 day of April

in the year of 1990, before me, a Notary Public,

personally appeared

Colleen Babcock

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.

Thomas P. Cannon
Notary Public for Idaho

Residing at Arco, ID.

My commission expires: 12-17-91

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 NE 1/4 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 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 S 1/2 N 1/2 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

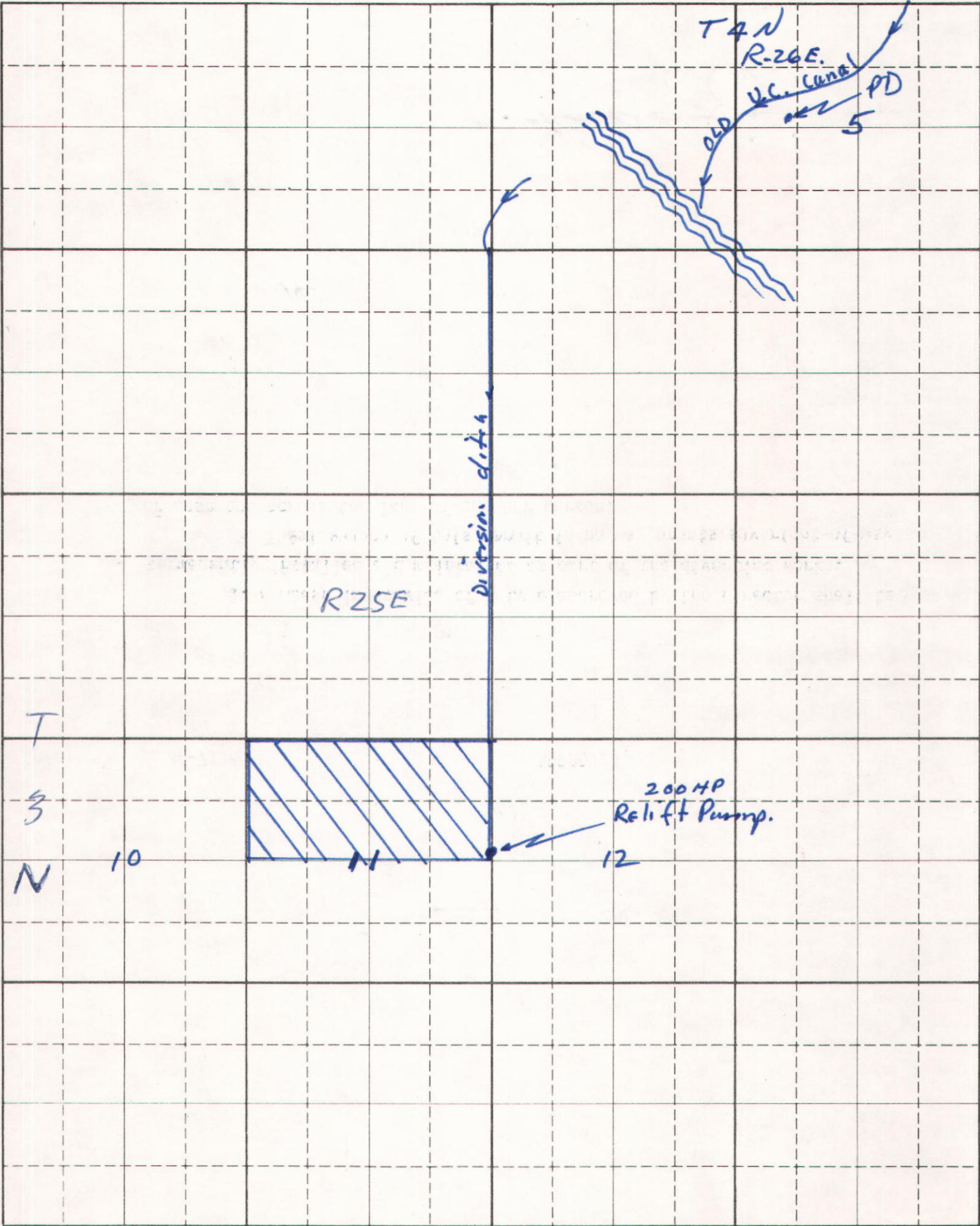
Director

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

MICROFILMED

NOV 01 1990

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.

Mark Todd Perkins
(Applicant)

Affidavit of Publication

RECEIVED

MAY 11 1976

Department of Water Resources
Eastern District Office

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 4/8/76

and ending with the issue dated 4/15/76

Le Ella Cammack

Subscribed and sworn to before me this

8 day of May, 1976

Charles G. ...

Notary Public

Residence: Arco, Idaho.

My commission expires 5/14/78, 1978

PUBLIC NOTICE

**NOTICE OF APPLICATION
FOR WATER PERMIT**

Notice is hereby given that
Marshal Todd Perkes, Arco, Idaho,
has on 3-26-76 submitted Ap-
plication No. 34-7136 for a permit to
appropriate 5.50 cubic feet per
second of water from a ground-
water source by means of well and
pump within the SW 1/4 NW 1/4, Sec. 5,
T. 4N, R. 26E, B.M., Butte County;
to be used from Apr. 1 to Nov. 1 for
the irrigation of 320 acres within the
N 1/2, Sec. 11, T. 3N, R. 25E, B.M.

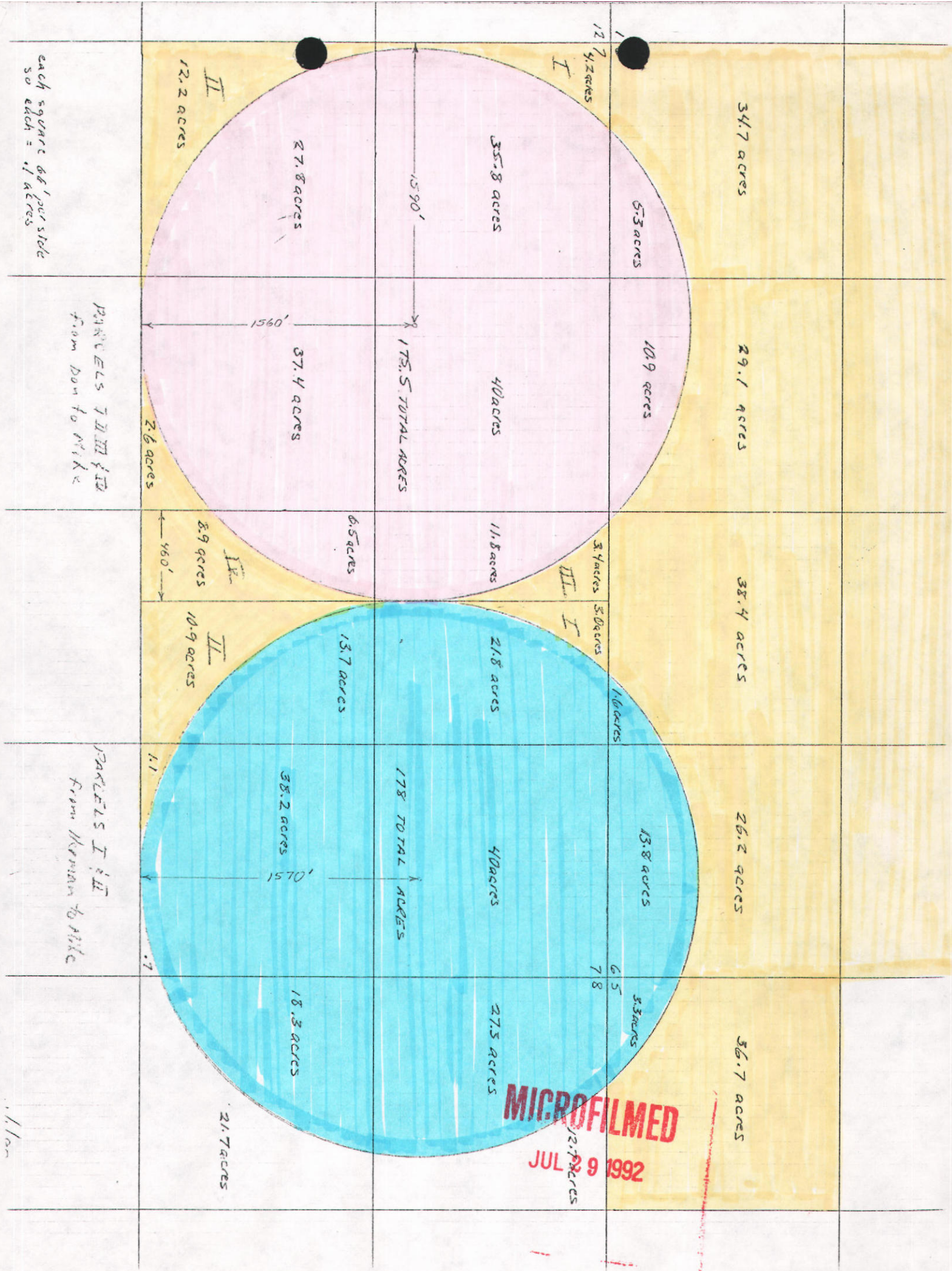
If issued, this permit will be
subject to all prior water rights.
Protests against the granting of the
permit must be filed with the Idaho
Department of Water Resources,
1515 Lincoln Road, Idaho Falls,
Idaho, 83401 on or before April 26,
1976.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser,
Arco, Idaho, on April 8 and April 15,
1976.

Note:
P.D.s are
actually located
in T4N, R26E,
not 3N, R25E
as shown on
the lic.
4/4
7-9-76

MICROFILMED



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~~ ^{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
Fern B. Guthrie	Box 319 Arco, Id. 83413
G. L. Guthrie	Arco
W. G. McKnight	Arco
Ray S. Sutton	Arco
Edythe Moore	Arco
Wm. T. McKinley	Arco
Donald L. Davis	Arco
Terri A. Davis	Arco
Louis Lyons	Arco
Dave Gray	Idaho Arco, Idaho
Kenneth Good	Arco Idaho
Shirley Good	Arco, Id.
Lee Ray Byington	Arco Idaho
Lella Byington	Arco Idaho
Gloria Ray	Arco
Jones B. Hochendyfer	Arco
Lida Mata-Hochendyfer	Arco
Wanda Abel	Arco
Gyane Holt	Arco
Lew H. Thomas	Arco
Louise H. Thomas	Arco
Mal F. Unshouser	Arco

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 AKELE 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 NW 1/4 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 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 S 1/4 N 1/4 S 1/4 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.

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MAY - 7 1990

Department of Water Resources
Eastern District Office

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NOV 01 1990

Paul D. Munday	Moore Id.
Frances O'Leary	Moore Id.
Gerald R. F.	Rt 1 Moore Idaho
Pam Jensen	P.O. Box 321 Butte City
Lloyd E. Jensen	Moore
Phyllis J. Jones	Moore, Id.
Beyon Wheeln	moore, ID.
Earl Keller	moore
Louise Keller	moore
Cary E. Korte	Moore Ida
Nellie Scouten	Moore, ID
Bonnie Larson	Moore Id
Chris A. Hays	Moore, ID.
Phil Hays	Moore, ID
Elizabeth Knapp	Moore, ID

RECEIVED

NOV 01 1990

RECEIVED

NOV 01 1990 MAY - 1990

Department of Water Resources
Eastern District Office

MAY - 7 1990

Department of Water Resources
Eastern District Office
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} ~~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

Dale Smith Rt #1 Box 22

Virgil D Hail Box 454

Clara J. Hail Box 454

Warren Brown

Clover Brown

David B. Peak

Albert C Babcock

May H Babcock

Vernal Thorngren

Lydia Thorngren

Jack McAffee

Jean McAffee

Lyndie Hocking

Alvin J. Roesser

Hesterude Roessner

William S. Dyer

Claudene Dyer

Lorin B. Lutschig

Bonnie F. Lutschig

Diana L. Cronquist

Dick Beverland

Jessie E. Beverland

Michael D. Crowley SE

Moore, Idaho 83255

Moore Idaho 83255

Moore, Id. 83255

Arco Ida 83213

Arco Ida 83213

Moore Ida 83255

Moore, Idaho 83255

Moore, Idaho 83255

Moore, Idaho 83255

Moore, Id. 83255

Moore, Idaho 83255

Moore Idaho 83255

Moore, Idaho 83255

Arco, Idaho 83213

Arco Ida 83213

Arco, Id. 83213

Arco Idaho 83213

Arco, Id. 83213

Moore, Id. 83255

11 11 11 11

Moore Id 208 over

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 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

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 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 S 1/4 N 1/4 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.

NOV 01 1990

MICROFILMED

<i>Cathryn Lee</i>	<i>Moore</i>	<i>83255</i>
<i>Janice M. Burch</i>	<i>Moore</i>	<i>83255</i>
<i>James E. Burch</i>	<i>moore</i>	<i>83255</i>
<i>Judy Crowley</i>	<i>Moore</i>	<i>83255</i>
<i>Dessa R. Haney</i>	<i>MOORE</i>	<i>83255</i>
<i>M. Duane Haney</i>	<i>Moore</i>	<i>83255</i>
<i>David Wanstrom</i>	<i>Moore</i>	<i>83255</i>
<i>Nancy Wanstrom</i>	<i>Moore</i>	<i>83255</i>
<i>Sam A. Jackson</i>	<i>Moore 2d</i>	<i>83255</i>
<i>Renee Jackson</i>	<i>Moore 2d.</i>	<i>83255</i>
<i>Patsy Brocken</i>	<i>Moore, 2da</i>	<i>83255</i>
<i>Nora Beluck</i>	<i>Moore 2da</i>	

RECEIVED

MAY - 7 1990

Department of Water Resources
Eastern District Office

MICROFILMED

NOV 01 1990

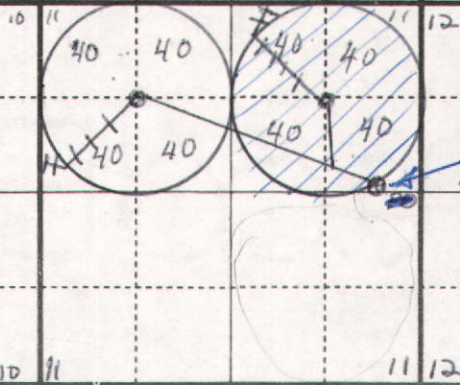
ts to you to be completed to amend these
s of the field examiner so that we could

these amendments. If we do not receive

assume you no longer have any interest in
ings will begin.

R 25 E

covered by LHO 34-7080 Part 12 names of Marshall & Todd Parkes



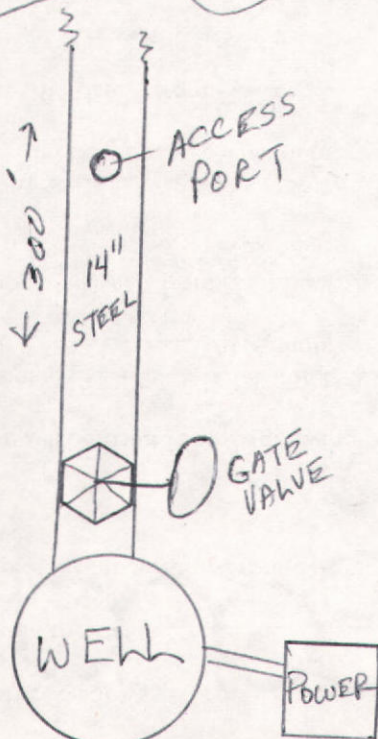
Relift pump

T
3
N

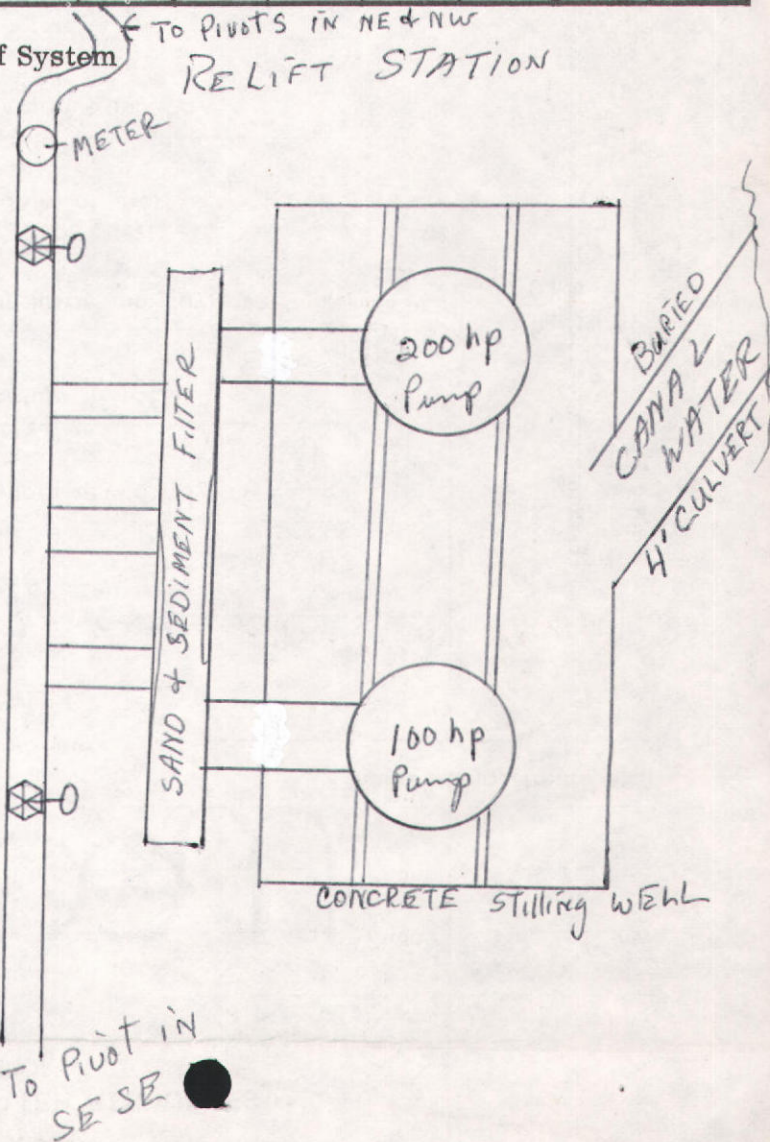
Diagram of System

GROUND WATER P.D.

TIMBERED DOME CANAL



MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer 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</u> to <u>Nov. 1</u> |
| <u>34-7136</u> | <u>03/26/1976</u> | <u>5.50 cfs</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 cfs</u> | <u>Irrigation</u> | <u>April 1</u> to <u>Nov. 1</u> |
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

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	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		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 _____

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

R. Keith Higgins
DIRECTOR

MICROFILMED
JUL 29 1992

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

MICROFILMED
JUL 29 1982

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

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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. 34-7169 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

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 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.

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

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<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, 1990.
(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 3-7-91

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

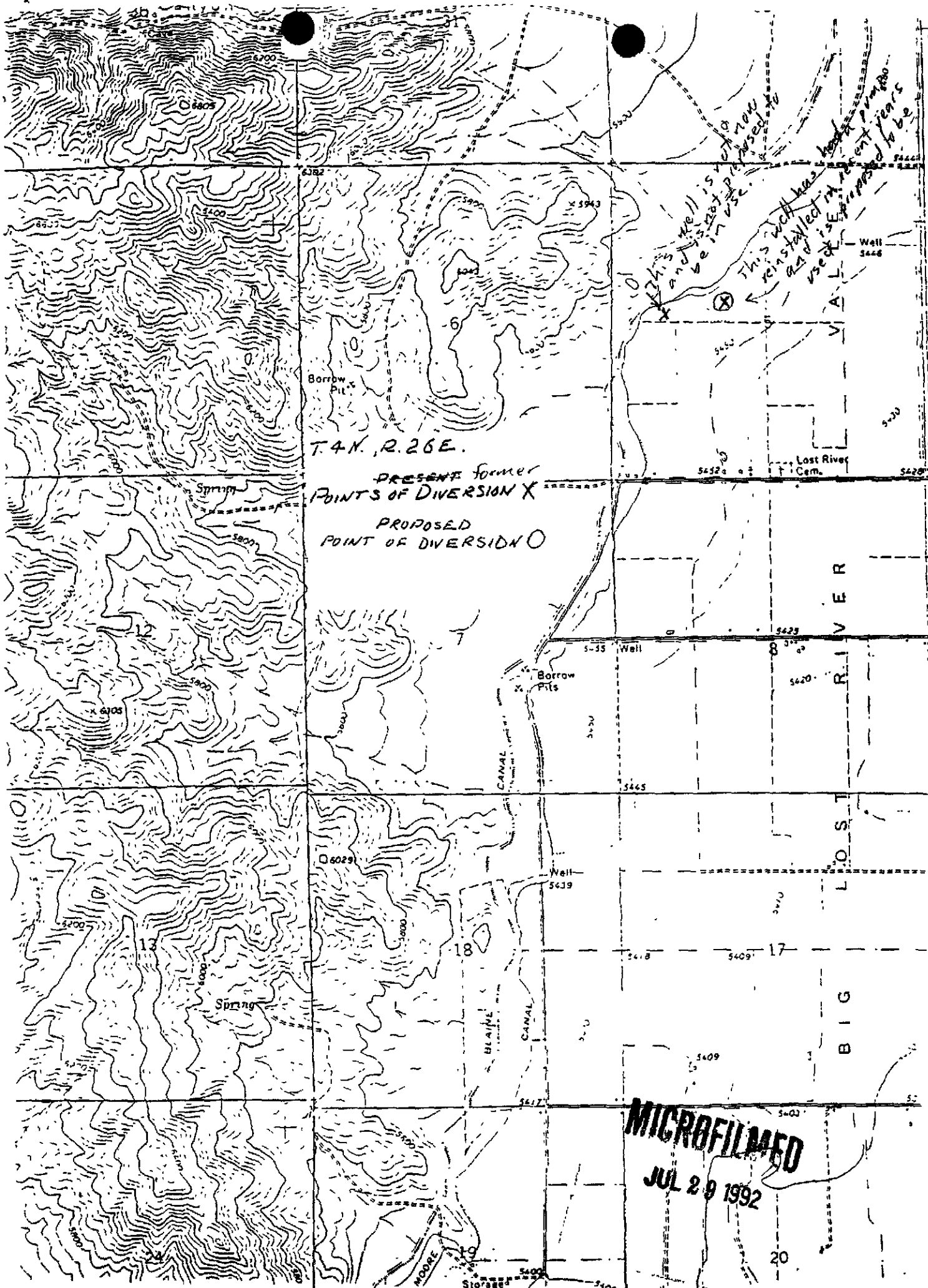
Recommended for ☐ approval ☐ denial

_____ rec'd. _____

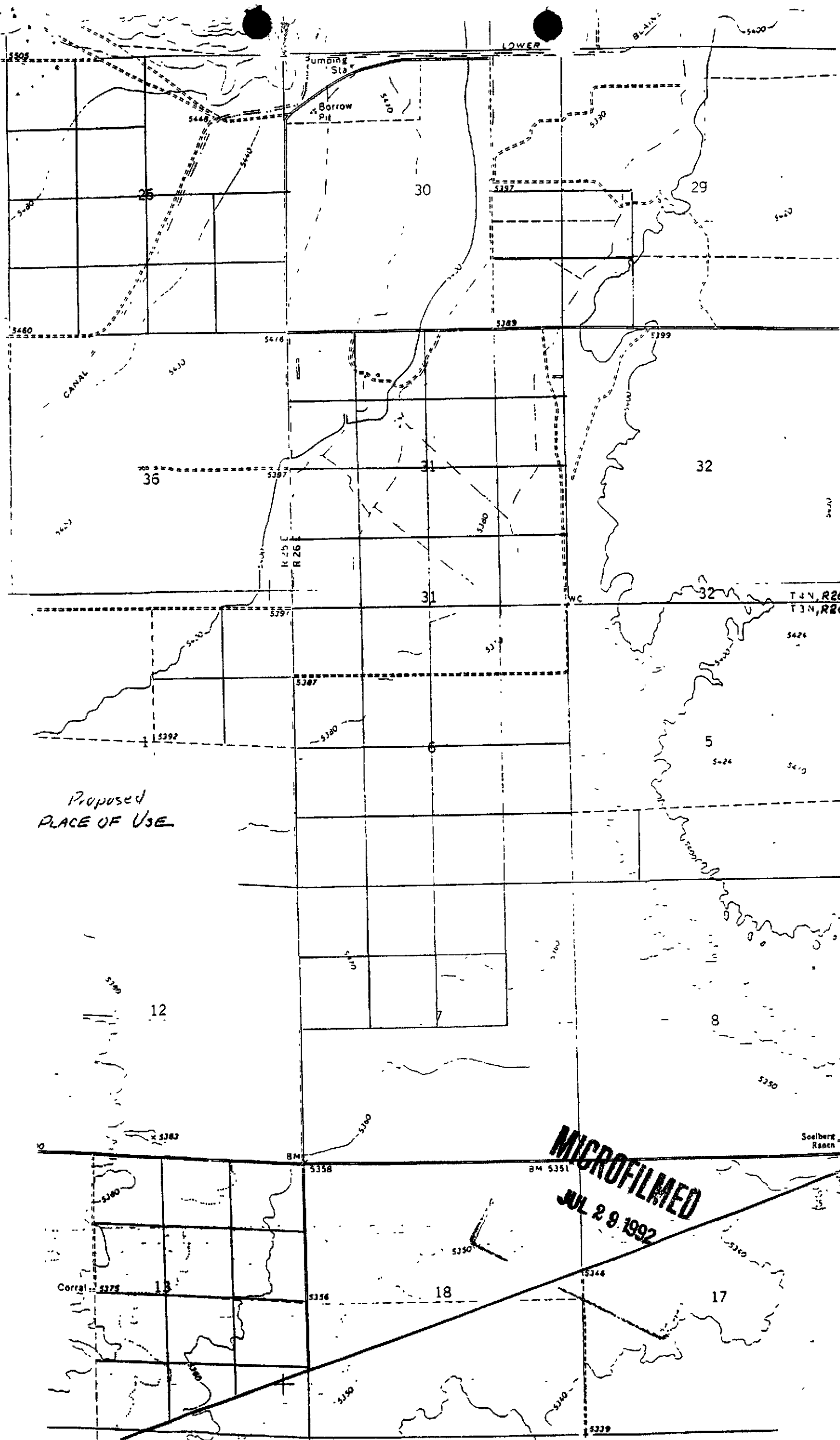
by _____

Copy of transfer sent to lien holder _____

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Proposed
PLACE OF USE

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JUL 29 1992

Soelberg
Ranch

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 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.

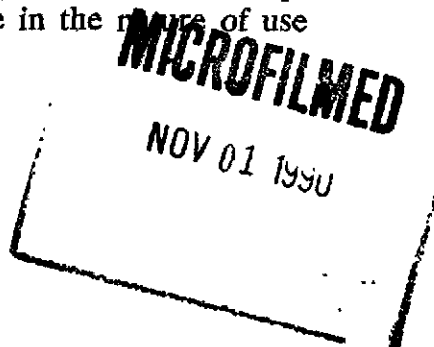
13) The S1/2SW1/4, Section 6, T3N, R26E, has been irrigated this season without a valid water right and irrigation has continued following service of the order to cease and desist.

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



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 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

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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

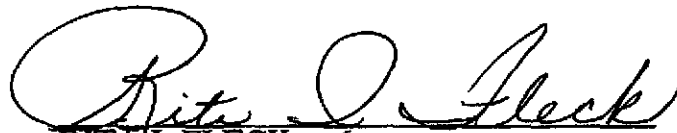
Juel and Michael Aikele
Route 1
Moore, ID 83255

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

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STATE 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)523-0620Post 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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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.

MICROFILMED

NOV 01 1990

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

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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 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	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

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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	

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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

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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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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.

M Todd Perkins *Paul Abdul Malik Akide*
(Signature of Applicant)

Subscribed and sworn to before me this 14 day of February, 19 82.

Scott D. White
(Notary Public)

My commission expires 11/10/92

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by CW Date 2-14-90 Protest filed by Big Lost River Seig.-

Prelim. check by _____ Fee \$50.00 # 2012101 Petitions

Received by HWT Date 2-20-90

Published in Custer Publishing: Arco Advertising 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. **MONITOR** by

Copy of transfer sent to lien holder

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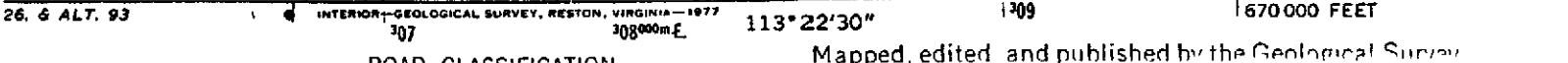
NOV 01 1990

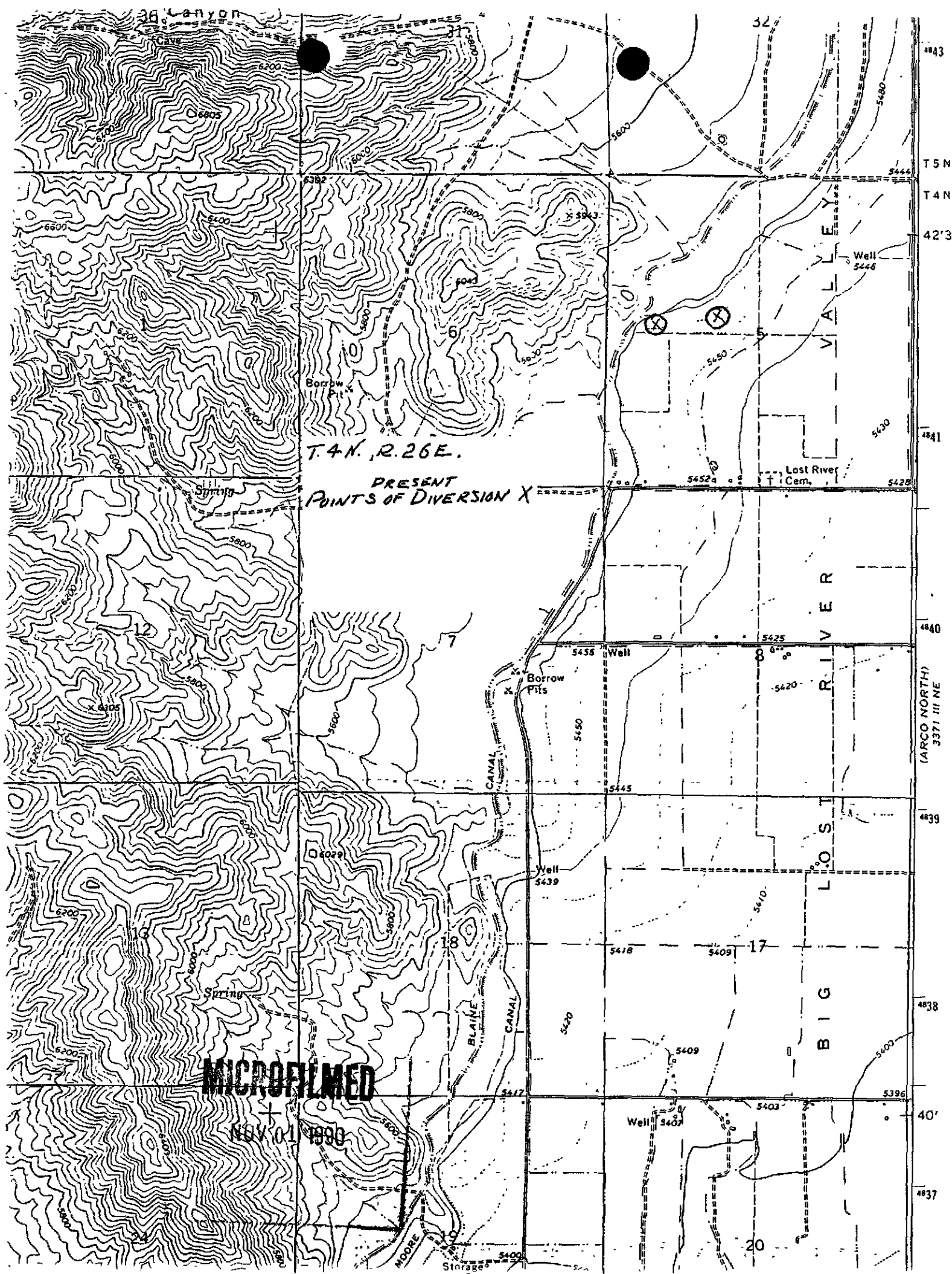
ATTACHMENT "A"

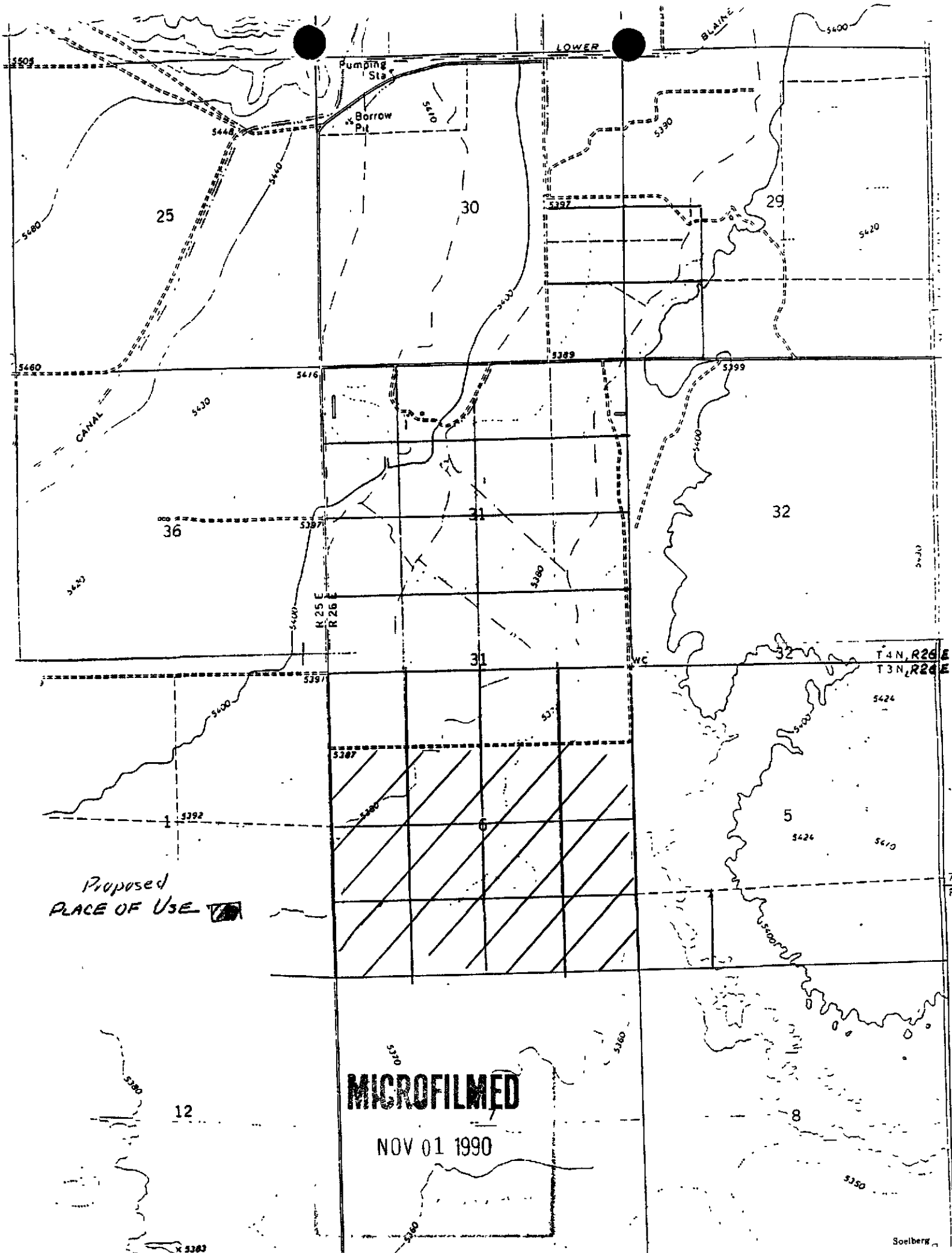
The three licenses, 34-7080A, 34-7136 and 34-7169, appear to show the two wells or points of diversion for these three rights in T.3N., R.25E., when, in fact, the wells are and always have been in T.4N., R.26E.

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Proposed
PLACE OF USE

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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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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

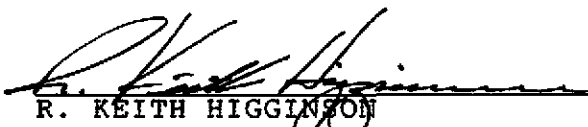
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

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

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NOV 01 1990

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 NOV 01 1990

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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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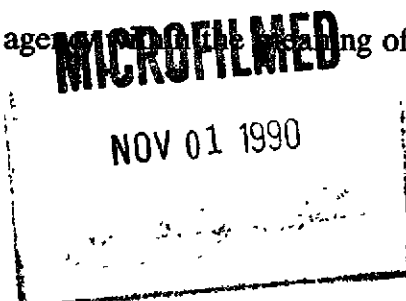
12-117. Attorney fees, witness fees and expenses awarded in certain instances.-- (1) In any administrative or civil judicial proceeding involving as adverse parties a state agency and a person, the court shall award the person reasonable attorney's fees, witness fees and reasonable expenses, if the court 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."

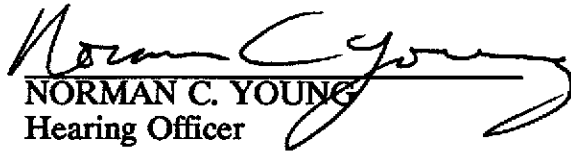
Even applying the Stewart court's broad reading of I.C. § 12-117, IDWR is not authorized to award attorney's fees to the applicants in the present proceeding. The Stewart decision could at most authorize IDWR to award attorney's fees in a proceeding in which at least one of the adverse parties is a state 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. In the hearing of I.C. § 12-117.

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 4



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

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NOV 01 1990

PROPOSED ORDER DENYING
MOTION FOR ATTORNEY'S FEES - 5

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

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

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

Juel and Michael Aikele
Route 1
Moore, ID 83255

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

Lawrence Babcock
Box 66
Moore, ID 83255


JODY I. SCHULTZ
Secretary/Records Manager

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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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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 13th day of August, 19 90.


R. KEITH HIGGINSON
Director

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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 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 persons 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.

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.

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PROPOSED MEMORANDUM
DECISION AND ORDER - 2

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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PROPOSED MEMORANDUM
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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 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 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.



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
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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.

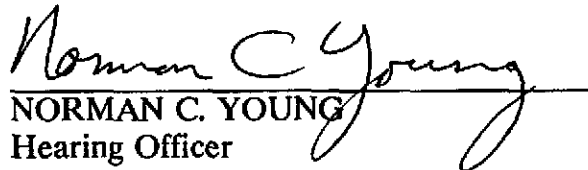
9) Applicants Juel Aikele and Michael Aikele shall pay into the enforcement fund of the Department a penalty of \$100 per day for each day that the well in the SW1/4SW1/4 Section 21, T4N, R26E was operated after receipt of the cease and desist order and prior to the date of the hearing on July 26, 1990. 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.

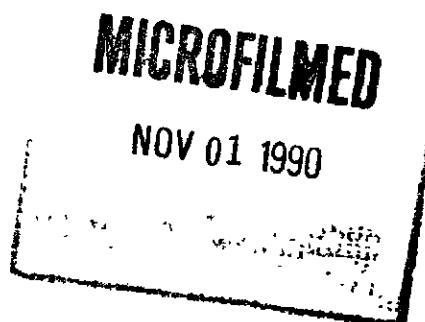
10) The director retains jurisdiction of this matter to extend the expiration date of this approval upon written notice that the lease has been extended; and upon expiration of the approval to order that the rights revert to the points of diversion and places of use existing prior to the approval of 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

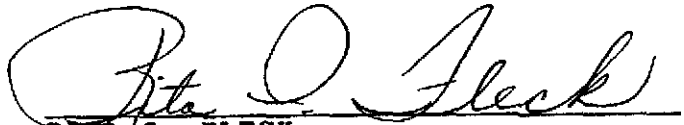
Juel and Michael Aikele
Route 1
Moore, ID 83255

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

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NOV 01 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,

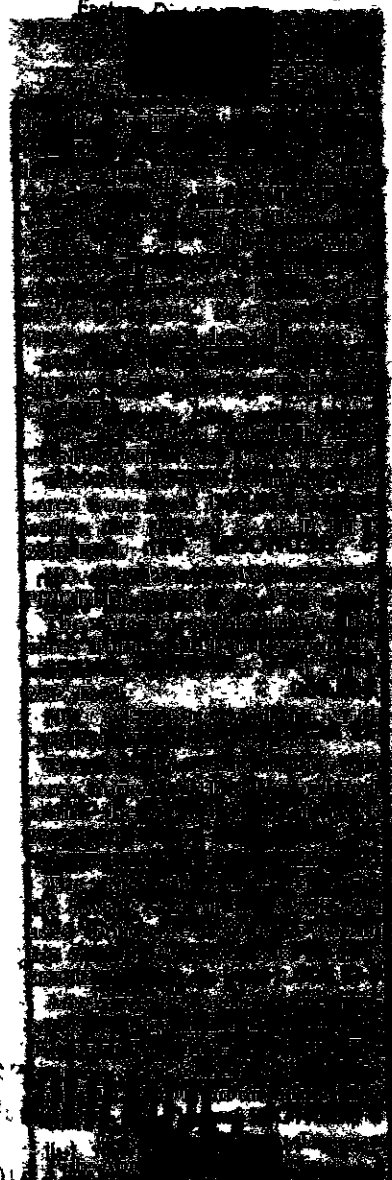
personally appeared Margaret Parks, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

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

RECEIVED

APR 30 1990

Department of Water Resources
Fishery Division



RECEIVED

NOV 01 1990

AFFIDAVIT OF PUBLICATION

I, Colleen Babcock **Department of Water Resources
Eastern District Office**

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 April 19, 1990 and ending with the issue dated

April 26, 1990
Colleen Babcock

STATE OF IDAHO }
COUNTY OF BUTTE }

On this 27 day of April
in the year of 1990, before me, a Notary Public,
personally appeared

Colleen Babcock
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

Thomas D. Cannon
Notary Public for Idaho

Residing at Arco, ID.

My commission expires 12-17-91

MICROFILMED

NOV 01 1990

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 34-7136 Priority March 26, 1976 Amount 5.50 cfs

THIS IS TO CERTIFY, that Marshal Todd Perkes
of Arco, Idaho, has complied with the terms and conditions of Permit
No. 34-7136 issued pursuant to Application for Permit dated March 26, 1976,
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>5.50</u> cfs and	<u>480.0</u> acre feet
	from _____ to _____	at _____ cfs and	_____
	from _____ to _____	at _____ cfs and	_____
(both dates inclusive)			

Subject, however, to the condition that no more than 5.50 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 confirmed 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 34-7169 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 0.02 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

RECEIVED

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. 34-7136 , 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 5.50 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	

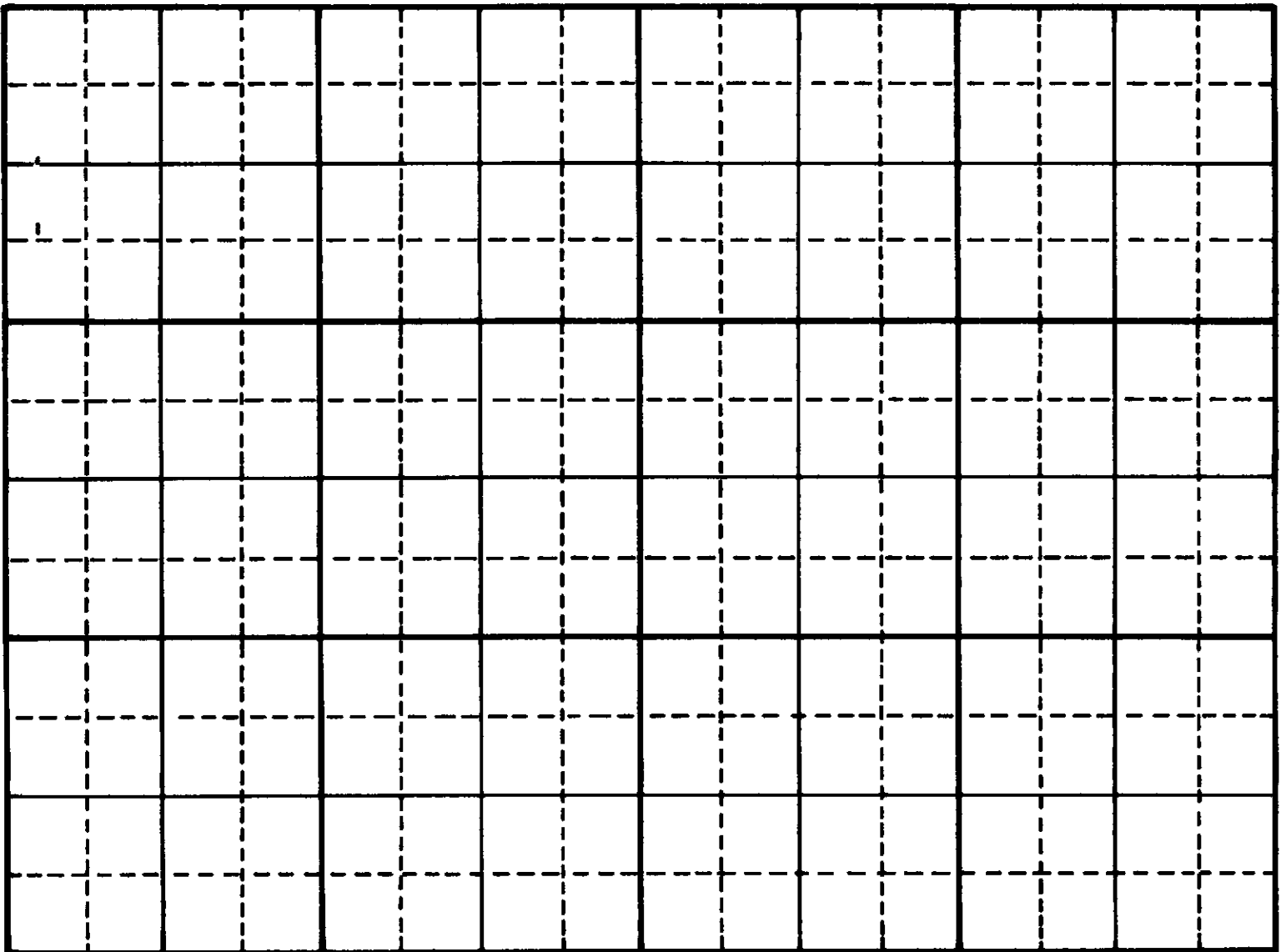
Total number of acres to be irrigated =

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 Arco Idaho, this 15 day of August, 19 82.
Marshall Todd Owen
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by Jim Fee = \$20.00
Publication prepared by W/A Date _____
Publication dates _____
Received by my Date 3-20-82
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. 34-7136.

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

Acting for the

Director
Norman C. Young

34 7136

Identification No. _____

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 Marshal Todd Perkes Phone 527-3157
 post office address Rt. #1, box 113B, Irco, Idaho 83213
- 2 Source of water supply ground water which is a tributary of _____
- 3 a Location of point of diversion is SW $\frac{1}{4}$ 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 5.5 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 5.5 cubic feet per second and/or
 b _____ acre feet per annum.
6. Proposed diverting works
 a Description of ditches, flumes, pumps, headgates, etc well, 250 HP pump, open canal, 200 HP
relift pump out of canal to sprinkler system.

- 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 \$200,000.00
- 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 _____

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

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	40	40	40	40									320

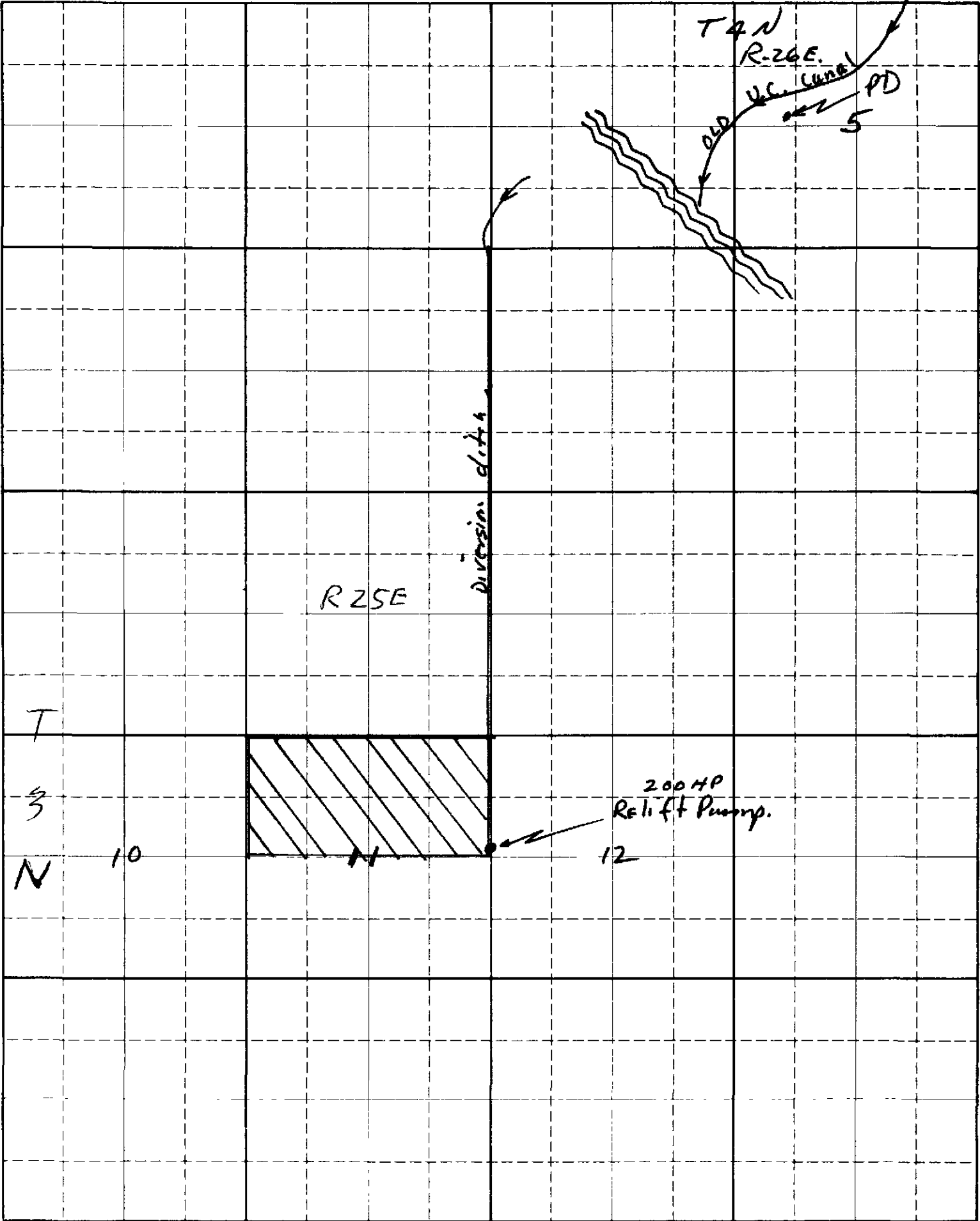
Total number of acres to be irrigated 320

c. Describe any other water rights used for the same purposes as described above. Permit No. 34-7080(part)

- 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 This permit will be supplemental to the NE¹/₄, Sec. 11, T. 4N, R. 26E, under Permit No. 34-7080. There is a 30% ditch transportation loss figured into the total amount of 5.5 c.f.s., 3.2 c.f.s. for the NW¹/₄, and 0.53 c.f.s. supplemental to the NE¹/₄, Sec. 11, T. 3N, R. 25E

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.

M. Todd Perkins
(Applicant)

Proposed Priority 3-26-76

Received by JNF Date 3/26/76 Time 4:30 P
Preliminary check by JNF Fee \$ 75.00
Receipted by JNF Date 3/26/76 # 15709
Publication prepared by ew Date 4-02-76
Published in Arco Adventure
Publication dates April 8 & 15, 1976
Publication approved me Date 5-11-76
Priority reduced to _____ Reason _____

Protests filed by _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by EDC DRT

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

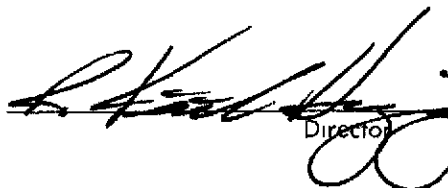
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No 34-7136, and said application is hereby APPROVED.

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 May 1, 1981.
- c. Other: 1. A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.
2. The issuance of this permit in no way grants any right-of-way or easement across the land of another person.

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

Witness my hand this 14 day of May 19 76.


Director

Affidavit of Publication

RECEIVED

MAY 11 1976

Department of Water Resources
Eastern District Office

Leella 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 4/8/76

and ending with the issue dated 4/15/76

Leella Cammack

Subscribed and sworn to before me this

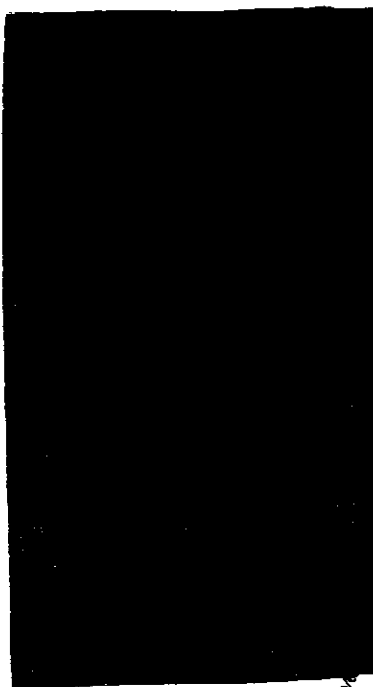
8 day of May, 1976

Charles G. ...

Notary Public

Residence: Arco, Idaho.

My commission expires 5/1/78, 1978



Note:
P.d.s are
actually located
in T4N, R26E,
not 3N, R25E,
as shown on
the lie.
4/4
7-9-76

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.

MICROFILMED

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. 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,



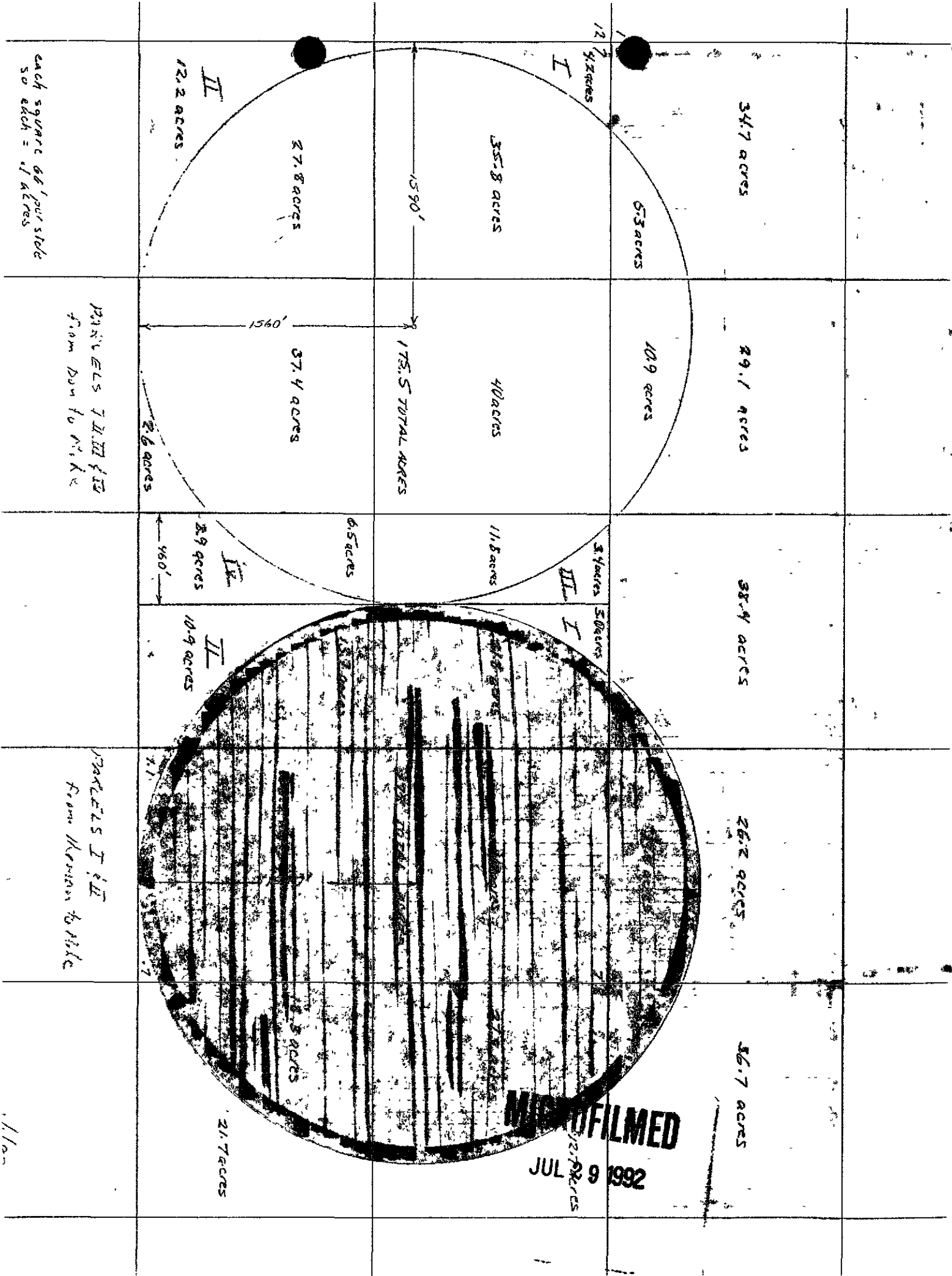
Kent W. Foster

#3840.00/srs

Enclosure

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JUL 29 1992



NOT FILMED
JUL 9 1992



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
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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NOV 01 1990

2-21-90
3-30-90

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: KC Wilson

1. Right number 34-7080A/7136/7169 Applicant M. Todd Perkes, Truel, Michael Aikele
2. Type of right: ☐ Decree ☒ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
 - b. ☒ Description of original point of diversion.
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☒ All of right.
 - b. ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
 - c. ☒ Check description of point(s) of diversion.
 - d. ☐ Check description of place of use.
 - e. ☐ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee.
 - g. ☐ Check proof of ownership of right &/or land from which water is transferred.
 - h. ☒ Check for expansion in use of right. Comments _____
 - i. ☐ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) _____
 - j. ☐ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 34 None

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on W.D #34 Received on 5-01-90
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* _____

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OCT 19 1990

Department of Water Resources

4. By _____ Date _____

* All uses within Watermaster Districts require special conditions.

Copy
Roberta

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.

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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

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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 \$42-222(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 a statement to the hearing
officer for an award of attorney's fees in favor of his clients

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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

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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 have complied with the
provisions of the statute and compliance is not had with the statutes, no
jurisdiction exists. (Emphasis added). 102
Idaho at 750.

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.

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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.

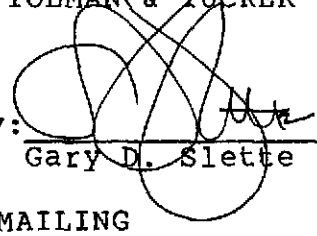
21 CONCLUSION

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.

27 NOV 01 1950
28

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

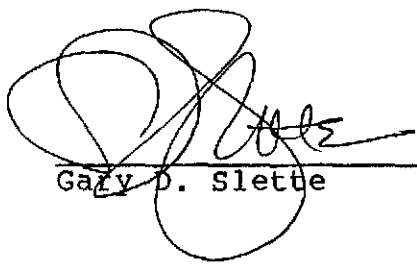
2 NELSON, ROSHOLT, ROBERTSON,
3 TOLMAN & TUCKER

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 Gary D. Slette
20
21
22
23
24
25
26
27
28

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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 27, 1990

CERTIFIED MAIL

#33171

Juel and Michael Aikele
Rt. 1
Moore, ID 83255

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

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

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	)	ORDER TO
SEC. 5, TWP. 4N, RGE. 26E, B.M.	)	
OWNED AND/OR CONTROLLED BY MARSHALL	)	CEASE AND DESIST
TODD PERKES, AND/OR JUEL AIKELE	)	
AND/OR MICHAEL AIKELE	)	
	)	

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.

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 wilfull 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.

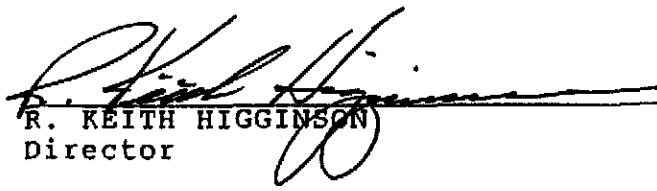
6. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

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

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

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

For your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: Juel + Michael Aikele Rt. 1 Moore, ID 83255	4. Article Number 33171 Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature - Addressee X <i>[Signature]</i> 6. Signature - Agent X <i>[Signature]</i>	8. Addressee's Address (ONLY if requested and fee paid) Rt. 1 Box 63 D Moore, ID. 83255
7. Date of Delivery 7-31-90	

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT



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

#33172

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Gentlemen:

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

Sincerely,


NORMAN C. YOUNG
Administrator

MICROFILMED

NCY:rf

c: Kent Foster
bc: Gary Slette

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:

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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.

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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

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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 wilfull 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.

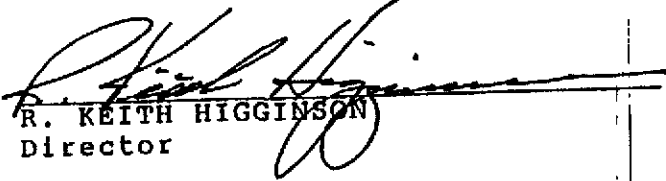
7. The Director should issue a Cease and Desist Order pursuant to the authority of Section 42-351, Idaho Code.

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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

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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.

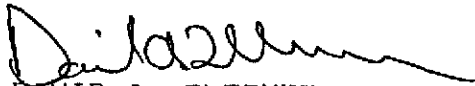
The Arco County Office Address is: FmHA
P.O. Box 656
Arco, Idaho 83213

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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

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NOV 01 1990

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 rights, and water stock pertaining to or reasonably necessary to the use of the real property described hereby. To 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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NOV 1 1990 --

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, $\frac{1}{4}$ 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 ^{hums TP} head of cattle from May 16 to August 16 on George Allotment, administered by the United States Department of the Interior, Bureau of Land Management.

NOV 01 1990

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.

MT P NRP

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

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(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, Borrower or anyone authorized to act for him will, after receipt of a bona fide offer, refuse to negotiate for 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 comply with or 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.

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(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

Entered	✓
Classified	✓
Indexed	✓

M. Todd Perkes
M. Todd Perkes

Norma R. Perkes
Norma L. Perkes

BUTTE COUNTY, IDAHO
STATE OF IDAHO

ACKNOWLEDGMENT

COUNTY OF Butte

ss:

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.

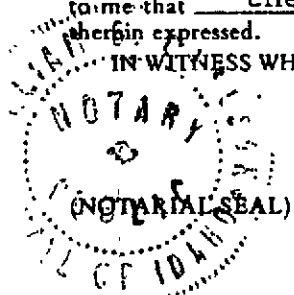
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the said date.

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NOV 01 1990

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

My commission expires: Lifetime
Bond expires: 11/27/79



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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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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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

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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 CHVISLIK
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^{South}, 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

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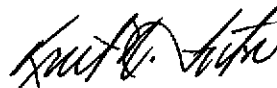
NOV 01 1990

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

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NOV 1 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

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 by *Jodi Schultz*
Administrator

NCY:js
cc: Kent Foster
Gary Slette

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NOV 01 1990

Glen

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.

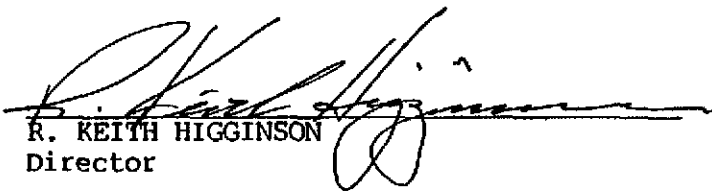
5. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

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 22ND day of June, 1990.


R. KEITH HIGGINSON
Director

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NOV 01 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

MICROFILMED

NOV 01 1990

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

MICROFILMED

NOV 01 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

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
Fern B. Guthrie	Box 319 Arco, Id. 83213
H. C. Guthrie	Arco
M. J. McKnight	Moekay
Ray S. Slaton	Arco
Edythe Moore	Arco
Wm. T. McKinley	Arco
Donald L. Davis	Arco
John A. Davis	Arco
Louis Lyons	Arco
Dave Gray	Idaho Arco, Idaho
Kenneth G. Goff	Arco Idaho
Shirley G. Goff	Arco, Id.
Lee Ray Bynington	Arco Idaho
Lella Bynington	Arco Idaho
Blair B. Bynington	Arco
James B. Haskins	Arco
Lida Haskins	Arco
Wanda Holt	Arco
Dyan Holt	Arco
Lynn A. Thomas	Arco
Louise H. Thomas	Arco
Mal F. Haskins	Arco

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

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

Notice is hereby given that M. T. GIBBS, JAMES A. MICHAEL, and others have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a CROWNED WATER source. The right sought to be changed is evidenced by LICENSE NO. 34-7080A, 34-7136, & 34-7169 and recorded as follows:
POINT OF DIVERSION: SWSW CORNER S 5 T 3 N R 26 E, BLTTE COUNTY NO. 34-7080A

AMOUNT: 2.97 CFS

PRIORITY: SEPT. 23, 1974

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 26 E, B.L.T.

NO. 34-7136

AMOUNT: 1.5 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 3 N R 26 E, B.L.T.

NO. 34-7169

AMOUNT: 4.45 CFS

PRIORITY: JAN. 8, 1977

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 26 E, B.L.T.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 5 T 3 N R 26 E and used to irrigate 480 acres within the SWSW S 5 T 3 N R 26 E, B.L.T.

Any person applying for a change under the provisions of the Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, before MAY 1, 1977.

R. Keith Higginson

Director

Published in the Eastern District Office on APRIL 10, 1977.

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MAY - 7 1990

Department of Water Resources
Eastern District Office

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NOV 01 1990

Paul D. Munday	Moore Id.
Rosanne Gilling	Moore Id.
Donald R. J.	RT 1, Moore, Idaho
Pam Jensen	P.O. Box 321 Butte City
Lloyd E. Jensen	Moore
Phyllis J. Jones	Moore, Id.
Beyon Wheeln	Moore, ID.
Earl Keller	Moore
Louise Keller	Moore
Cam E. Skates	Moore Idaho
Rebecca Scutten	Moore, ID
Bonnie Larson	Moore Id
Chas. A. Hays	Moore, ID.
Phil Hays	Moore, ID
Elizabeth Knapp	Moore, ID

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NOV 01 1980 MAY - 1990

Department of Water Resources
Eastern District Office

MAY - 1 1990

Department of Water Resources
Eastern District Office
Idaho Dept. of Water Resources
190 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} 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

Dale Smith Rt #1 Box 22

Wright & Hail Box 454

Blase J. Hail Box 454

YVONNE BROWN

Flower Brown

David Beale

Albert C Babcock

Mary H Babcock

Vernal Thorngren

Lydia Thorngren

Jack McAffee

Joan McAffee

Lynn Hocking

Alvin J. Roesner

Hesterude Roesner

William S. Dyer

Laudene Dyer

Loren B. Lutschg

Bonnie F. Lutschg

Diana L. Aronquist

Dick Buerland

Jennie E. Buerland

Michael D. Crowley

SE

Moore, Idaho 83255

Moore Idaho 83255

Moore Id. 83255

Arco Ida 83213

Arco Ida 83213

Moore Id. 83255

Moore, Idaho 83255

Moore, Idaho 83255

Moore, Idaho 83255

Moore, Id. 83255

Moore, Idaho 83255

Moore Idaho 83255

Moore Idaho 83255

Moore, Idaho 83255

Arco, Idaho 83213

Arco Ida 83213

Arco, Id. 83213

Arco Idaho 83213

Arco, Id. 83213

Moore, Id. 83255

11 11 11 11

Moore Id 205

Moore Id 83255

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

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

Notice is hereby given that TERRY PERKINS, JUEL & MICHAEL ADAMS have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. It is right sought to be changed in existing by LICENSE NO. 34-7080A, 34-7136 & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW 36TH S 11 T 3N R 26E, 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 26E, 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 NW 1/4 S 11 T 3N R 26E, 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 SW 1/4 S 11 T 3N R 26E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SW 1/4 S 21 T 4N R 26E and used to irrigate 160 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 Department of Water Resources, Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson

Director

Published in the Idaho Statesman on APRIL 19 & 20, 1990.

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Cathryn Bue	Moore	83255
Janice M. Burch	Moore	83255
James E. Burch	Moore	83255
Judy Crowley	Moore	83255
Dessa R. Haney	Moore	83255
M. Duane Haney	Moore	83255
David W. Wanstrom	Moore	83255
Nancy Wanstrom	Moore	83255
Sam A. Jackson	Moore 2d	83255
Renee Jackson	Moore 2d	83255
Patsy Broder	Moore 2da	83255
Mara Schuck	Moore 2da	

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MAY - 7 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

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~~ ^{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

Lawrence Babcock	Moore, Idaho
Gerald Stewart	Moore Idaho
Jeffrey Stewart	Moore Idaho
Craig Stewart	Moore, Idaho
Elben Reynolds	Moore Idaho
Louis Jean Reynolds	Moore Idaho
Raymond Nott	Moore Idaho

**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 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 SANA S 1/4 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

RECORDED

MAY - 1990

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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} ~~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
Lewis Rothwell	RT 1 Box 405 Arco, Ida
Dan Hendrick	RT #1 Box 82 Moore, Ida
Ervin Mathews	Box 553 Arco Idaho
Ed R. Walker	Box 32 Arco, Idaho
Verna Mathews	Box 553 Arco, Idaho
Bill Stewart	Box 408 Arco, Ida.
Dorothy Stewart	" "
Ed Echols	Box 6 Arco, Ida
Long R. Thompson	Box 392 Arco, Ida
Glenn Hammer	Box 144 Arco
Larry Rothwell	Box 133 Moore
Cesar Rolland Clement	Box 637 Arco Idaho
Leuther Winger	Box 341 Arco Idaho
Merlin F Phillips	RT BOX 442 Arco Idaho
Anthony E. Madson	RT #1 Box 446 Arco, Idaho
Curtis E. Beay	Box 31 Arco, Idaho
Ed Hamilton	P.O. Box 211 Arco, Id.
Watt Westerman	
DuMaynard	P.O. Box 293 Arco Id
Edna Maynard	P.O. Box 293 Arco, Id.
Theron L. Anderson	P.O. Box 258 Arco Idaho
Frances A. Anderson	Rt. 1 Box 258 Arco, Id.

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 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 S 1/4 N 1/4 S 1/4 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.

RECEIVED

MAY - 7 1990

Department of Water Resources
Eastern District Office

MICROFILMED

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 protect 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* ~~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>Paul Larson</i>	<i>area Idaho 83213</i>
<i>W. Kevin Dumas</i>	<i>Idaho State 83213</i>
<i>Robert L. Isgrah</i>	<i>ARCO Idaho 83213</i>
<i>J. M. Longalo</i>	<i>ARCO Idaho 83213</i>
<i>Frank L. Hammett</i>	<i>Moore Idaho 83255</i>
<i>Jim Hunter</i>	<i>more Idaho 83255</i>
<i>Jay Stewart</i>	<i>more Idaho 83255</i>
<i>Wendell J. Andersen</i>	<i>PO Box 2 ARCO IDAHO 83213</i>
<i>Mathie C. Andersen</i>	<i>area Id 83213</i>
<i>Curtis Roy</i>	<i>PO BOX 313</i>
<i>John Andersen</i>	<i>ARCO Id 83213</i>
<i>Geo. W. Creecher</i>	<i>More, Id 83255</i>
<i>Al Wheeler</i>	<i>Moore Idaho</i>
<i>Norman H. Andersen</i>	<i>Moore, Idaho 83255</i>

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 ARKELE 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 26, 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 S 1/4 NW 1/4 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.

MICROFILMED

NOV 01 1990

RECEIVED

MAY - 7 1990

Department of Water Resources
Eastern District Office

RECEIVED

MAY - 7 1990

Department of Water Resources
Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
Eastern District Office
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} ~~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

Arco Idaho

Dennis Braswell

Arco Idaho

Lusky Braswell

Arco Idaho

Dan Braswell

Arco Idaho

John M. Morgan

Rt. 1 Box 219 - Arco, Idaho

Linda Morgan

Rt 1 Box 219, Arco, Idaho 83213

George Stonhill

Rte 1 Box 220 Arco ID.

Louis Cargatelli

Box 209 Arco ID

Adell Cargatelli

Route 1 Box 209 Arco Id.

Nancy Hughes

Rt 1 Box 193 Arco, Id.

Barbara Hunter

Rt 1 Box 207

Arco, Id

Robert Thornton

Rt 1 Box 207

Arco, Idaho

Chad Bunker

Box 83

Arco Idaho

Edith Reichman

Box 513

ARCO Idaho

L. F. Reichman

Box 513

Arco, Idaho

Wesley F. Waters

Box 546

Arco, ID.

Helen Merrell

Rt 1

MICROFILMED

Arco, ID

Glen A. Whitehead

RR #1 Box 263

NOV 01 1990 ARCO, ID.

Louis V. Smith

Box 306

Arco Id.

Harold Larson

Rt. 1 Box 289

Arco Id.

Paul Larson

Rt 1 Box 289 Arco Id.

Tom Thornton

Box 13, Arco Idaho

Leo Orland

Box 300 Arco Idaho

**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 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 NW 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 S 1/4 NW 1/4 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.

Big Lost River Irrigation District

P. O. Box 205
MACKAY, ID 83251

April 28, 1990

RECEIVED

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

RECEIVED

MAY - 1 1990

APPLICATION FOR TRANSFER OF

Department of Water Resources
Eastern District Office

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

WATER DISTRICT 34

WATERMASTER

Aug Rosenbance

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:

MICROFILMED

NOV 01 1990

Aug Rosenbance
Watermaster

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

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

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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 S1/2

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NOV 01 1990

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.

✓

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NOV 01 1990

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

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

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NOV 01 1990

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R 26E and used to irrigate 480 acres within the S1/2N1/2 S1/2

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

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

MICROFILMED

NOV 01 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 01 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
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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 (1938-1982)
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
Kent W. Foster

#3840.00/srr

Enclosure

MICROFILMED
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

MICROFILMED
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

MICROFILMED

NOV 01 1990

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TERRY L. CRAPO (1939-1982)
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

MICROFILMED

NOV 01 1990

LAW OFFICES
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TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

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

October 4, 1982

RE: Permit Nos. 34-7060A, 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. 34-7060 A, 34-7150 and 34-7169

Marshal Todd Perkes
Route 21, Box 110
Arco, ID 83210

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. 34-7136

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

Dear Mr. Perkes:

A representative of this Department made an examination of the works covered by your Permit No. 34-7136 and has found the following:

Amount of water that can be recognized as beneficially used under
Idaho law: 5.50 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 NW $\frac{1}{4}$, Sec. 11, Twp. 3N,
Rge. 25E

Priority date established: March 26, 1976

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

file
MEMO

TO: Files 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.

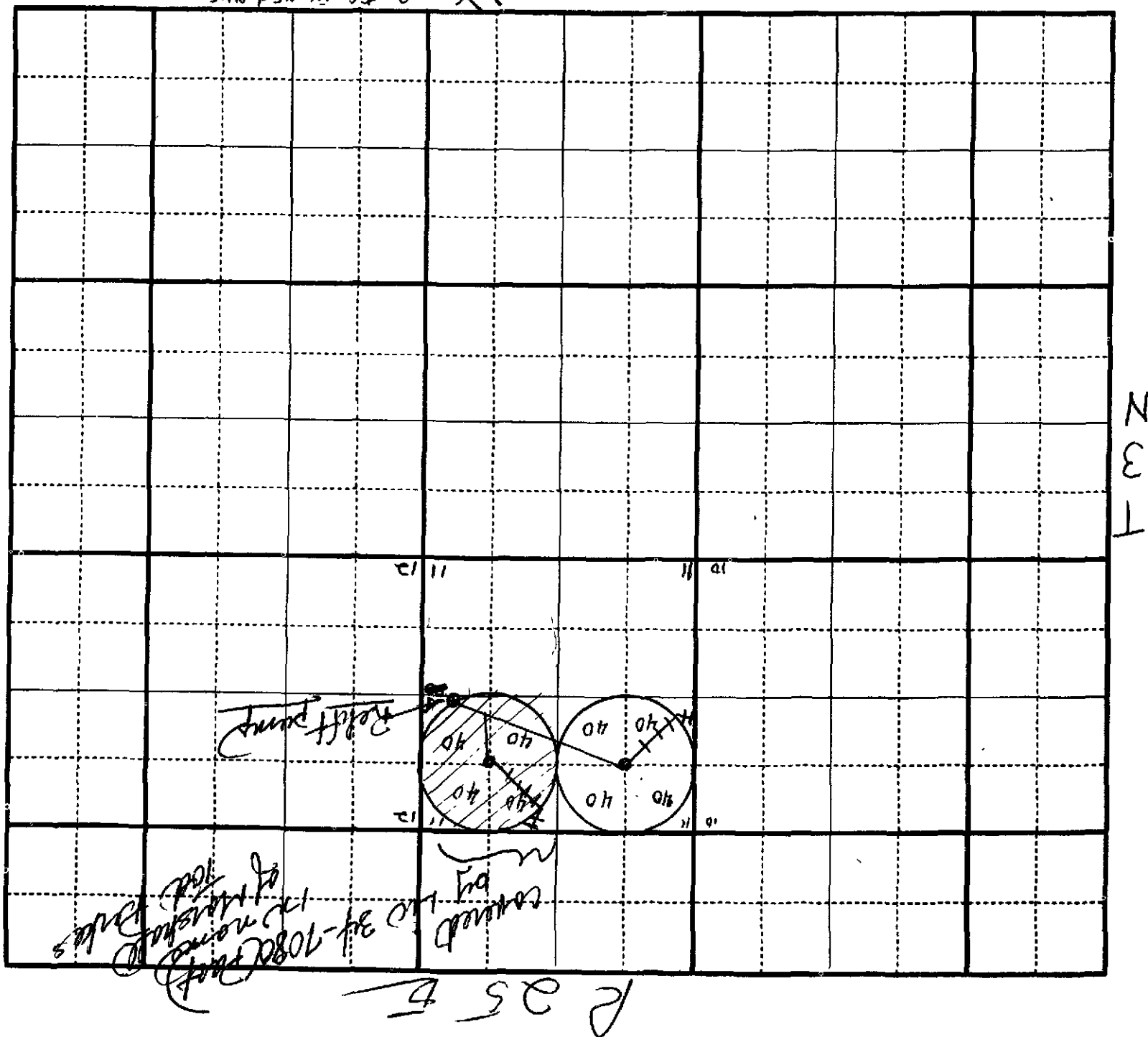
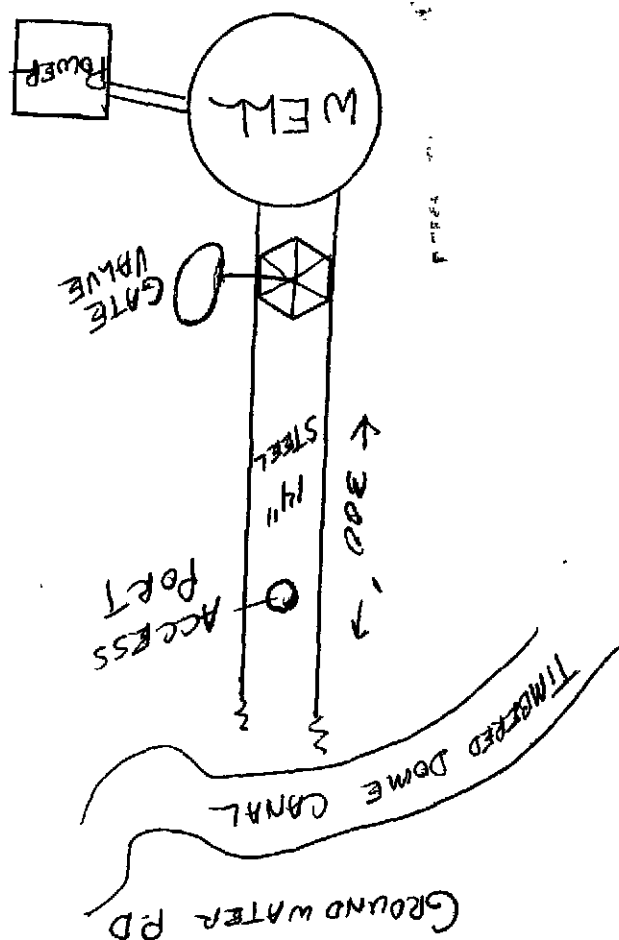
SUMMARY:

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.

Done

TOTAL ACREAGE 320



DATE OF EXAM

6-26-79

1600a covered under 34-7080 (part) from same well

ACREAGE

Found

320

Recommended

1600a

Irrigation Requirement

3.0

Ac Ft/Ac

* 3.2

USE

Irrigation Q = ~~1.44~~ 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 ☒ no ☐

Name source:

Timberdome Canal

twp. ~~4N~~ N/S, Rge

26E

E/W, B.M., Sec.

5

Sub.

SW 1/4

NW 1/4

Butte

County

Exchange? yes ☐ no ☒

Name source exchanged with:

n/a

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

5.17 CFS @ P/O

Method of measurement

10.070" ANNULAR METER AT RD. IN-LINE METER-AT RELIFT

Total Q recommended

* 3.2

Meter No

78-12-163

Type

MCCROMETER

Condition

NEW

Total V recommended

480.0 AF/YR

*

0.02 cfs/acre allowed w/ condition that their right when combined w/ 34-7080A & 34-7169 shall not exceed a capacity of 5.82 cfs

Recommended Amendments:

P.D.

Place of Use

Other

None

NONE

MEASUREMENT CALCULATION:

TIMED FLOW = 1.001 in 1 min 15 sec = 75 435.6 = 5.808 CFS = 5.81 CFS AT RELIFT STATION

ANNULAR READING = 36" = 2321.01 5.17 CFS

V = 1.97 CFS X 214 X 1.9835 = 836.2 AF/YR > 3.0 X 160 = 480 AF/YR

System capacity = 5.17 CFS = 2.20 cfs (1-34-7080 part) = 1.97 cfs

SYSTEM DESCRIPTION:

Motors - No. 1. GE TIR, QAD 100hp SN. BNT 209423 / No. 2. "U.S. High Thrust 200hp 3D" C1516-01-588-8502930

Pumps - No. 1. Johnston V.T. SN. 45948 - No. 2. AURORA VERTILINE No S.N.

PIVOTS - VALLEY CORNER SYSTEM MODELS 5171

METER - MCCROMETER - 78-12-163

RD. - Motor - U.S. Holloshaft 200hp Type H.U. SN. 1387258

Pump - LAYNE & BOWLER WELLINE SN 45957

REMARKS:

See exam for 34-7080 (part)

ADDITIONAL WATER IS PROVIDED TO RELIFT STATION BY WELL covered under permit 34-7169 which Diverts 7.26 cfs into TIMBERDOME CANAL. groundwater is discharged into the Timberdome Canal in SW NW sec 5 T4N R26E and conveyed by the canal to relift pump located in SENE Sec 11 T3N R25E.

Examiner's Signature

Rodney A. Parker

Date

11-28-79

Checked by

Anthony R. Kozlowski

Date

4-16-80

Approved by

Jmi

Date

3/19/82

WRD417

WATER RIGHTS PROOF READING REPORT

10/05/82

PAGE 1

WATER RIGHT NUMBER 34-7136

OWNER LAST NAME - PERKES

ADDRESS LINE 1 - RT. 1 BOX 1138 110

ADDRESS LINE 2 -

FIRST NAME - MARSHAL TODD

ORIG OWNER -

ADDRESS LINE 3 -

CITY - ARCO

SOURCE - GROUNDWATER

STATUS -

PRIORITY - 03-26-1976

COUNTY - BUTTE

STATE - ID ZIP CODE - 83213

STAGE - PERMIT

TOTAL DIV. VOLUME - 480

.00 AFA

TRFR/AMEND -

WATER DIST. -

DLE/CAREY ACT -

RIGHT BASIS -

TOTAL DIV. RATE - 5.5000 CFS

DIVERSION POINT - 3MM 05 04N 26E LOT

REDIV -

USE DIV. RATE -

5.5000 CFS

USE DIV. VOLUME - 480

.00 AFA

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

PLACE OF USE -

TWN 03N R1G 25E SEC 11

TRACT NENE LOT

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USE - IRRIGATION

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DEGREE NAME -

REMARKS - See file for Licensing Conditions.

NON IRRIG USE -

OTHER RIGHTS FOR SAME USE - 34-7080.

PROOF DUE - 05-01-1981

PERMIT/DENIED - 05-14-1976

PROCESSED -

PROOF MADE - P FLD EXAM -

COND. OF APPROVAL -

01 04 16

DIVERSION MEANS - WELL, PUMP, CANAL & SPRINKLERS.

HEARING -

OLD NO. -

DATE -

TOTAL ACRES - 320

TRACT SWNE LOT

Also SENE 11 3N 25E

Rediversion

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

FIRST NAME - MARSHAL TODD

CITY - ARCO

STATE - ID ZIP CODE - 83213

N SOURCE - GROUNDWATER
N STAGE - PERMIT

PRIORITY - 03-26-1976 COUNTY - BUTTE TOTAL DIV. RATE - 5.5000CFS

N DIVERSION POINT - SWNW 05 04N 26E

N FROM - 04-01 10 - 11-01 USE - IRRIGATION

USE DIV. RATE - 5.5000CFS

N USE - IRRIGATION

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

AC 40 TRACT NWNE

AC 40

N TRACT SWNE

AC 40 TRACT SENE

AC 40

N TRACT NENW

AC 40 TRACT NWNW

AC 40

N TRACT SWNW

AC 40

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

AC 40

N OTHER RIGHTS FOR SAME USE - 34-7080.

N PROOF DUE - 05-01-1981 PERMIT/DENIED - 05-14-1976

N COND. OF APPRVL - 01 04

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

IDENT. NO. 34-7136

WATER RIGHT
DATA ENTRY LOG

[illegible]

WATER RIGHT ANALYSIS FORM

- DATA ENTRY -

Identification No. 134-7136
 Old No. _____ New No. _____

Record

1. Original Owner: Marshal Todd Perkins

Present Owner: _____

2. Address: Rt 1, Box 113B

3. City: Arco State: ID Zip: 83213

4. A. Source of Water: groundwater

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: ~~5-1-98~~ 3-26-1976

D. County: 23

E. Total Diversion Rate: 5.5

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>SWNW</u>	<u>5</u>	<u>4N</u>	<u>26E</u>		

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

from 4-1 to 11-1 for A purposes. Amount 5.5
 (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: 34-7080

13. A. Proof Due Date: 5-1-1981

B. Date Permit Approved or Denied: 5-14-1976

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: 01, 04

14. Diversion Means (brief narrative): *well, pump, canal + sprinklers*

AKO 4-13-79



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

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

PROOF OF APPLICATION
OF WATER TO BENEFICIAL USE

FEB 18 1979

Department of Water Resources

1. a) Name of permit holder Marshall Todd Perkes

b) Post office address Rt #1 Box 110, ARCO Idaho 83213

2. Permit number 34,7080 partial & 347136

3. Date of priority that you are prepared to establish May 1976

4. a) Source from which water was appropriated Ground Source

b) Location of the point of diversion: SW 1/4 NW 1/4, Section 5

Township 4N, Range 26E Boise Meridian. Other points of diversion: _____

5. a) The amount of water and use to which the water has been applied:

Amount 5.5 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:

Timber dome Canal Company 7 miles to place of use.

b) Describe the agreement of understanding by which you take water from the works: own share

in Canal 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 200 horse power 20" well casing, 200' feet 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.

MICROFILMED

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, 1976

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	
3N2	25E	11	40	40	40	40	40	40	40	40									320

10. Remarks: There is a ditch Transportation loss involved. Total number of acres irrigated 320

The above information is a true statement of the extent to which the above numbered permit has been developed.

Feb. 12 1979
(Date)

Marshal Todd Perkins
(Signature)

State of Idaho)
County of Bud) 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.

My commission expires Life term
Boad: 11/2/79

William H. Carlson
Notary Public
Residing at Arco, Idaho

MICROFILM

May 17, 1976

Re: Permit No. 34-7136

Marshal Todd Perkes
Rt. #1, Box 113B
Arco, ID 83213

Dear Mr. Perkes:

Enclosed is a copy of your approved Application for Permit No. 34-7136. 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.

Please be advised that the Idaho Supreme Court has ruled that a water right initiated and/or put to beneficial use by aid of trespass on private property is invalid.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:mef

Enc.

April 26, 1976

RE: Application for Permit No. 34-7136 PERKES
" " " No. 34-7137 BURNS
Application for Amendment No. 34-7080 PERKES

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 notice was to have been published in your paper on April 8 and April 15, 1976.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

April 2, 1976

RE: Application for Permit Nos. 34-7136 PERKES
34-7137 BURNS

The Arco Advertiser
P.O. 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 5-11-76 by CW

RDC:ME

Legal Notices (2)

PUBLIC NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Marshal Todd Perkes, Arco, Idaho, has on 3-26-76 submitted Application No. 34-7136 for a permit to appropriate 550 cubic feet per second of water from a ground-water source by means of well and pump within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 5, T. 4N, R. 26E, B.M., Butte County; to be used from Apr. 1 to Nov. 1 for the irrigation of 320 acres within the N $\frac{1}{2}$, 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 April 26, 1976.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser,
Arco, Idaho, on April 8 and April 15,
1976.

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Marshal Todd Perkes,

Arco, Idaho

has on 3-26-76 submitted Application No. 34-7136

for a permit to appropriate 5.50 cubic feet per second ~~XXXXXX per annum~~

of water from a ground-water source

by means of well and pump

within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 5, T. 4N, R. 26E, B.M., Butte County;

to be used from Apr. 1 to Nov. 1

for the irrigation of 320 acres

within the N $\frac{1}{2}$, 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 April 26, 1976.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho

on April 8 and April 15, 1976

*me. A.
me. A.
me. A.*

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item Initial Date

Application No. Perkes

☒ 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) ML 3/26/76

In form to receipt

(2) ML 3/26/76

Send Copies to:

☒ Idaho State Health Department
☒ Idaho Fish and Game Department
☒ Bureau of Land Management

(3) ML 3/26/76

☒ Request Special Use Permit from U.S.F.S.
☒ Request Easement from B.L.M.
☒ Request Information from Applicant

(4) ML 3/26/76

In form for advertising

(5) ML 3/26/76

Platted on Map No. T3N, R25E and T4N, R25E

(6) ML 3/26/76

Located within Water District No. N/A

(7) ML 3/26/76

Critical groundwater area: yes ☐ no ☒

(8) ML 3/26/76

Groundwater levels:

☐ Declining, ☒ Stable, ☐ Increasing

(comment) Gnd H₂O levels, 1974, T4N, R26E, 32CBB1

(9) ML 3/26/76

Other rights on the same place of use No

(10) ML 3/26/76

Comments: None

(11) ML 5-11-76

Affidavit of Publication received(date) May 11, 1976

(12) ML 5-11-76

Final date for protests April 26, 1976

Protests received: yes ☐ no ☒

(13) RDC 5/11/76

All requested information received from agencies or applicant: yes ☐ no ☐

(14) " "

Action recommended:

☒ Approve

RECEIVED

3/26/76 Proposed Priority

MAY 13 1976

Reason for Reduction Department of Water Resources

☒ Measuring device required

☒ See ~~attached sheet for~~ other conditions of approval

☐ No special conditions for approval

PERMIT DOES NOT GRANT
ACCESS OR EASEMENT
TO LANDS OF ANOTHER

(15) District E By RDC Date 5/11/76

Copy
7/1/76