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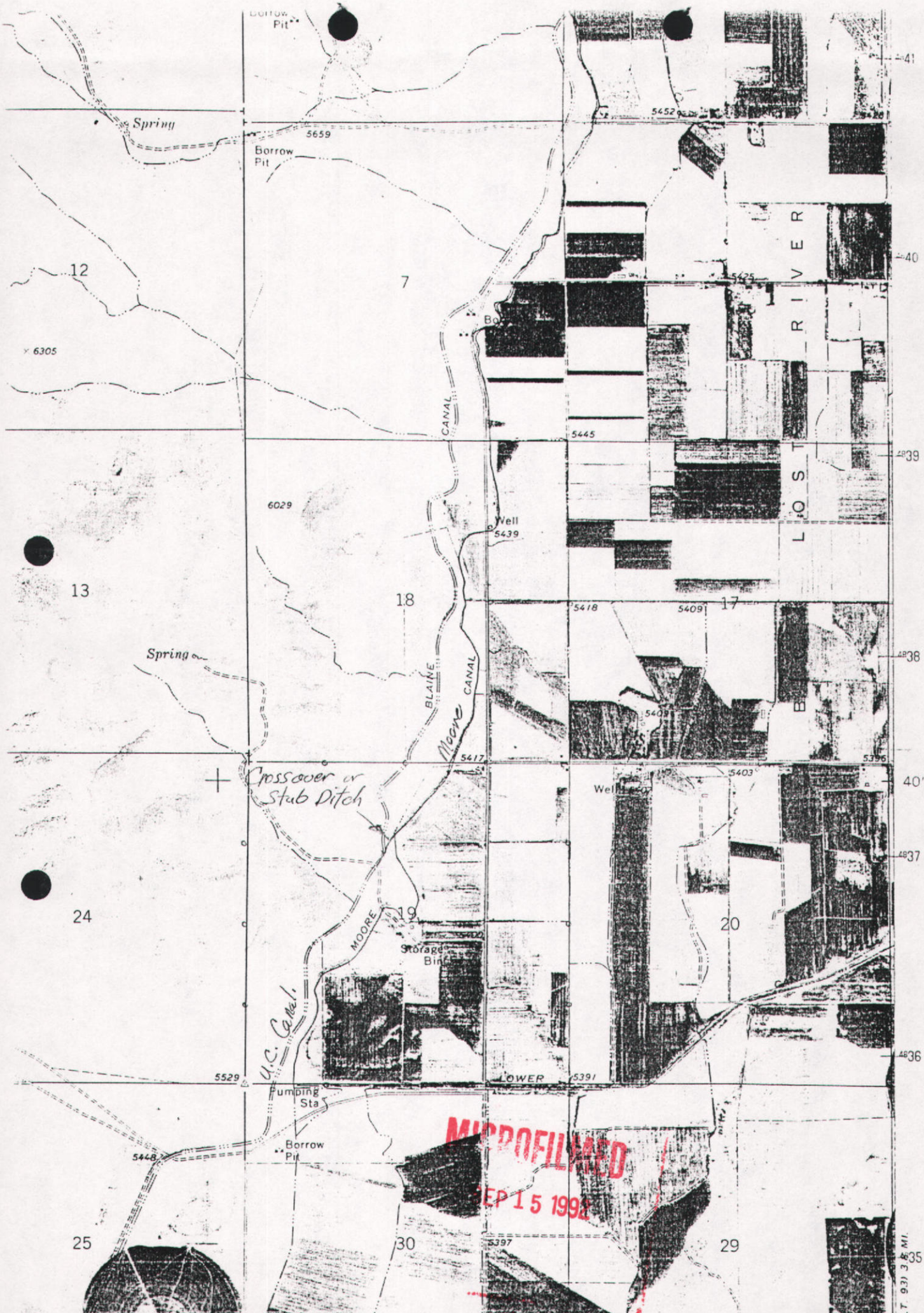
Two 5N
Rge 26E
Wells

Gravel Pit
Well

21

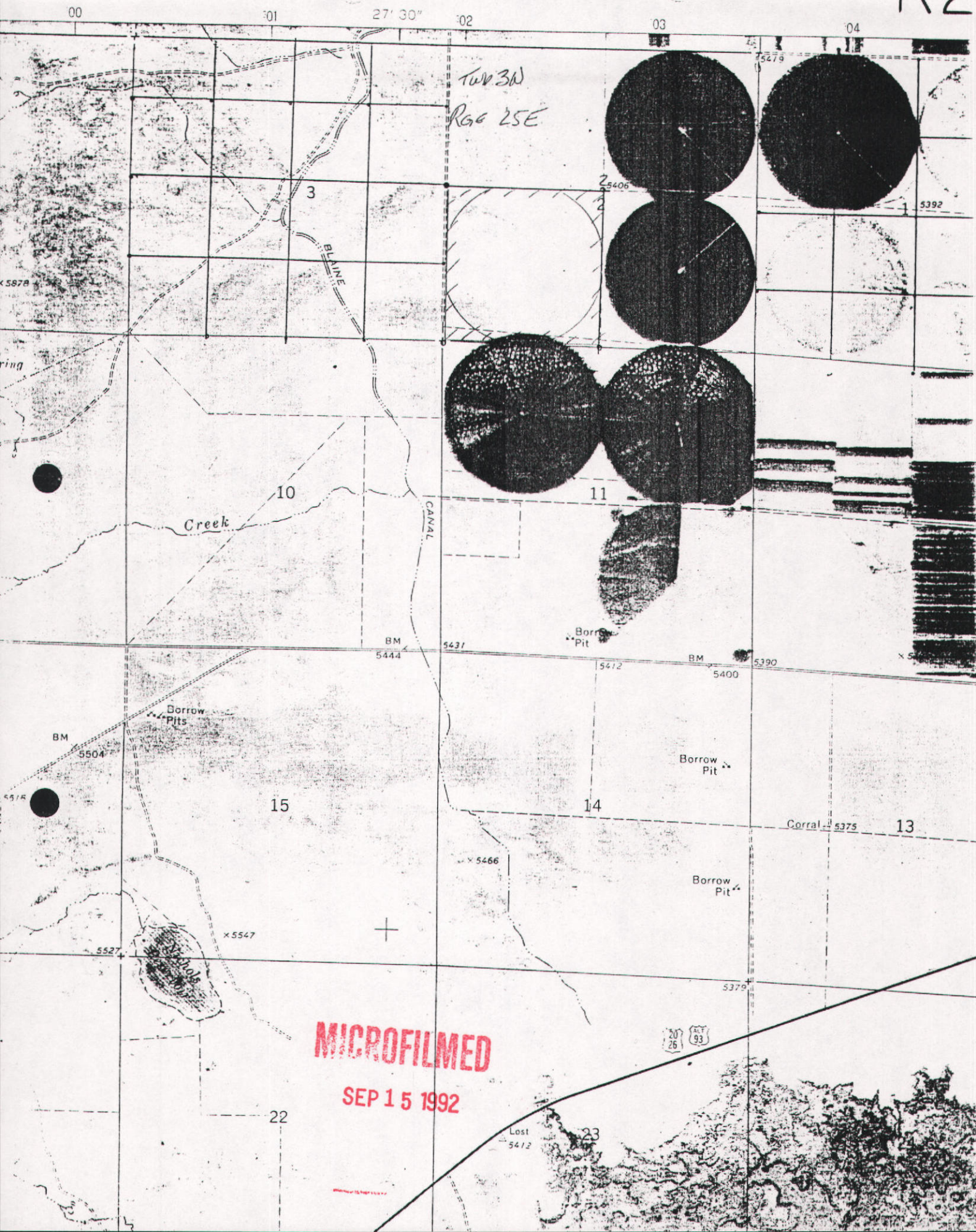
22

23



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ALT. 9313 & MI.
35



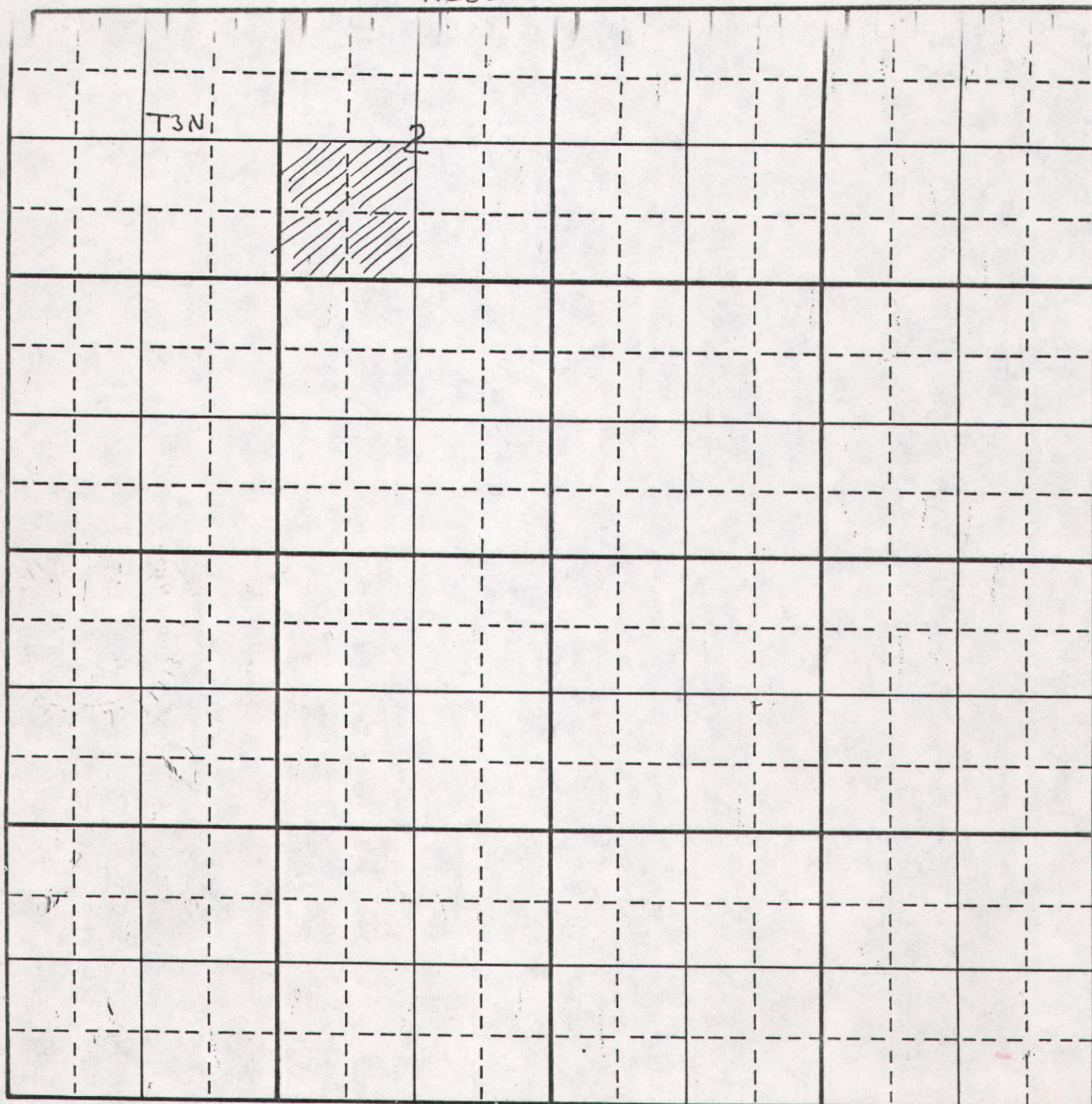
c. Describe the lands and place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3 N	25E	2									36	36	36	37					145

Total number of acres to be irrigated 145

4. Describe any other water rights used for the same purpose as described above. none
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

R25E



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

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

Map of proposed project showing a grid with handwritten annotations:

- Range 26E (top center)
- Well (indicated by an asterisk and a line pointing to it)
- 21 (section number, below the well)
- Township 5N (left side)

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.

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OCT 23 1992

A. Etzel Moss
(Applicant)

Affidavit of Publication

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

for 2 consecutive weeks, commencing with

the issue dated Sept 26, 1974

and ending with the issue dated Oct 3, 1974

Le Ella Cammack

Subscribed and sworn to before me this

28 day of Oct, 1974

Charles G. [Signature]

Notary Public

Residence: Arco, Idaho.

My commission expires Sept 4, 1978

RECEIVED

OCT 30 1974

Department of Water Resources
Eastern District Office

PUBLIC NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that
A. Etsel Moss, Box 102, Moore,
Idaho has on 9/17/74 submitted
Application No. 34-7079 for a
permit to appropriate 2.76 cubic
feet per second of water from
a ground-water source by means
of well and pump within the
NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R.
26E, B.M., Butte County; to
be used from Apr. 1 to Nov. 1
for the irrigation of 145 acres
within the N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$,
Sec. 21, T. 5N, R. 26E, 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 October 15, 1974.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser,
Arco, Idaho on September 26 and October 3, 1974. al

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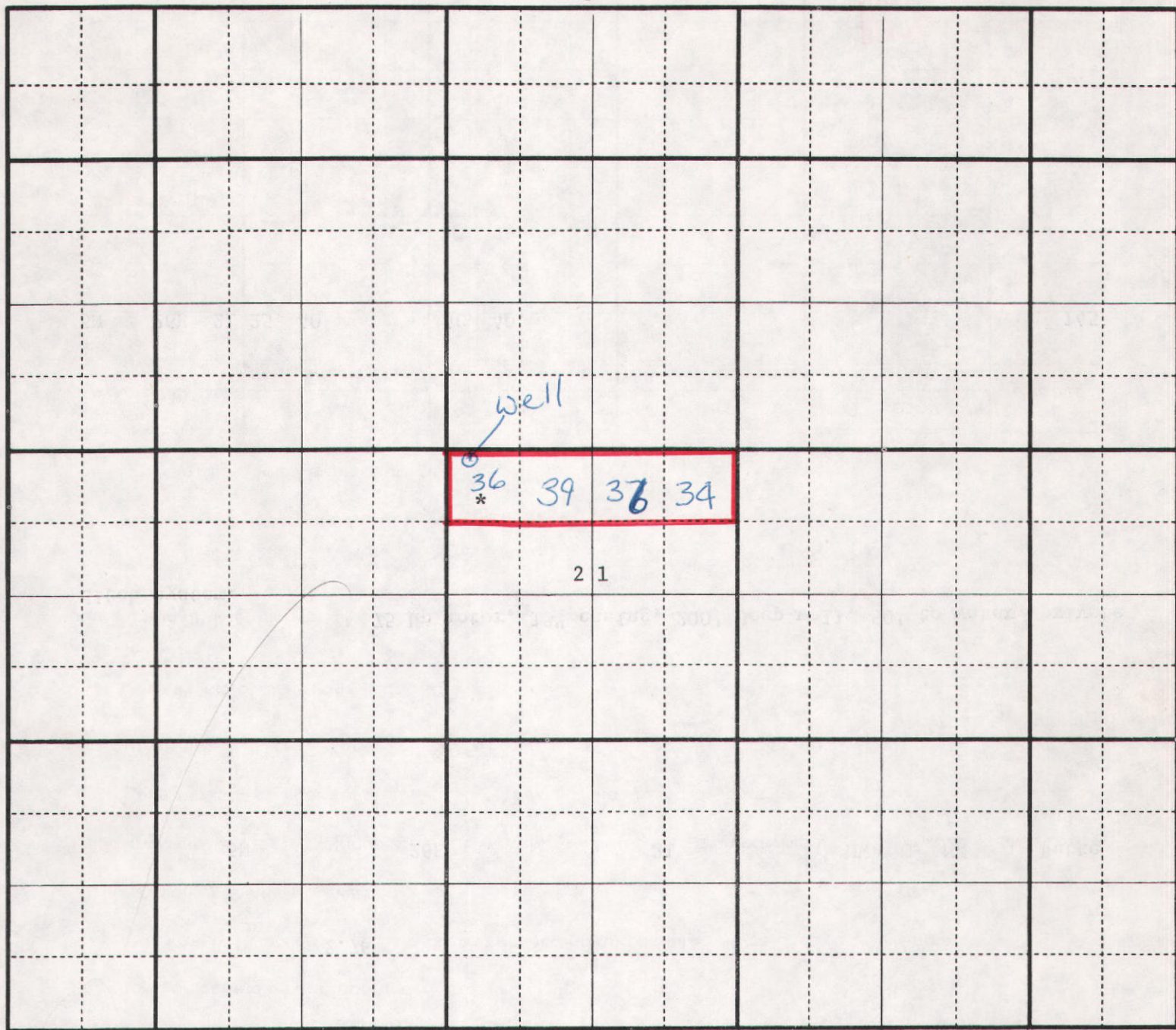
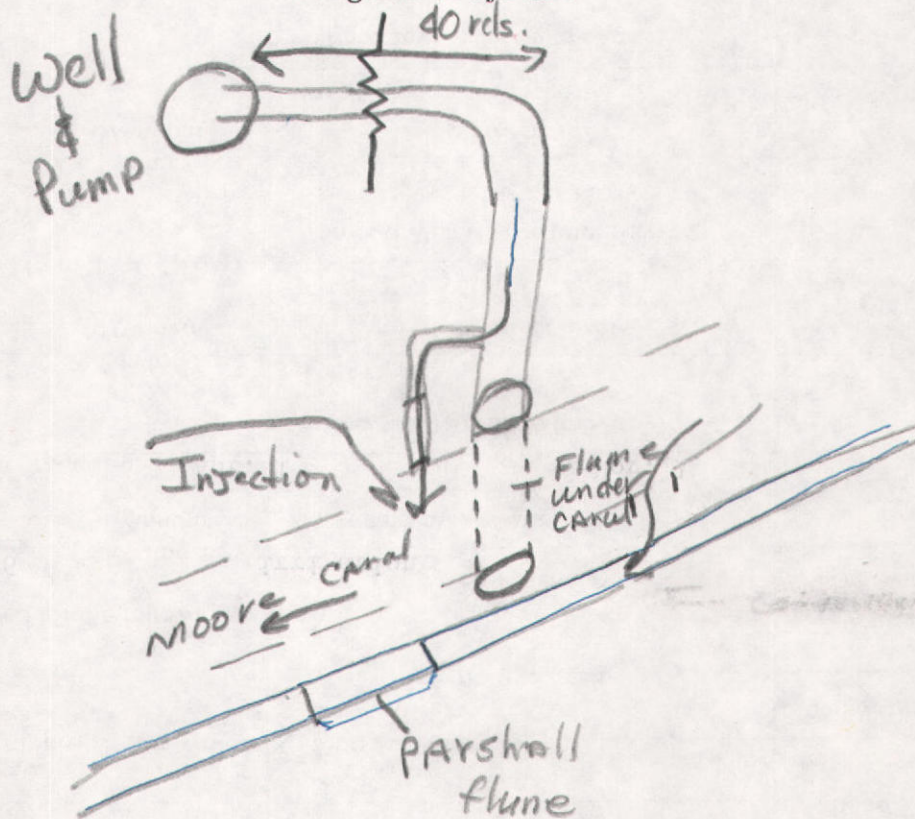


Diagram of System



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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SEP 27 1993
Department of Water Resources

PROOF OF COMPLETED TRANSFER

The Idaho Department of Water Resources will consider this form as a statement regarding completion of the authorized water right(s) transfer.

1. Water Right No(s). 34-02332 & 34-07079

Transfer No. 3705

2. Name of Water Right Holder(s): HILLCREEK PROPERTIES

Address: % Richard Tuthill Rt. 1 Box 447 Arco, Idaho 83213

3. Water right transfer authorized by Department is:
(check appropriate space or provide description)

Complete X

Not Complete _____

Partially Complete (describe work completed) _____

4. If the transfer has not yet been completed or is only partially complete, please provide a statement why the authorized change(s) have not been accomplished and the date which you expect the change(s) to be complete: _____

5. I hereby assert that the responses provided above are true to the best of my knowledge. I understand that any willful misrepresentations may result in Department action rescinding the approved water right(s) transfer.

Terry Bailey manager
Signature

9-20-93
Date

(& title if on behalf of a company or organization)

RECEIVED

OCT 19 1993

PART 1**6 General Information**

- a. Description of diversion system Water from 2 wells will be discharged directly into the Moore Canal, where it will be returned into the old U.C. Canal. After leaving the Big Lost River irrigation district the water will be (see remarks)
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
- _____
- _____
- _____

d. Remarks:

carried to the place of use through the Timber Pine Canal. The point of redirection from the Timber Pine Canal is in the SE 1/4 NE 1/4 Section 35 T4N, R35E.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No 34-02332/07079

And said application is hereby APPROVED, subject to the following limitations and conditions:
SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL.

Witness my hand this 14th day of August, 19 92.

J. Glen Saxton
CHIEF, WATER ALLOCATION

SEP 15 1992

CONDITIONS OF APPROVAL
Transfer of Water Rights
No. 34-02332/07079

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
3. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
5. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre for the lands above.
6. Prior to diversion of water under this transfer, measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained on each of the wells in a manner that will provide the watermaster suitable control of the diversion.
7. The combined rate of diversion from these wells shall not exceed 2.90 cfs.

Dated this 14th day of August, 1992.

J. Glen Saxton
Chief, Water Alloc. Bureau

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SEP 15 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. _____ issued by the Idaho Department of Water Resources.

c. Claim No. _____ on file with the Idaho Department of Water Resources

d. Transfer No. 3214 / 34-7079 & 34-2332 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 (34-7079) Sept 17, 1974, (34-2332) May 6, 1955.

5. Water is used for the following purpose

34-7079 amount 2.76 for Irrigation purposes from 4/1 to 4/1
 (cfs/ac-ft) 34-2332
 amount 2.90 for _____ purposes from 4/1 to 4/1
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____

6. Total amount of water under right 2.98 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge.	County	Local name for diversion
		NW	NW	21	5N	36E	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	2									36	36	36	37					145

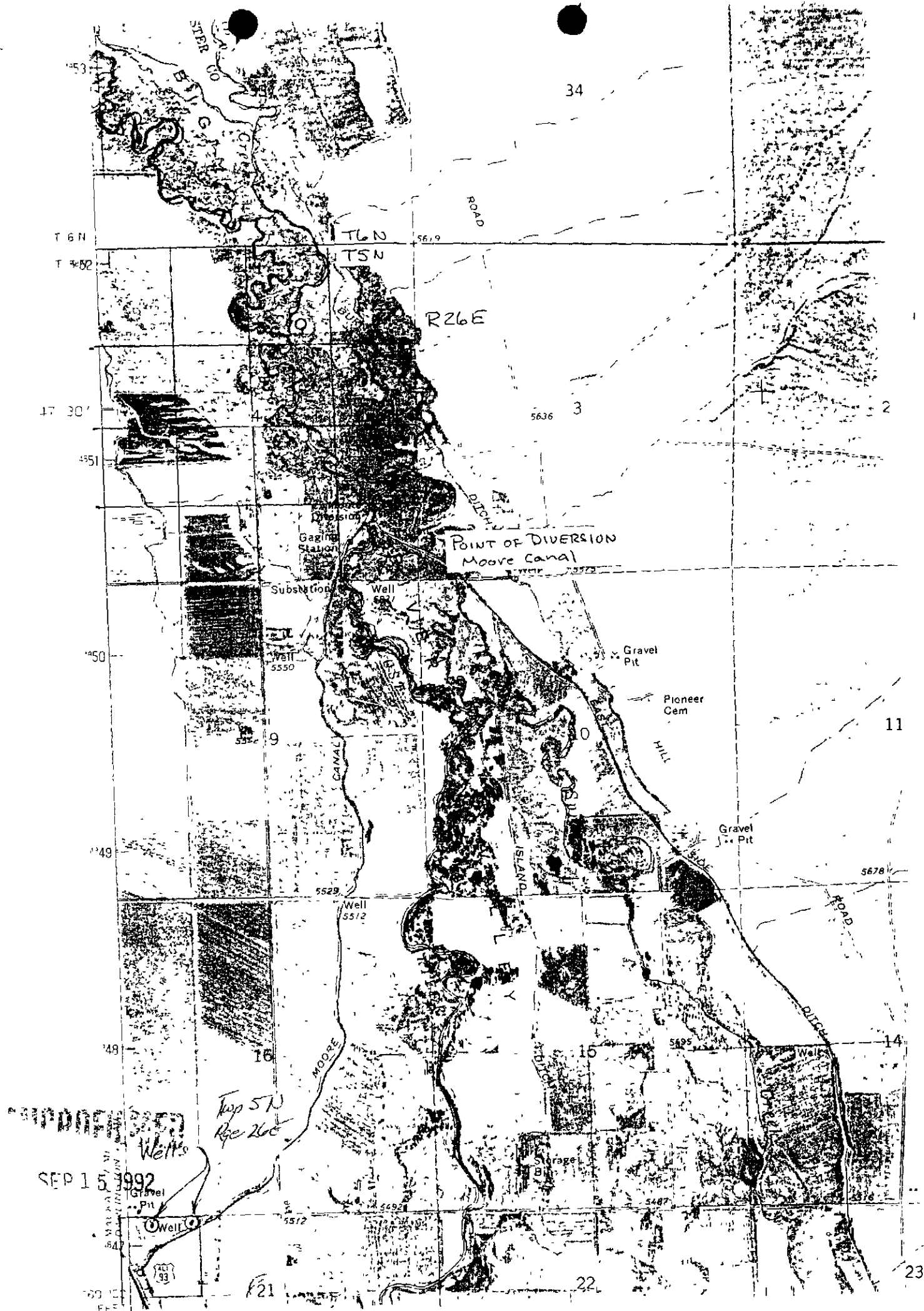
Total acres 145

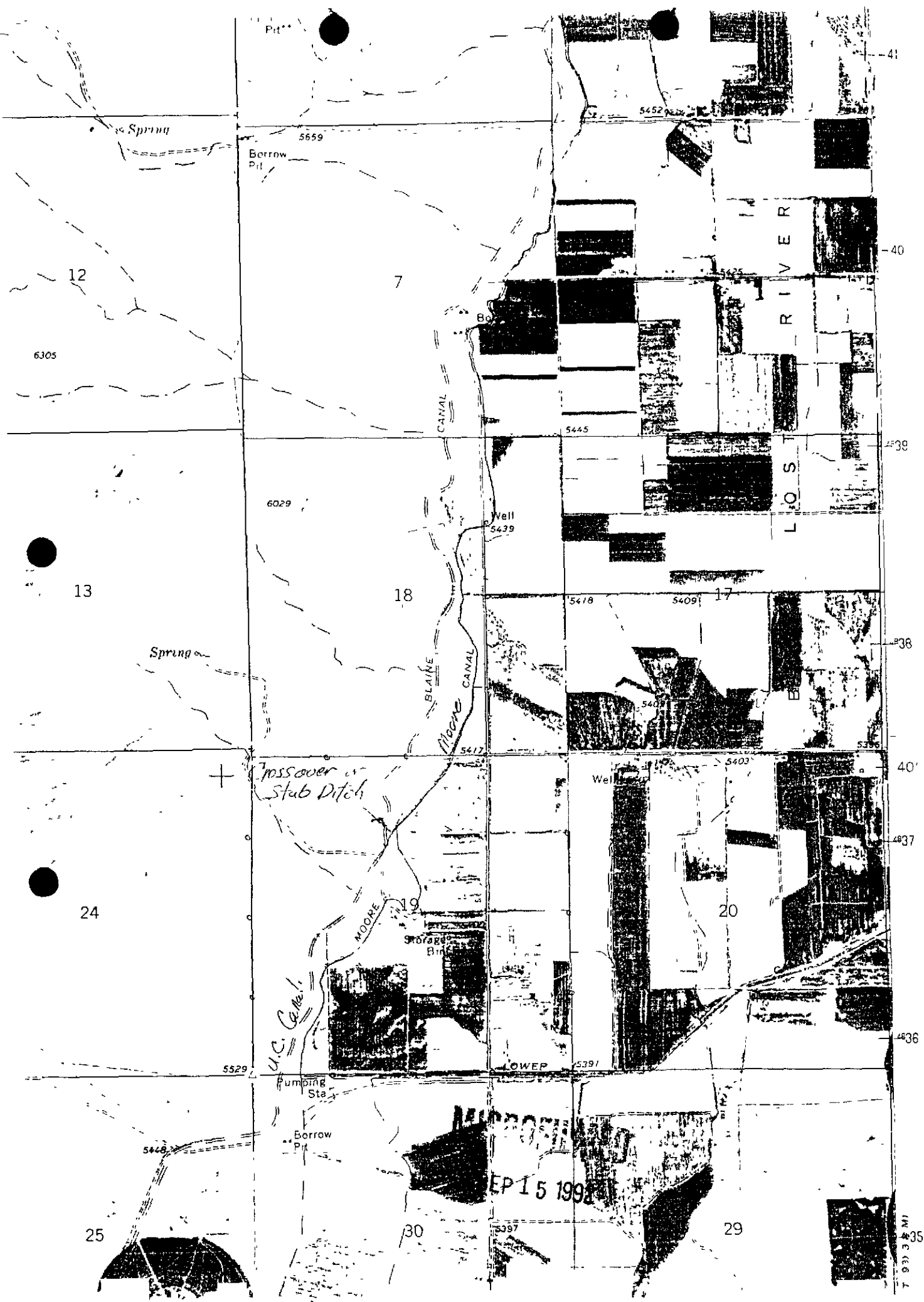
9. Describe any other water rights used for the same purpose as described above

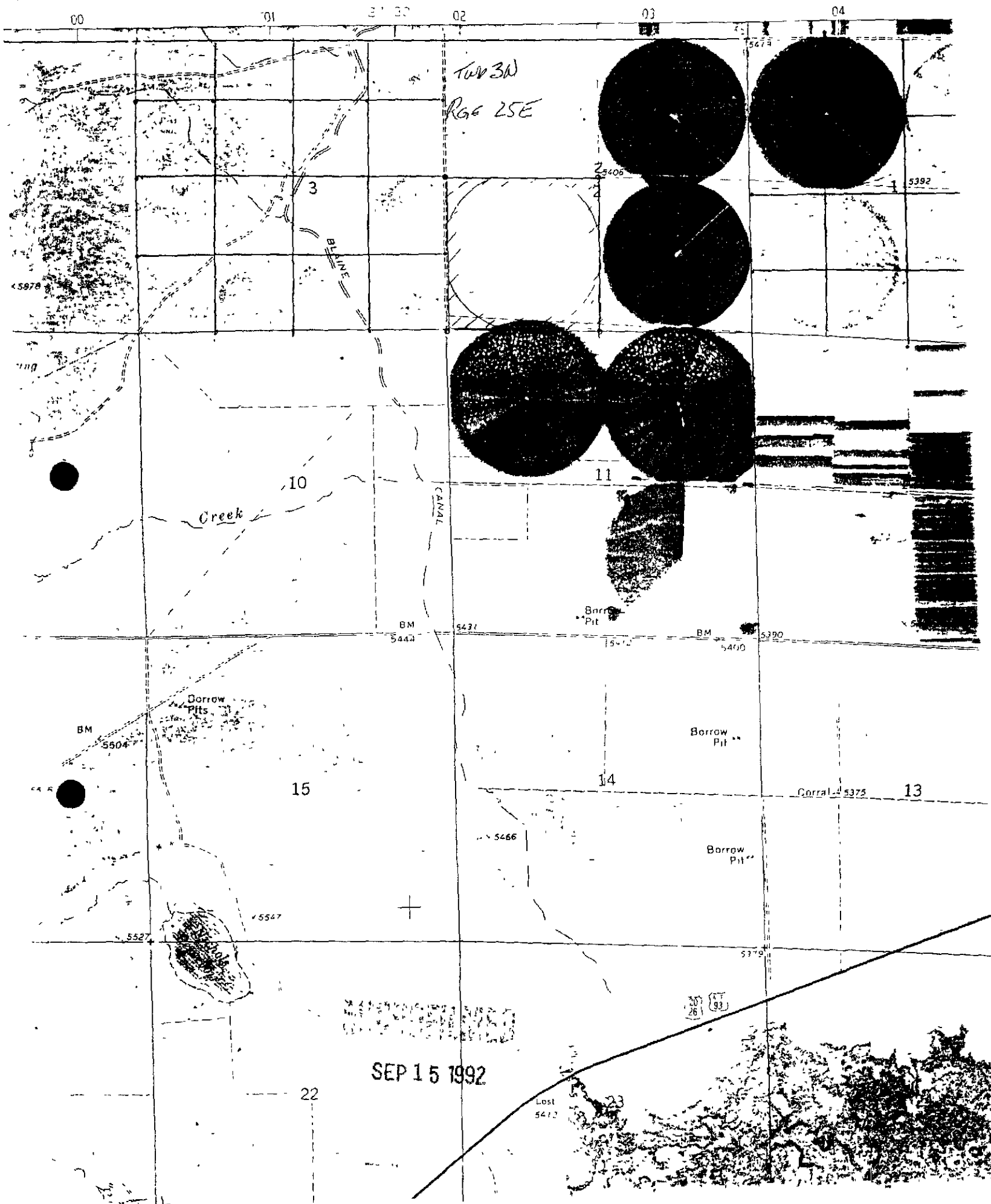
None

MAILED
 SEP 15 1992

3N
5N







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

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

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

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

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

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

Subscribed and sworn to before me this _____ day of _____, 19 90.

(Signature of Applicant)

(Notary Public)

My commission expires _____

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by EMC Date May 23, 1990 Protest filed by _____Prelim. check by _____ Fee \$50.00 ED14652Receipted by EMC Date May 23, 1990Published in Arco Advertiser / Custer Publishing Copies of protest forwarded by _____Pub. dates 6-7 & 14-90 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd _____ by _____

Copy of transfer sent to lien holder _____

SEP 15 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF)
GROUNDWATER BY RICHARD TUTHILL DBA)
HILLCREEK PROPERTIES AND P.U. RANCH)

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, has investigated certain diversions of water being made by or under the control of P.U. Ranch (applicant). Based upon the Director's investigation and his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On December 4, 1985, the department approved Transfer No. 3214 in connection with licensed water rights 34-2332 and 34-7079. The conditions of approval of the transfer required that "The rate of diversion and annual volume of rights 34-7079 and 34-2332 when combined shall not exceed 2.9 cfs or 435 acre feet per annum".

2. The water diverted under approved Transfer No. 3214 is from a well located in the NW1/4NW1/4 Section 21, T5N, R26E, BM, Butte County and is appurtenant to land owned and/or operated by Richard Tuthill DBA Hillcreek Properties and P. U. Ranch (applicant).

3. On October 18, 1989, the department issued Drilling Permit No. 34-89-E-085 to the applicant authorizing the deepening of the well associated with Transfer No. 3214.

4. In May 1990, the applicant contacted the department and asked if the old well could be abandoned and a new replacement well could be drilled in the same 40-acre tract or to use both wells if needed. The department advised the applicant that he could do this under specific circumstances.

5. On July 11, 1990, department staff observed that a second well had been constructed and that water was being diverted from the old well and new well at the same time. The combined rate of diversion from the two wells as measured by department staff on the July 11, 1990 inspection

SEP 15 1992

exceeds the 2.9 cfs authorized by Transfer No. 3214.

6. The applicant has filed application for transfer no. 3705 which has been protested to add a point of diversion. The protested application is subject to an administrative hearing to determine whether to approve the application or not.

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. The applicant is diverting more water than authorized by the water rights represented in approved Transfer No. 3214.

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 in part as follows:

"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, following service of the cease and desist order in which the illegal diversion or use of water occurs."

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

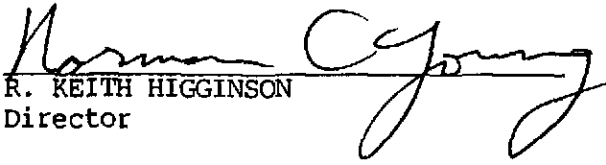
ORDER

IT IS HEREBY ORDERED, that the applicant shall immediately upon receipt of this order CEASE AND DESIST the diversion of water from wells in

SEP 15 1966

the NW1/4NW1/4 Section 21, T5N, R26E, BM. which is in excess of the rate authorized by Transfer No. 3214.

DATED this 13TH day of July, 1990.

for 
R. KEITH HIGGINSON
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant Hillcreek Properties Phone 527-3151Post Office address % Richard Tuthill Rt 1, Arco, Idaho 83213 8906**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by:

a. Decree No. _____ Decreed to _____ (Name)

in case of _____ vs _____

dated in _____ in _____ county of _____
(Name of court)b. License No. 34-7079 issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____

_____3. Source of water Ground water tributary to _____4. Date of priority Sept 17, 1974

5. Water is used for the following purposes:

amount 2.76 cfs for irrigation purposes from 4/1 to 11/1

amount _____ for _____ purposes from _____ to _____

amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)6. Total amount of water under right: a. 2.76 cubic feet per second
&/or
b. _____ acre feet per annum7. Location of original point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21
Township 5N Range 26E, B.M., in Butte CountyAdditional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
5N	26E	21	34	36			39	36											145

Total number of acres to be irrigated 1459. Describe any other water rights used for the same purpose as described above 34-233210. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? no If yes, describe in item D, REMARKS

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A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____ (Name)
in case of _____ vs _____
dated in _____ in _____ county of _____
(Name of court)
- b. License No. 34-2332 issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____

3. Source of water Ground water tributary to _____

4. Date of priority 5/6/1955

5. Water is used for the following purposes:

amount 2.90 for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.90 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21
Township 5 N Range 26 E, B.M., in Butte County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
<u>5N</u>	<u>26E</u>	<u>21</u>	<u>25</u>	<u>40</u>			<u>40</u>	<u>40</u>											<u>145</u>

Total number of acres to be irrigated 145

9. Describe any other water rights used for the same purpose as described above 34-7079

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? no If yes, describe in item D, REMARKS.

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DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (if the entire right is owned by the applicant, omit part B).

1. Amount of water a _____ cubic feet per second
&/or
b _____ acre feet per annum
2. Point of diversion _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. 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 $\frac{1}{4}$	

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information * 2.76-34-7079
2.90-34-2332
 - a. Amount of water to be diverted _____ c.f.s. &/or _____ acre feet
 - b. Description of diverting works well, pump, open discharge into Moore Canal
 - c. Describe the reasons for the proposed changes _____
2. Change in point of diversion
Point of diversion NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21 Township 5N
Range 26E, B.M., Butte County
Additional points _____
3. Change in place of use
 - a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
 - b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
Land will continue to be irrigated with decreed water from Big Lost River

* The rate of diversion under License 34-2332 & 34-7079 shall not exceed that required to effeiecently irrigate the land. The mamimum volume per year sha not exceed 435 acre feet or _____ acre feet per

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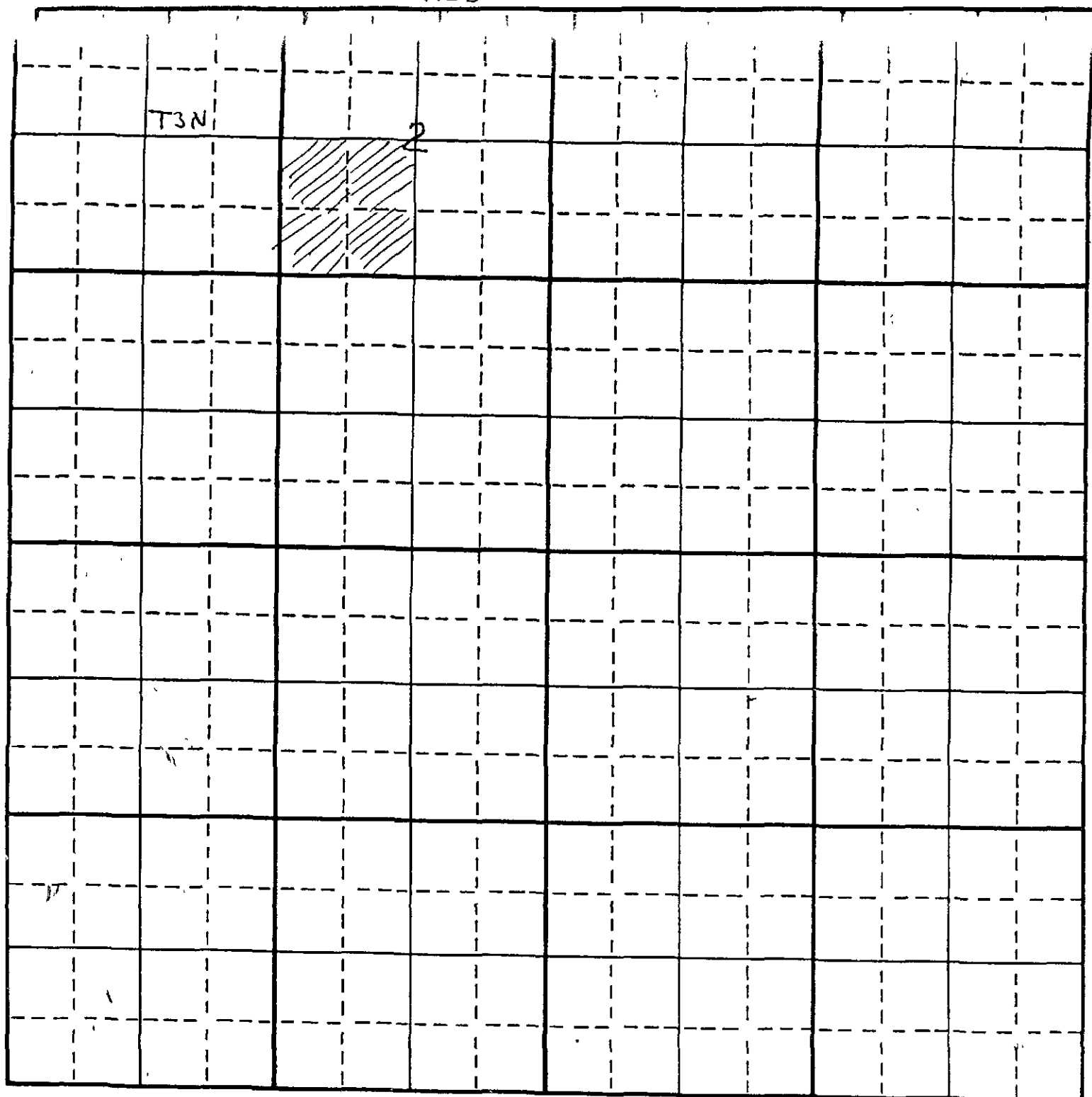
c. Describe the lands and place of use to which the right will be transferred.

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 $\frac{1}{4}$	
3 N	25E	2									36	36	36	37					145

Total number of acres to be irrigated 145

- Describe any other water rights used for the same purpose as described above. none
- Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

R25E



SCALE: 2 inches equal 1 mile Draw plan in ink

WICKS & SONS

D. REMARKS

water from the well will discharge directly into the Moore canal, where it w.
be redirected into the Old U C canal. After leaving the Big Lost River
irrigation district the water will be carried to the place of use through
the Timber Dome Canal. The point of redirection from the Timber Dome Canal
is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 35 Twp 4 N R 25 EBM

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

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

Hill Creek Properties
Richard A. Jentall, Pres
(Signature of Applicant)

Subscribed and sworn to before me this 21 day of August, 19 85.

Charles A. Jones
(Notary Public)

My commission expires Sept

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 34-2332/7079
and said application is hereby APPROVED, subject to the following limitations and conditions:

1. The rate of diversion and annual volume of Rights 34-7079 and 34-2332 when combined shall not exceed 2.90 cfs or 435 acre feet per annum.
2. No more than 2.90 cfs of 435 acre feet per annum shall be injected into the Moore Canal.
3. The rate of re-diversion from Timberdome Canal may be subject to a conveyance loss assessment.
4. Approval of this transfer does not constitute a right to use privately owned conveyance facilities.

Witness my hand this 4th day of December, 19 85

J. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by CT Date 8-26-85 Protest filed by _____

Prelim. check by KCW Fee \$ 50.00

Receipted by CT Date 8-26-85 #55479

Published in MOORE IRRIGATION Copies of protest forwarded by _____

Pub. dates 9/26 & 10/3/85 Hearing held by _____ Date _____

Watermaster recommendation requested on NA Recommended for approval denial

_____ rec'd. _____ by RDC Jim

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State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 34-7079 Priority Sept. 17, 1974 Amount 2.76 cfs

THIS IS TO CERTIFY, that A. ETSEL MOSS
of Moore, Idaho, has complied with the terms and conditions of Permit
No. 34-7079 issued pursuant to Application for Permit dated September 17, 1974
and has submitted proof to the Department of Water Resources on March 24, 1975
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 5.66 cfs of water from a ground water 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
<u>Irrigation</u> from <u>April 1</u> to <u>Nov. 1</u> at <u>2.76</u> cfs and			<u>435 acre feet or</u>
			<u>3.0 af per acre</u>
_____ from _____ to _____ at _____ cfs and			_____
_____ from _____ to _____ at _____ cfs and			_____

(both dates inclusive)

Subject, however, to the condition that no more than * 2.76 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
** 435 acre feet per year, and waters to be diverted within the NW¹/₄ NW¹/₄ of Sec. 21,
Twp. 5 N, Rge. 26 E, B. M. in the County of Butte

Description and location of place of use:

Twp.	Range	Sec.	NE ¹ / ₄				NW ¹ / ₄				SW ¹ / ₄				SE ¹ / ₄				Totals
			NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	
5 N	26 E	21	34	36			39	36											145

Total number of acres irrigated 145

* The rate of diversion under this license and License No. 34-2332 shall not exceed
that required to efficiently irrigate the land.

** The maximum volume per year shall not exceed 435 acre feet, or 3.0 acre feet per
acre, when combined with License No. 34-2332.

A measuring device of a type approved by the Department shall be permanently
maintained as part of the diverting works.

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 12 day of
August, 19 75.

Director

Identification No 34 7079

Application No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

APPLICATION FOR PERMIT

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

1 Name of applicant A. Etsel Moss Phone 554-3041
post office address Box 102, Moore, Idaho

2 Source of water supply ground water which is a tributary of _____

3 a Location of point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21 Township 5N
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 2.76 for Irrig. 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 2.76 cubic feet per second and/or

b _____ acre feet per annum

6 Proposed diverting works

a Description of ditches, flumes, pumps, headgates, etc Well with 75 HP pump open discharge
(260')

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 18 inches; proposed depth of well is 208 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 \$ _____

8 Description of proposed uses

a If water is **not** for irrigation N.A.

(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 _____

APPROVED

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	
5N	26E	21	25	40			40	40											145

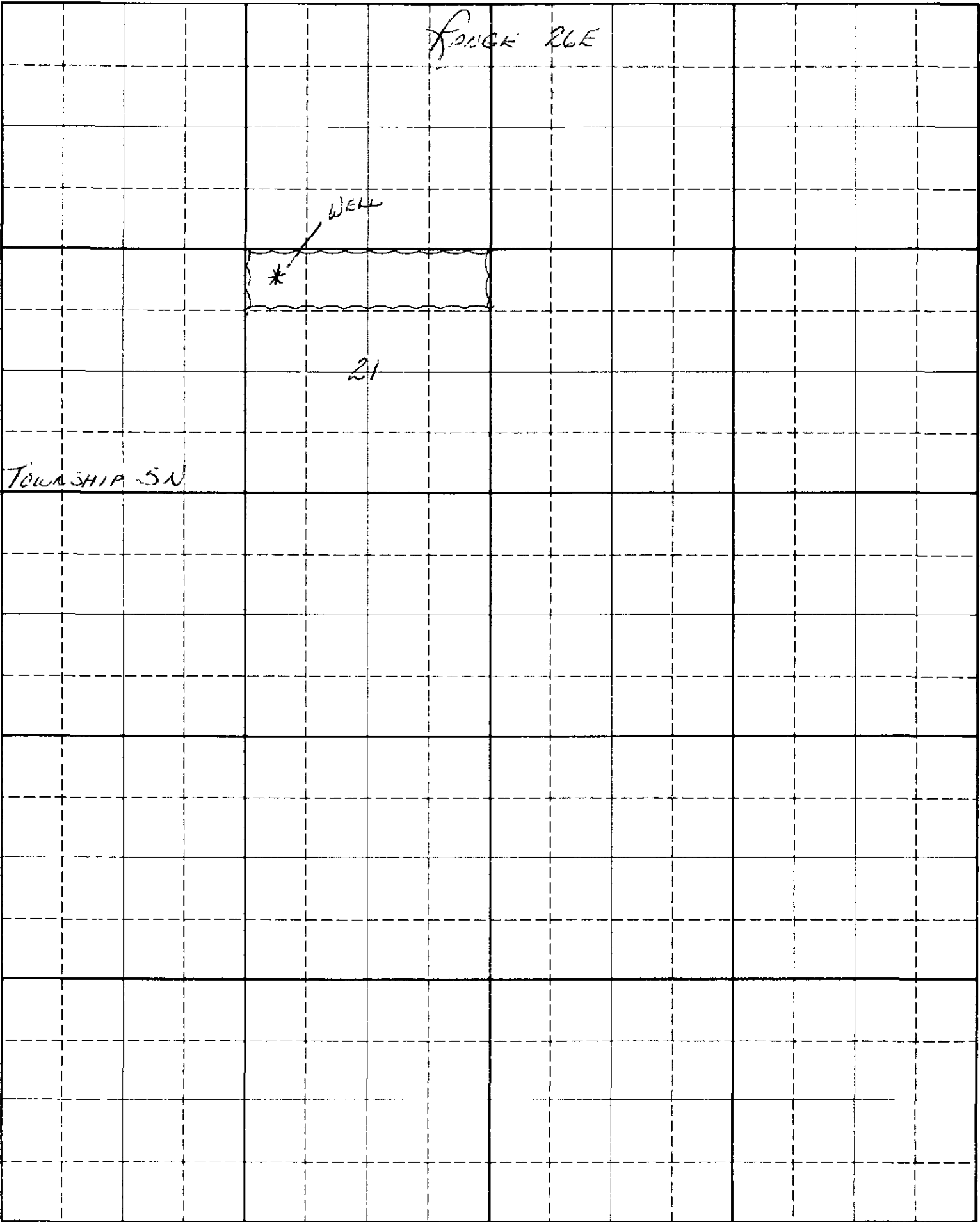
Total number of acres to be irrigated. 145

c Describe any other water rights used for the same purposes as described above.
 License No. 34-2332 for 2.9 cfs for same ground

- 9 a Who owns the property at the point of diversion Applicant
- 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

10. Remarks This application is to increase the diversion rate for this land to more adequately meet irrigation requirements.

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

A. E. Mel Moore
(Applicant)

Proposed Permit 9-17-1974

Received by MB Date 4-17-74 Time 12:50 P.M.

Preliminary check by RDC Fee \$ 45.00

Received by MB Date 4-17-74 # 13054

Publication prepared by OB Date 9/19/74

Published in Arts & Architecture

Publication dates 9/26 & 10/3/74

Publication approved OB Date 10/30/74

Priority reduced to _____ Reason _____

Protests filed by _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by RDC BDF

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. 34-7079, 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 January 1, 19 80.

c Other A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

(2) The rate of diversion under this permit and license no. 34-2332 shall not exceed that required to efficiently irrigate the land.

2 Denial of said application is for the following reasons _____

Witness my hand this 24 day of January, 19 75.

R. Karl Hiji
Director

031 05102

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item Initial Date

Application No. 34-7079

☒ 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) LH 9-17-74 In form to receipt
- (2) " " NA Send Copies to:
Idaho State Health Department
Idaho Fish and Game Department
Bureau of Land Management
- (3) " " NA Request Special Use Permit from U.S.F.S.
Request Easement from B.L.M.
Request Information from Applicant
- (4) " " In form for advertising
- (5) " " Platted on Map No. S.U 26E
- (6) " " Located within Water District No. 34
- (7) " " Critical groundwater area: yes no L
- (8) " " Groundwater levels:
Declining, Stable, Increasing
(comment) 23Cdb1 SN 26E
- (9) " " Other rights on the same place of use yes - Lic # 34-2332
- (10) " " Comments: Requires justification for more than
102 cfs/acre.
- (11) MB 10/30/74 Affidavit of Publication received(date) Oct. 20, 1974
- (12) " " Final date for protests October 15, 1974
Protests received: yes no
- (13) BC 12/17/74 All requested information received from agencies or
applicant: yes no
- (14) " " Action recommended:
Approve Deny
9/17/74 Proposed Priority
Reason for Reduction
Measuring device required
See attached sheet for other conditions of
approval
No special conditions for approval
- (15) District E By MICROFILMED Date "

Condition 3

- ① The rate of diversion under this permit and license no 34-2332 shall not exceed that required to efficiently irrigate the land.

MICROFILMED

OCT 23 1992

MICROFILMED

Affidavit of Publication

I, Le Ella Cassmanick 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 Sept. 26, 1974

and ending with the issue dated Oct. 3, 1974

Le Ella Cassmanick

Subscribed and sworn to before me this

28 day of Oct, 1974

Charles A. Jones
Notary Public

Residence: Arco, Idaho.

My commission expires Sept. 4, 1978

PUBLIC NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that A. Etsel Moss, Box 102, Moore, Idaho has on 9/17/74 submitted Application No. 34-7079 for a permit to appropriate 2.76 cubic feet per second of water from a ground-water source by means of well and pump within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R. 26E, B.M., Butte County; to be used from Apr. 1 to Nov. 1 for the irrigation of 145 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R. 26E, 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 October 15, 1974.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho on September 26 and October 3, 1974. ad

MICROFILMED

OCT 23 1974

LAW OFFICES

HOLDEN, KIDWELL, HAHN & CRAPO

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IDAHO FALLS OFFICE

FRED J HAHN
 KENT W FOSTER
 ROBERT E FARNAM
 WILLIAM D FALER
 STEPHEN E. MARTIN
 CHARLES A HOMER
 GARY L MEIKLE
 GAYLE A SORENSON, P A
 DONALD L HARRIS
 MARIE T TYLER
 JOHN G SIMMONS, P A
 ROBERT M FOLLETT
 KUMEN L TAYLOR
 JAMES K SLAVENS

WEST ONE BANK
 P O BOX 50130
 330 SHOUP AVENUE
 IDAHO FALLS, IDAHO 83405

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

KEY FINANCIAL CENTER
 702 W. IDAHO SUITE 810
 BOISE, IDAHO 83702

TELEPHONE (208) 343-0820
 TELEFAX (208) 343-8078

BOISE OFFICE

RANDALL B REED
 FREDERICK J. HAHN III
 RONALD D CHRISTIAN

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

September 23, 1993

Jim Johnson, Water Rights Supervisor
 IDAHO DEPARTMENT OF WATER RESOURCES
 1301 North Orchard Street
 Statehouse Mail
 Boise, Idaho 83720

Re: Transfer #3705/Water Right #34-02332 & 34-07079

Dear Mr. Johnson:

We are returning the Proof of Completed Transfer form which you recently sent to our client. This transfer was completed many years ago and very little has been done since May 22, 1990, except to reduce diversions.

Yours very truly,



Kent W. Foster

#7180.00/kep

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OCT 19 1993



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

August 17, 1992

HILLCREEK PROPERTIES
% RICHARD TUTHILL
RT 1 BOX 447
ARCO ID 83213

RE: Transfer of Water Right Nos. 34-02332 & 34-07079

Dear Water Right Holder(s):

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 3705) Be sure to note any conditions of approval as listed on the second page.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Johnson', written over a circular stamp.

JIM JOHNSON
Water Rights Supervisor

JJ:cz

Enclosure

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WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name P. U. Ranch
Address Arco, Idaho
Owner's Permit No 34-89-E-085

2. NATURE OF WORK

- ☒ New well ☐ Deepened ☐ Replacement
☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)

3. PROPOSED USE

- ☐ Domestic ☒ Irrigation ☐ Test ☐ Municipal
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

- ☐ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary
☒ Cable ☐ Dug ☐ Other _____

5. WELL CONSTRUCTION

Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
<u>.250</u> inches	<u>16</u> inches	<u>1</u> feet	<u>199</u> feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☒ Yes ☐ No
Was a packer or seal used? ☐ Yes ☐ No
Perforated? ☒ Yes ☐ No

How perforated? ☐ Factory ☐ Knife ☒ Torch
Size of perforation 3/8 inches by 6 inches

Number	From	To
<u>240</u> perforations	<u>80</u> feet	<u>200</u> feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name _____
Type _____ Model No _____
Diameter _____ Slot size _____ Set from _____ feet to _____ feet
Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☒ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet

Surface seal depth _____ Material used in seal: ☐ Cement grout
☐ Bentonite ☐ Puddling clay ☐ _____

Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing
☐ Overbore to seal depth
Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent Weld

☐ Cemented between strata

Describe access port _____

7. WATER LEVEL

Static water level 86 feet below land surface.

Flowing? ☐ Yes ☒ No GPM flow _____

Artesian closed-in pressure _____ p.s.i.

Controlled by: ☐ Valve ☐ Cap ☐ Plug

Temperature _____ °F Quality good

Describe artesian or temperature zones below

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Air ☐ Other _____

Discharge G.P.M.

Pumping Level

Hours Pumped

9. LITHOLOGIC LOG

Bore Diam.	Depth		Material	Water	
	From	To		Yes	No
16'	0	2	Topsoil		
	2	19	Gravel + Sand		
	19	81	Clay, gravel, sand		
	81	84	Sand		
	84	125	Gravel, clay, coarse sand		
	125	109	Gravel + Sand		
	109	200	Clay and small gravel		

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10012-1990

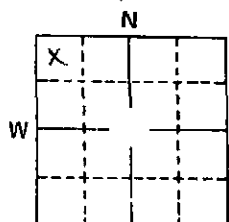
Department of Water Resources
Eastern District Office

10

Work started 6-29-90 finished 6-18-90

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name

Lot No. _____ Block No. 15

County

Butte

NW 1/4 NW 1/4 Sec. 21, T. 5N, R. 26E

11. DRILLERS CERTIFICATION

I/We certify that all minimum well construction standards were
complied with at the time the rig was removed.

Firm Name Findly, Drilling Firm No. 62

Address 2450 Varsity Ave. Date 6-19-90

Signed by (Firm Official) Bill Findly

and
(Operator) Joe Hewitt

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Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication)
of Rights to the Use of Water)
from the Snake River Basin Water)
System.)

Case No. 39756

The State of Idaho, ex rel. R.)
Keith Higginson in his official)
capacity as director of the Idaho)
Department of Water Resources,)

ORDER GRANTING
PRELIMINARY INJUNCTION

Petitioner,)

vs.)

DICKCON, a California corporation,)
TIMJON, a California corporation,)
dba HILLCREEK PROPERTIES, and)
RICHARD A. TUTHILL, dba P. U.)
RANCH, LTD.,)

Respondents.)

State of Idaho's Petition for Preliminary Injunction,
Granted. State's Request for Civil Penalties, Denied as
premature.

Phillip J. Rassier, Deputy Attorney General, State of
Idaho, appearing on behalf of Petitioner.

Kent W. Foster, Holden, Kidwell, Hahn and Crapo, Idaho
Falls, Idaho, appearing on behalf of Respondents.

SEP 15 1992

The petitioner, Idaho Department of Water Resources (IDWR), on January 31, 1991, filed a petition pursuant to I.R.C.P. 65(a) and (e) seeking preliminary injunctive relief prohibiting Respondents from diverting water in excess of an amount authorized under two licensed water rights pending the issuance of a decree adjudicating rights to both surface and ground water in the Big Lost River Basin.

The parties thereafter having submitted the matter to the court on stipulated facts and having briefed the issues, the court issued its Memorandum Decision on July 30, 1991, granting IDWR the injunctive relief requested and denying as premature IDWR's request for civil penalties for Respondents' wilful failure to comply with the Director's cease and desist order. The Memorandum Decision constitutes the court's Findings of Fact and Conclusions of Law in this proceeding.

THEREFORE, IT IS HEREBY ORDERED:

1. Respondents are enjoined from making any further diversions of ground water in excess of 2.9 cfs under their licensed water rights, Nos. 34-2332 and 34-7079, from the Moss wells, pending determination of Respondents' water rights in the Snake River Basin Adjudication (S.R.B.A.).

2. To the extent Respondents may claim entitlement in the S.R.B.A. to more water than is allowed under their licenses, based on a claim of appropriation by beneficial use, said claim will be resolved in the S.R.B.A. after filing of a Director's Report.

3. Petitioner is authorized to take those actions reasonably

SEP 15 1992

necessary to cause the diversions from the Respondents' Moss wells not to exceed 2.9 cfs and to ensure that the diversions are so maintained.

4. Petitioner's request for civil penalties for Respondents' wilful failure to comply with the Director's cease and desist order is denied as premature.

5. Each party shall bear its own costs and attorney fees in this proceeding.

DATED this 29 day of August, 1991.

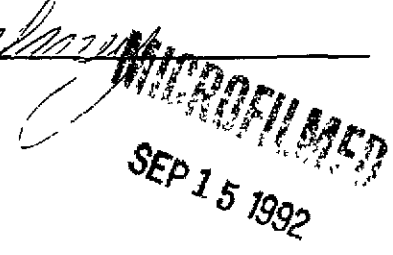

DANIEL C. HURLBUTT, JR.
District Judge

CERTIFICATE OF MAILING

The undersigned certifies that on the 30th day of August, 1991, she caused to be mailed, or hand delivered, a copy of the foregoing ORDER GRANTING PRELIMINARY INJUNCTION to:

Phillip J. Rassier
Deputy Attorney General
State of Idaho
1301 N. Orchard
Boise, ID 83706-2237

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

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Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication
of Rights to the Use of Water
from the Snake River Basin
Water System

Case No. 39576

The State of Idaho, ex rel.
R. Keith Higginson in his
official capacity as director
of the Idaho Department of
Water Resources,

Petitioner,

vs.

DICKON, a California
corporation, TIMJON, a
California corporation, dba
HILLCREEK PROPERTIES, and
RICHARD A. TUTHILL, dba P.U.
RANCH, LTD.,

Respondents.

MEMORANDUM DECISION RE:
PETITION FOR PRELIMINARY
INJUNCTION

State of Idaho's Petition for Preliminary Injunction,
Granted. State's Request for Civil Penalties,
Denied.

Phillip J. Rassier, Deputy Attorney General, State
of Idaho, appearing on behalf of Petitioner.

Kent W. Foster, Holder, Kidwell, Hahn and Crapo,
Idaho Falls, Idaho, appearing on behalf of Respon-
dents.

MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION - 1

SEP 15 1991

BACKGROUND

The Idaho Department of Water Resources (IDWR), seeks injunctive relief prohibiting Respondents from diverting water in excess of two licensed water rights pending the issuance of a decree adjudicating rights to both surface and ground water in the Big Lost River Basin.

On January 31, 1991, IDWR filed its petition seeking a preliminary injunction pursuant to I.R.C.P. 65(a) and (e). The Respondents filed a Motion To Dismiss or, in the Alternative, for Change of Venue. After hearing, both motions were denied. The parties subsequently advised the court of their agreement to submit the issues on stipulated facts, which have been filed.

The issue presented is whether the Respondents may continue to divert ground water in excess of two licensed water rights, Nos. 34-2332 and 34-7079. Decreed surface water rights belonging to Respondents are not at issue here. Therefore, any argument on the merits about their decreed surface water rights are not necessary for the resolution of the instant petition and will not be addressed.

FACTS

Water right License Number 34-2332 authorizes a diversion rate of 2.9 cfs for use on 145 acres located in Section 21, Township 5N, Range 26E, B.M., Butte County. (Stipulation of Facts, No. 11.) License Number 34-7079 authorizes a diversion rate of

MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION 2

SEP 15 1992

2.76 cfs for supplemental use on the same 145 acres. However, it includes conditions specifying that the total rate of diversion under the two licenses (Nos. 34-7079 and 34-2332) "shall not exceed that required to efficiently irrigate the land; and 2) the maximum volume per year diverted under the license shall not exceed 435 acre feet or 3.0 acre feet per acre, when combined with License No. 34-2332." (Stipulation of Facts, No. 12, emphasis added.)

Respondents filed a transfer application in 1985 seeking a change in the place of use of Licenses 34-2332 and 34-7079 under I.C. § 42-222. On December 4, 1985, IDWR approved the transfer (Transfer Number 3214) with the conditions that:

1. The rate of diversion and annual volume of rights 34-7079 and 34-2332 when combined, shall not exceed 2.90 cfs or 435 acre feet per annum.
2. No more than 2.90 cfs or 435 acre feet per annum shall be injected into the Moore Canal.
3. The rate of re-diversion from Timberdome Canal may be subject to a conveyance loss assessment.
4. Approval of this transfer does not constitute a right to use privately owned conveyance facilities.

Stipulation of Facts, No. 16

Respondents neither contested nor appealed the conditions placed on the transfer (Stipulation of Facts, No. 15) and fully acknowledge timely service of a copy of the transfer and conditions (Stipulation of Facts, No. 24).

In October, 1989, Respondents applied to IDWR for a drilling permit to deepen the "Moss well" which was the source of water for

5 1992

both licensed rights. IDWR issued Drilling Permit Number 34-89-E-085. Respondents subsequently decided to drill a new well rather than deepen the existing "Moss well". IDWR advised Respondents that their drilling permit (No. 34-89-E-085) could be used to drill a replacement well but required that the old well be abandoned.

IDWR further advised that if use of both the old and the new wells was necessary to provide the authorized diversion amount, a transfer application to add the second point of diversion would be required.

On May 22, 1990, Respondents filed a transfer application to add the second point of diversion. This application is being held pending the resolution of this case or Respondents' decision whether or not to abandon the old Moss well. (Stipulation of Facts, Nos. 21 and 22).

The record further shows that Respondents filed two claims in the Snake River Basin Adjudication (S.R.B.A.) for rights to divert water from the Moss well, at 362.5 acre feet per annum or 2.5 acre feet per acre. (Stipulation of Facts, No. 25; Appendix, Exhibit A & B to Petition for Preliminary Injunction). Subsequently, Respondents filed amended SRBA claims for rights to divert 5.66 cfs from the Moss well rather than the 2.90 cfs authorized by Transfer Number 3214. (Stipulation of Facts, No. 28). The amended claims increase the irrigated acreage from the Moss well to 264 acres and the annual volume of consumptive use to 924 acre

MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION

SEP 15 1992

feet per annum, or 3.5 acre feet per year. The amended claims were filed as accomplished transfers under I. C. § 42-1416A. (Appendix, Exhibits A & B to Petition for Preliminary Injunction.)

In addition to the amended claim, Respondents simultaneously filed a new claim for 2.34 cfs, reflecting a claimed expansion of the amount of water authorized to be diverted from the Moss well under License Nos. 34-2332 and 34-7079, declaring an April 1, 1980 priority date. (Stipulation of Facts, No. 29.) Respondents now assert that this new claim for 2.34 cfs is in error and that the correct amount should be the difference between the approximate 6.0 cfs they claim was historically produced by the Moss well and the 5.66 cfs set forth in their amended adjudication claim. (Stipulation of Facts, No. 29.)

On July 2, 1990, Respondents advised IDWR of their intent to divert a total of 8.0 cfs from both the Moss well and the newly drilled second well (Moss wells). (Stipulation of Facts, No. 30.)

On July 13, 1990, IDWR issued a cease and desist order prohibiting Respondents from diverting water from the two wells in excess of the 2.9 cfs authorized by Transfer Number 2314. (Stipulation of Facts, No. 16 & 34.) Respondents did not, and have not, complied with the cease and desist order from the date of issuance. (Stipulation of Facts, No. 35.)

Under I. C. § 42-352, IDWR further prays for an order against Respondents for a civil penalty of up to one hundred

dollars (\$100) per diversion for each calendar day following service of the cease and desist order on July 14, 1990. (Petition for Preliminary Injunction, P. 6, paragraph 24.)

Injunctive Relief

IDWR seeks a preliminary injunction pursuant to I.R.C.P. 65(a) and (e). The Department also alleges entitlement to the preliminary injunction under I. C. § 42-231, 42-351 and 42-1805(9).

Respondents challenge IDWR's entitlement to injunctive relief on two procedural grounds. First, they question the ability of IDWR to seek such relief as a part of the Snake River Basin Adjudication. Respondents allege that an action for injunction short-circuits the S.R.B.A. process and promotes piecemeal adjudication of water rights. Second, Respondents argue that the preliminary injunction would destroy, rather than preserve, the status quo as it exists for the water rights in question and that the state suffers no injury if this dispute awaits resolution as part of the S.R.B.A..

IDWR possesses well-defined responsibilities and authority over the appropriation of ground water in Idaho. (Idaho Ground Water Act, I. C. § § 42-226-42-237(h)). The Director of IDWR is required to, "do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to public policy expressed in this Act." I. C. § 42-231. The Director is required to sue to enjoin the illegal

MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION

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opening or excavation of wells or join in any action that might result in depletion of ground water resources of the state in a manner contrary to the Act. I. C. § 42-237(f). Similarly, the Director may issue cease and desist orders and subsequently seek injunctive relief for illegal diversion from a natural watercourse or a ground water source. I. C. § 42-351.

In this action, the Director seeks to enforce the cease and desist order previously issued against the Respondents by this court's entry of a preliminary injunction.

Injunctive relief to enforce IDWR cease and desist orders, under I.R.C.P. 65(e), has been approved in Idaho. Olson v. Bedke, 97 Idaho 825, 555 P.2d 156 (1976). This court will, therefore, analyze the request under I.R.C.P. 65(e).¹

This court finds that IDWR is entitled to an injunction under I.R.C.P. 65(e)(1) because it appears the Department is entitled to the relief demanded, and such relief is required to restrain Respondents from continuing to divert water in excess of their licenses. Further, it is found that under I.R.C.P. 65(e)(2) the continued diversion of water by Respondents in excess of their licenses constitutes irreparable injury to the state because it is

¹ It should be noted that the Department also asserts entitlement to injunctive relief under I. C. § 42-351(5) which sets forth an entirely different burden of proof than I.R.C.P. 65(e). Because IDWR is entitled to relief under I.R.C.P. 65(e), this court declines to address the conflict between I.R.C.P. 65(e) and I. C. § 42-351(5).

an act which directly contravenes state water law and the express terms and conditions their licenses.

IDWR has the right to seek injunctive relief either as a part of the Snake River Basin Adjudication or in an independent action in Butte County. This court has previously ruled that where a water user has filed a claim in the S.R.B.A., they become a party in that action. Where acts surrounding an S.R.B.A. claimed water right are sought to be enjoined by IDWR, it is entirely proper for the relief to be sought in the S.R.B.A.. The S.R.B.A. neither changes nor terminates the Director's responsibilities over the appropriation of ground water in the state of Idaho. The Director must proceed to enjoin illegal diversion; and, where the transgressor is a party in the S.R.B.A., jurisdiction lies with this court to entertain the Director's petition.

To include such injunctive actions in the S.R.B.A. does not create piecemeal adjudication. Notwithstanding the S.R.B.A., the Director has a right to seek this relief. Whatever the outcome of the action for injunction, the water claimant still proceeds with its claim in the S.R.B.A. One advantage to having injunctive actions in the S.R.B.A. is the avoidance of possibly inconsistent rulings which may occur if the court in the usual county of venue hears the matter.

This case is not unlike that of State ex rel. Tappan v. Smith, 92 Idaho 451, 444 P.2d 412 (1968). There, a petition was

filed for an injunction against landowners to stop withdrawal of ground water from a well. Respondents in that action had previously filed an application for change of point of diversion and place of use. That application was pending while the petition for injunction was litigated. As part of the injunctive action, the trial court attempted to adjudicate the application. The Supreme Court found it was error for the trial court to attempt such an adjudication while it still could be heard by the agency. Similarly, here, this court may entertain a petition for injunction, notwithstanding the pendency of Respondents' S.R.B.A. claim. That claim will be fully resolved following the filing of the Director's Report and any subsequent Objections and Responses. While Respondents argue that a decision on this injunction may dispose of all, or part, of their S.R.B.A. claim, the situation is no different than that in State ex rel. Tappan. Therefore, the court clearly has the authority to proceed on the Director's petition in this case.

Respondents further argue that injunctive relief is improper because it would destroy rather than preserve the status quo. Respondents argue that the status quo is represented by their claimed thirty-year diversion, which exceeds their licenses. This court finds that the status quo is represented by the lawfully licensed quantity of water Respondents may divert. Therefore, to allow them to divert in excess of their lawful water right would

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constitute a change in the status quo. Preservation of the status quo requires Respondents to divert no more water than that to which they are lawfully entitled under their licenses.

Respondents' Water Right

The critical issue in this case is the quantity of water to which Respondents are entitled from what has been called the Moss wells. This issue can only be resolved after determining the quantity of water to which Respondents are entitled under the terms of their two licenses, their approved Transfer Application and their S.R.B.A. claim to additional water as an expansion of use pursuant to I. C. § 42-1416.

Licensed Right Nos. 34-2332 and 7079 and Transfer
Application No. 3214

Respondents purchased the Moss well in 1985. Two licensed rights had been issued prior to purchase. Licensed right No. 34-2332, issued in 1959, was for 2.9 cfs to be supplemental to a decreed water right for the irrigation of 145 acres. Licensed right No. 34-7079, issued in 1975, was for 2.76 cfs for supplemental use on the same 145 acres. This second right (34-7079) was conditioned on the holder not drawing more water than was necessary for the irrigation of the 145 acres up to a maximum of 435 acre feet between, or in combination with, water right No. 34-2332.

The approved transfer application No. 3214, issued in 1985, was to cover the requested change in place of use of water taken under rights 34-2332 and 34-7079. Respondents' Transfer Applica-

tion requested only that their rights, in combination, were for 2.9 cfs, up to a maximum of 435 acre feet. In granting the transfer application, IDWR attached certain conditions, including: 1) the combination of water taken under rights 34-2332 and 34-7079 would not exceed 2.9 cfs or 435 acre feet; 2) no more than 2.9 cfs or 435 acre feet could be placed into the Moore Canal; 3) the rate of rediversion from Timberdome Canal may be subject to a conveyance loss assessment; and 4) approval of the transfer did not constitute a right to use privately owned conveyance facilities.

Further evidence of Respondents' water right exists in their claims filed in the Snake River Basin Adjudication. Claims No. A34-07079 and A34-02332 relate to the Moss wells and only claim 362.5 acre feet of water. Respondents have amended these claims and now claim 924 acre feet for the Moss wells under the accomplished transfer statute, I. C. § 42-1416(A). Another amended claim for the Moss wells claims an expansion of use for the two licensed rights, Nos. 34-2332 and 34-7079, for a total of 5.66 cfs. Notwithstanding these licenses, the transfer application and claims and amended claims in the S.R.B.A., Respondents were diverting a combined rate of 8.0 cfs from the Moss wells in the summer of 1990.

In reviewing its licensed rights, transfer application and original S.R.B.A. claim, Respondents argue that IDWR and the documentation pertaining to these rights is all wrong. Respondents claim that they were mistaken when, in Transfer Application No.

3214, they only requested a diversion rate of up to a maximum of 435 acre feet. Respondents vehemently argue that IDWR was incorrect in placing conditions on Transfer Application No. 3214, restricting it to a combined diversion rate of 2.9 cfs or 435 acre feet. In fact, Respondents have gone so far as to say that this restriction constitutes an illegal taking of their property, ~~notwithstanding the fact that~~ ^{even though} the Transfer Application granted to them exactly what their application requested. Finally, Respondents claim that they were wrong when they mistakenly filed their original S.R.B.A. claims for these rights requesting 362.5 acre feet.

Respondents' water right for the Moss wells is governed by the two licenses which existed in 1985 when they purchased the original well. Right 34-2332 was limited to 2.9 cfs. Right 34-7079 was restricted to 2.76 cfs on the condition that in combination with right 34-2332 no more than 435 acre feet would be diverted. Transfer Application No. 3214 contains the same restrictions. Respondents clearly understood this in making the Transfer Application in the first place because they only filed for those amounts. Respondents now assert that not only were they mistaken when they filed the Transfer Application, but their failure to notice the restriction when the application was approved was an oversight and one which any applicant, and every applicant, was likely to make. This is simply not credible.

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Respondents' Transfer Application clearly evidences an intent to request a change in place of use of a right to 2.9 cfs or 435 acre feet, which they were allowed to divert under rights No. 34-2332 and 34-7079. Respondents never saw an error in the conditions in the Transfer Application and never proceeded with an appeal of or challenge to those conditions. Respondents have used the water out of the Moss wells continuously since the transfer application was approved, a period of now over six years without dispute. And even when filing a claim in the S.R.B.A., Respondents never claimed the right to divert water in excess of the original two water rights governing the Moss wells. The amended S.R.B.A. claims were only made after the instant dispute was raised by the Department of Water Resources.

This court finds that Respondents' right to divert from the Moss wells is governed by Water License Nos. 34-2332 and 34-7079, as well as Transfer Application No. 3214. This right is limited to a combined diversion rate of 2.9 cfs or 435 acre feet per annum. Respondents' claim that the licenses or approved Transfer Application with its conditions were in error or constitute a taking of its property are without merit.

Expansion of Use Under I. C. § 42-1416

Respondents also claim in this action, and in one amended claim in the S.R.B.A., that the quantity of water which they have diverted from the Moss wells has been expanded to approximately 8.0

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cfs under the expansion of use statute, I. C. § 42-1416(2). Respondents have suggested that raising this issue is premature in light of the pendency of the Snake River Basin Adjudication. However, in determining IDWR's entitlement to a preliminary injunction, this court must determine that the Department is likely to prevail on the issue of the amount of water Respondents can divert from the Moss wells. The answer to this is certainly clear with respect to the licenses and Transfer Application discussed above. However, to determine the likelihood that the Department will prevail, the expansion of use issue must be addressed.

I. C. § 42-1416(2) provides, in pertinent part:

In any basin-wide adjudication, the following shall apply:

(2) Expansion of the use after acquisition of a valid unadjudicated right in violation of the mandatory permit requirements shall be presumed to be valid and have created a water right with a priority date as of the completion of the expansion, in the absence of injury to other appropriators.

The issue presented is whether the term "expansion of the use" means an increase in the quantity of water diverted. Applying the rules of statutory interpretation, this court answers the question emphatically in the negative.

The law governing statutory interpretation is well settled. The court must first look to the four corners of the statute and give plain, ordinary and common meaning to its terms. Effect must be given to every word, clause and sentence in order to implement

all provisions of the statute and to avoid rendering any portion inoperative, superfluous, void or insignificant. Ordinarily, the language of the statute is conclusive, and a presumption exists that the plain words of a statute express the intent of the legislature. It is this legislative intent which governs the court's interpretation of a statute. Sweitzer v. Dean, 118 Idaho 568, 798 P.2d 27 (1990); Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First National Bank, 117 Idaho 29, 784 P.2d 885 (1989); Roe v. Hopper, 90 Idaho 22, 408 P.2d 161 (1965).

Here, even if the term "expansion of the use" could be considered ambiguous, no legislative history exists which sheds light on its meaning. Neither party, nor the court, have found any definition or statement by the legislature for this term nor do any cases exist construing the statute.

The plain language of I. C. § 42-1416(2) allows a water user to claim an "expansion of the use" of a validly existing water right that has yet to be adjudicated. "Use", when used as a noun, has been defined as: "continued or repeated exercise or employment; a method or manner of using something; habitual or customary practice and accustomed or usual procedure". Webster's Third New International Dictionary (1990).

The word "use" appears several places in Idaho water statutes. I. C. § 42-101 speaks of providing for the "use" of Idaho's waters and recognizes and confirms the right to the "use"

of any water in the state. It further provides that right to the "use" of public waters which will be or have been allotted or beneficially applied, and the right to continue the "use" of any such waters shall not be denied. I. C. § 42-108 and 42-222 contemplate that a person may make application to change the point of diversion, period of "use" or the nature of "use" or, within limitations, transfer water to other land. I. C. § 42-1416(A) allows a person entitled to the "use" of water to make a change in point of diversion, place of "use", period of "use" or nature of "use" of all or a part of the water. Significantly, I. C. § 42-1416(A)(2) states that,

To the extent that the provisions of this section and § 42-1416, I. C. are both applicable to the same water right, the two sections shall be applied conjunctively, if possible, but this section shall not be construed to limit the provisions of § 42-1416, I. C.

All of these provisions engage the term "use" in the context of every aspect of a water right except the quantity of water. Expansion of use may very well include changes in the point of diversion, place of use, period of use and the nature of the use. This is consistent with the common meaning of the term "use" where it describes the method or manner of using something. The common meaning of the word "use", however, does not include the object being used. It only covers how it is being used. The same is true of the statute here.

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"Expansion of the use" as that term is used in I. C. § 42-1416 does not mean an expansion of the amount of water to which a user is entitled. To hold otherwise would be contrary to existing Idaho water law. Such a change in Idaho water law is so significant that it is presumed the legislature would have clearly stated such an intention if it existed. Unless the legislature specifically and unequivocally includes the right to increase the quantity of water to which one is entitled under I. C. § 42-1416, this court will not engraft such an interpretation onto the statute.

Respondents' claim to 8.0 cfs per annum from the Moss wells under the expansion of use language in I. C. § 42-1416 is without merit. Therefore, Respondents' right to divert water from the Moss wells remains 2.9 cfs or 435 acre feet per annum under the terms of its licenses and transfer application.

Estoppel

Respondents finally contend that IDWR should be estopped from seeking injunctive relief because of prior representations it made to water users.

The Director notified water users in the Big Lost River Basin of IDWR's policy for water management, pending a determination in rights in the S.R.B.A.. These letters and memoranda were sent in February, April and May, 1990. The May 7, 1990, memorandum states:

Various uses of water without a valid recorded right have been brought to my attention during the past year. IDWR's response has been to issue administrative orders to "cease and desist" use of water if either no water right is of record with the Department or if the only record is an unapproved application. This continues to be IDWR's policy where no valid right to use water is evident, and IDWR will seek injunctions and civil fines as necessary to enforce the administrative orders.

Stipulation of Facts, No. 26.

Recognizing that some rights in the basin had changed either because of authorized expansions under I.C. § 42-1416 or changes in point of diversion under I.C. § 42-1416A, the Director notified claimants that:

IDWR will not seek to prevent use of ground water where the right to use the water is based upon a claim unless:

(1) The claim is obviously without merit because the use clearly did not commence prior to the required dates or the use was obviously expanded after the statutory deadline.

(2) The rate of diversion exceeds the rate of the right which is claimed is expanded or transferred.

(3) Documented evidence exists that the claimed use by itself or in conjunction with the use of other claimed uses is directly and significantly injuring another valid right or rights.

Stipulation of Facts, No. 26.

Respondents argue that these statements by the Director should estop IDWR from proceeding in this court for injunctive relief, arguing that the Department is committed to wait for the

resolution of Respondents' water right in the Snake River Basin Adjudication.

Reviewing the conditions set out in the Director's letter, it is clear that condition number 2 fully applies. As such, the Director is following through with his announced policy by seeking an injunction in this case. As this court has already found, Respondents' diversion from the Moss wells exceeds the rate set forth in their two licensed rights and transfer application. Therefore, Respondents' claim for estoppel is denied.

Civil Penalties

IDWR requests civil penalties be assessed against Respondents under I.C. § 42-352. This section provides that the Director of IDWR may impose a civil penalty against anyone who wilfully violates his cease and desist order. The statute also allows the Director to seek court enforcement of such penalties.

IDWR's Petition, however, discloses that the Director has not imposed a civil penalty against Respondents. Therefore, this court lacks jurisdiction to enforce or set a civil penalty under I.C. § 42-352. The request is premature and is denied.

CONCLUSION

Respondents' diversion of nearly 8.0 cfs from the Moss wells clearly exceeds the 2.9 cfs or 435 acre feet allowed under their licensed rights and under the terms of their transfer application. Their increased rate of diversion is not an expansion of use under

11-12-92
-1-12-92
y+name

I.C. § 42-1416. This statute in no way allows a water user to expand or increase the quantity of water diverted under a valid unadjudicated water right. Respondents' diversion of water in excess of their right is also in contravention of the cease and desist order issued by IDWR.

Pursuant to I.R.C.P. 65(e)(1), a preliminary injunction shall issue prohibiting Respondents from diverting water from the Moss wells in excess of their licensed right. IDWR has established that it is entitled to the relief demanded. The Respondents shall be restrained from continuing to divert from the Moss wells in excess of their rights.

To the extent Respondents are claiming entitlement in the S.R.B.A. to more water than is allowed under their licenses, based on a claim of appropriation by beneficial use, said claim will be resolved in the S.R.B.A. after filing of a Director's Report.

IDWR's request for civil penalties for Respondents' wilfull failure to follow the Director's cease and desist order is premature and denied.

This Memorandum Decision constitutes the court's Findings of Fact and Conclusions of Law herein.

Counsel for the Petitioner shall prepare an order reflecting the court's decision, submitting copies to counsel and the court for review and entry.

IT IS SO ORDERED.

MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION - 20

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DATED this 30 day of July, 1991.

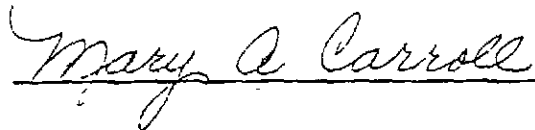

DANIEL C. HURLBUTT, JR.
District Judge

CERTIFICATE OF MAILING

The undersigned certifies that on the 30th day of July, 1991, she caused to be mailed, or hand delivered, a copy of the foregoing MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION to:

Phillip J. Rassier
Deputy Attorney General
State of Idaho
1301 N. Orchard
Boise, ID 83706-2237

Kent W. Foster
Holder, Kidwell, Hahn and Crapo
P. O. Box 50130
Idaho Falls, ID 83405



(C. & D.) Order Dated July 13, 1990

NOTICE

THIS WATER RIGHT HAS A CEASE AND DESIST ORDER IN THE CEASE AND
DESIST FILE. C & D # 34-00002

NOTED

SEP 15 1992

FROM Sharla

TO File 34-7079

SUBJECT Cease & Desist

DATE 7/13/90

See file 34-2332 for misc. drilling permit copies, correspondence, etc.
leading to the cease & desist order dated 7/13/90.

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SIGNATURE

March 9, 1990

P.U. Ranch
c/o Tony Bailey
Rt 1, Box 447
Arco, ID 83213

RE: INQUIRY - 34-2512, 34-2332 AND 34-7079

Dear Mr. Bailey:

As a result of your inquiry to Norman Young of this office, I have researched your water rights of record. This research has involved two phone calls to you, several calls to our Idaho Falls office and a computer search for adjudication claims which may have been filed in either the name of P.U. Ranches or Hillcreek properties.

I have located licensed rights 34-2512, 34-2332, 34-7079 and approved transfer 3214 which involves rights 34-2332 and 34-7079.

I have not been able to locate any pending applications for transfer or any adjudication claims. Is it possible that your attorney has not yet filed your adjudication claims?

Without the proper data to review, I can not respond to your inquiries. At this point, I suggest you contact Harold Jones of our Idaho Falls office to be sure that proper adjudication claims have been filed. Once I have copies of the adjudication claims, I am willing to further research your water right questions.

I will not be available from March 12 through March 16, 1990. When I return, however, I can be reached at my direct phone number which is 327-7955.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: Harold Jones
Norman C. Young

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INTER-DEPARTMENT MEMO — 1

FROM Sharla

DATE 12/5/85

TO File 34-7079

SUBJECT Trans. 3214

See file 34-2332 for all correspondence regarding the above referenced transfer.

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SIGNATURE

August 13, 1976

Re: Permit No. 34-7679

A. Etsel Moss
Box 102
Moore, ID 83255

Dear Mr. Moss:

Enclosed herewith is a copy of the water license issued on the above referenced permit.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:rb

Enc.

July 30, 1975

A. Etsel Moss
Box 102
Moore, Idaho 83255

Dear Mr. Moss:

A representative of this Department has made an examination of the works covered by your Permit No. 34-7079 and has found the following:

Quantity of water diverted: 5.66 cfs Source: ground water

Amount of water that can be recognized as beneficially used under
Idaho law: 2.76 cfs

The maximum volume per year shall not exceed 435 acre feet, or
3.0 acre feet per acre, when combined with License No. 34-2332.

Point of diversion: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp. 5 N, Rge. 26 E, B.M.

Beneficial use: Irrigation of 145 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$ (70) and
N $\frac{1}{2}$ NW $\frac{1}{4}$ (75) of Sec. 21, Twp. 5 N, Rge. 26 E, B.M.

Priority date established: Sept. 17, 1974

If you ~~donot~~ concur with these findings please contact us within 10 days, otherwise a
water license will be issued as set forth above.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:DR

bc: Eastern District Office

DEPARTMENT OF WATER ADMINISTRATION
FIELD REPORT

1. Name of permit holder A. Etsel Moss
Post office address Box 102, Moore, ID Phone _____
Person to contact _____ Phone _____

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

3. Water will be used for the following purposes

Amount 2.76 cfs for irrigation
_____ AF/Annum (nature of use)

Period of Use from Apr. 1 to Nov. 1
(mo.-day) inclusive (mo.-day)

Amount _____ cfs for _____
_____ AF/Annum (nature of use)

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

Amount _____ cfs for _____
_____ AF/Annum (nature of use)

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

Other uses _____

Permit No 34-7079
Examination for b/u

4. Total amount to be appropriated

Max Rate of Diversion 2.76 cubic feet per second and annual volume _____ AF/Annum

5. Location of Point(s) of Diversion

Township 5N N/S, Range 26E E/W, B.M., Section 21, Subdivision NW 1/4 NW 1/4, Butte
County

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

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

Other Points of Diversions _____

Description of diverting works 75 hp motor, 18" casing, 200' deep well, 50' to water, private ditch system.

Measuring device required yes ☒ no ☐

6. Lands to be irrigated or place of use

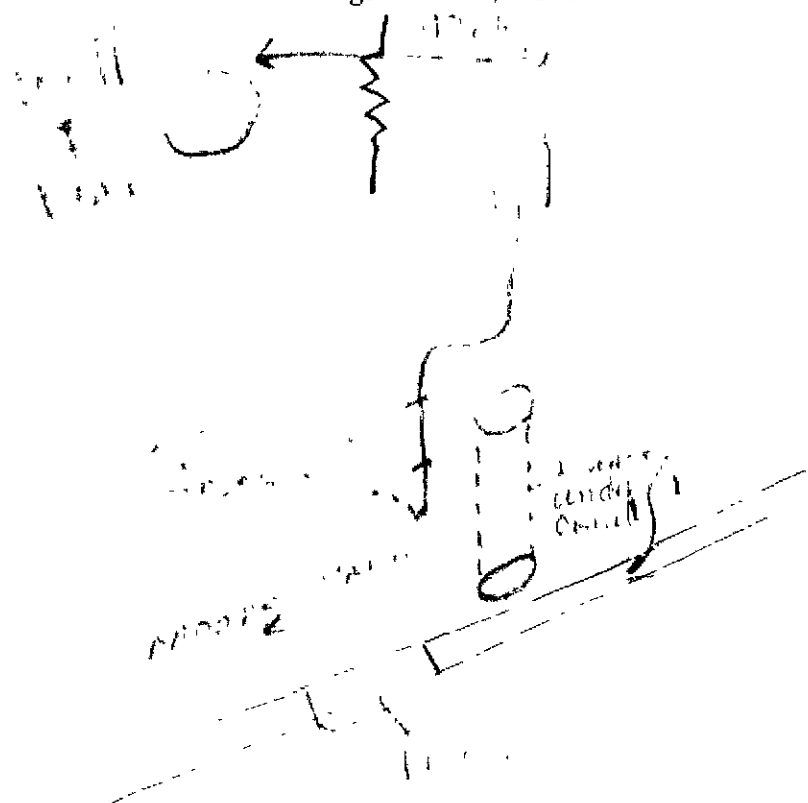
TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
5N	26E	21	25	40			40	40											145

TOTAL ACREAGE

145

T
5
N

Diagram of System



DATE OF EXAM MAY 22, 1975

ACREAGE
Found 145
Recommended 145

Irrigation Requirement 3.0 Ac Ft/Ac

USE
Irrigation Q= c.f.s. V= 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: MOORE Canal
twp N/S, Rge E/W, B.M., Sec. , Sub. $\frac{1}{4}$ $\frac{1}{4}$ County

Exchange? yes ☐ no ☒

Name source exchanged with:
twp N/S, Rge E/W, B.M., Sec. , Sub. $\frac{1}{4}$ $\frac{1}{4}$ County

Point of injection;
twp 5N N/S, Rge 26E E/W, B.M., Sec. 21, Sub. NW $\frac{1}{4}$ NW $\frac{1}{4}$ Butte County

Point of exchange;
twp 5N N/S, Rge 26E E/W, B.M., Sec. 21, Sub. NW $\frac{1}{4}$ NW $\frac{1}{4}$ Butte County

Total Q measured 566 cts = 283" Method of measurement 24" Parshall flume

Total Q recommended 2.76 cts Meter No. Type Condition Stel Conditions

Total V recommended ?

Recommended Amendments

P D
Place of Use
Other
None ☒

MEASUREMENT CALCULATION.

.80 ft head = 5.66 cts
- 2.90 Lic 34-2332
2.76 cts

SYSTEM DESCRIPTION.

GE, 75 Hp Ser# TVJ616128 Model SK6267XC4A
12" Open discharge N. 20' To concrete Block Box diverted E or W
into private ditch. When diverted West, The water is flumed under
The MOORE Canal To 24" Parshall flume (M.D.) water @ this point
may be dumped into MOORE Canal - Layne Bowler Pump # 21502

REMARKS

System & Land shown by A. Etzel Moss
Water is injected into moore Canal and Taken out
To irrigate 18 Ac NW NW Sec. 21.
Prior Lic 34-2332 2.9 cts 145 Ac.

Examiner's Signature Bill Rhoads Date MAY 22, 1975

Checked by Larry C. Halver Date June 3, 1975

Approved by Date

April 2, 1975

Re: Permit No. 34-7079

A. Etzel Moss
Box 102
Moore, ID 83255

Dear Mr. Moss:

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 during which part of the irrigation season this examination will be made, however, our examiner will try to contact you at the time he makes the exam so that you may show him the system.

If you have any questions concerning the field exam, please contact our District Office in Idaho Falls.

Sincerely,

D. Darlene Reich
Water Rights Supervisor

DDR:JG

RECEIVED

MAR 24 1975

Department of Water Resources
Eastern District Office

Identification No. _____

Permit No. 34-7079

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of Permit Holder A. ETSEL MOSS
b) Post Office Address BOX 102 MOORE ID.
2. Permit Number 34-7079
3. Date of Priority that you are prepared to establish 9-17-74
4. a) Source from which water was appropriated GROUND WATER
b) Location of the point of diversion: NW 1/4 NW 1/4, Section 21
Township 5N, Range 26E Boise Meridian, Other points of diversion: _____
5. a) The amount of water and use to which the water has been applied:
Amount 2.76 cfs for Irrigation purposes from Ap. 1 to Nov. 1 incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
b) Total amount appropriated 2.76 cfs 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: Irrigation District
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:

b) Describe the agreement or understanding by which you take water from the works: _____

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) 75 hp. Motor 18 in. casing 200 ft. deep well 50 ft. to water. Private ditch system

b) Describe the type and size of measuring device which you have installed at your point of diversion: Parshall flume

c) Give well driller's name and address and the date the well was completed: Cushman 1955

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use: _____

Exam typed 4/2/75 by JS

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	
5N	26E	21	25	40			40	40											145

Total number of acres irrigated 145

10. Remarks: _____

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

Mar 24 - 75
(Date)

A. Estel Moss
(Signature)

State of IDAHO)
) ss.
County of BONNEVILLE)

On this 24th day of MARCH, 1975, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Ralph Carlson
Notary Public residing at FIRTH, IDAHO

My commission expires 2/14/78

January 24, 1975

Re: Permit No. 34-7079

A. Etzel Moss
Box 102
Moore, Idaho 83255

Dear Mr. Moss:

Enclosed is a copy of your approved Application for Permit No. 34-7079. We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Enclosures

MICROFILMED

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OCT 23 1992

INTER-DEPARTMENT MEMO — 1

DATE January 9, 1975

FROM Ron Carlson

TO Bob Fleenor

SUBJECT Application for Permit No. 34-7079

I am still not completely happy with the letter of justification submitted by the S.C.S. Would it be possible to make this permit conditional to the method of irrigation? I suggest that the conditions of approval be:

1. ~~The approval of this permit is only for the boarder irrigation of the lands described in the application.~~
2. Any transfer of this right to other lands will cause the priority date to be advanced to bear the date the application for transfer was filed with the Dept.
3. A measuring device of a type approved by by this Department shall be permanently installed and maintained ~~at the~~ of the diverting works.
4. Proof of beneficial use must be submitted to the Department on or before _____ 1979.

OCT 23 1982

MICROFILMED

Ron

SIGNATURE

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

1/~~1~~³/75

RECEIVED

JAN 6 1975

Department of Water Resources
Eastern District Office

To: Mr. Ronald Carlson
Dept. of Water Administration
Idaho Falls, Idaho 83401

This letter is in reply to our telephone conversation on Mr. Etsel Moss's request for additional water.

As I stated before, I believe that one additional I.M.I is needed by Mr. Moss. You have requested that I include some information on intake rates and percolation rates. Since these 2 factors are about the same, I will try to give you an idea of the intake rates. The intake rate for the average soil on the Etsel Moss farm is about 3.00 inches per hour, while the intake rate for an average loam soil is about 1.00 inch per hour. Mr. Moss has narrowed his width of borders from the average in this area of about 60 feet to widths of 34 feet, this has helped his irrigation efficiency greatly. Probably the greatest problem of getting higher irrigation efficiency is the length of runs. While Mr. Moss's length of runs are as long as 1600 feet (well within the S.C.S specifications) he could get greater efficiency by cutting them to shorter lengths. Also if he converted to sprinkler, I'm sure he wouldn't need the additional water.

Under his present method of irrigating I believe that the additional one I.M.I that Mr. Moss has requested is justified.

Sincerely



James R. Stalnaker
District Conservationist
Soil Conservation Service
Arco, Idaho 83213

MICROFILMED

OCT 23 1992

MICROFILMED

December 17, 1974

RE: Application for Permit No. 34-7079

Mr. A. Etsel Moss
Box 102
Moore, Idaho 83255

Dear Mr. Moss:

Your application No. 34-7079 has been advertised and is now ready for final action. Because the land you propose to irrigate under this new appropriation is already covered for a full inch per acre under License No. 34-2322, you must justify the need for this additional water. By justifying we mean calculations which consider such parameters as soil type, percolation rates, and length of run. If you cannot get the SCS or other soil experts to make these necessary calculations, or submit other information that would be adequate to determine this needed diversion rate, we will have no choice but to deny this application for permit.

If we have not received this justification by the 16th of January, this application will be forwarded to our Boise Office with the recommendation that it be denied by the Director.

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

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:cw

MICROFILMED

60 28 122

XXXXXXXXXXXXXXXXXXXXX RESOURCES

October 15, 1974

Re: Application for Permit No. 34-7079 Moss

The Arco Advertiser
Box "C"
Arco, ID 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application. The legal notice was to have been published in your paper on September 26 and October 3, 1974.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:MB

MICROFILMED

MICROFILMED

OCT 23 1992

Filed 10-29-74

UNITED STATES GOVERNMENT

Memorandum

RECEIVED

DEC 2 1974

TO : Department of Water Administration

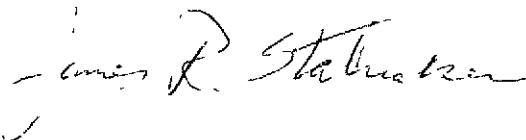
DATE: 11/25/74
Department of Water Resources
Eastern District Office

FROM : James R. Stalnaker

SUBJECT: Elsel Moss:

This is in reply to your telephone call on the request by Elsel Moss.

I have no concrete data on how much additional water is needed but I would estimate that one additional Idaho minors inch would be enough with his present irrigation system.



James R. Stalnaker
District Conservationist
Soil Conservation Service
Arco, Idaho

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

10/5/74

Mr. Norman C. Young
District Engineer
Dept. of Water Adm.
Idaho Falls, Idaho 83401

Mr. Etsel Moss has requested a letter be written regarding extra water for his land.

Mr. Moss has soils that are 10 to 20 inches deep to gravel. These soils require more than one inches of water to irrigate using present irrigation methods. These soils have high intake rates, and use a lot of water. His river water rights are not very good, which means that in most years after July, he will depend on pump water totally.



James Stalnaker
District Conservationist
Soil Conservation Service
Arco, Idaho

10/11/74



XXXXXXXXXXXXXXXXXXXXX RESOURCES

September 20, 1974

Re: Application for Permit No. 34-7079 Moss

Arco Advertiser
Box "C"
Arco, ID 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
Acting District Engineer

Bill submitted 10-30-74 by MB

RDC:MB

Enc: Legal Notice (1)

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that A. Etzel Moss, Box 102

Moore, Idaho

has on 9/17/74 submitted Application No. 34-7079
for a permit to appropriate 2.76 cubic feet per second ~~acres feet per annum~~
of water from a ground-water source
by means of well and pump
within the NW¹/₄NW¹/₄, Sec. 21, T. 5N, R. 26E, B.M., Butte County;

to be used from Apr. 1 to Nov. 1
for the irrigation of 145 acres

within the N¹/₂NE¹/₄, N¹/₂NW¹/₄, Sec. 21, T. 5N, R. 26E, 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 October 15, 1974.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho

on September 26, and October 3, 1974.

MB-LA
NW-A