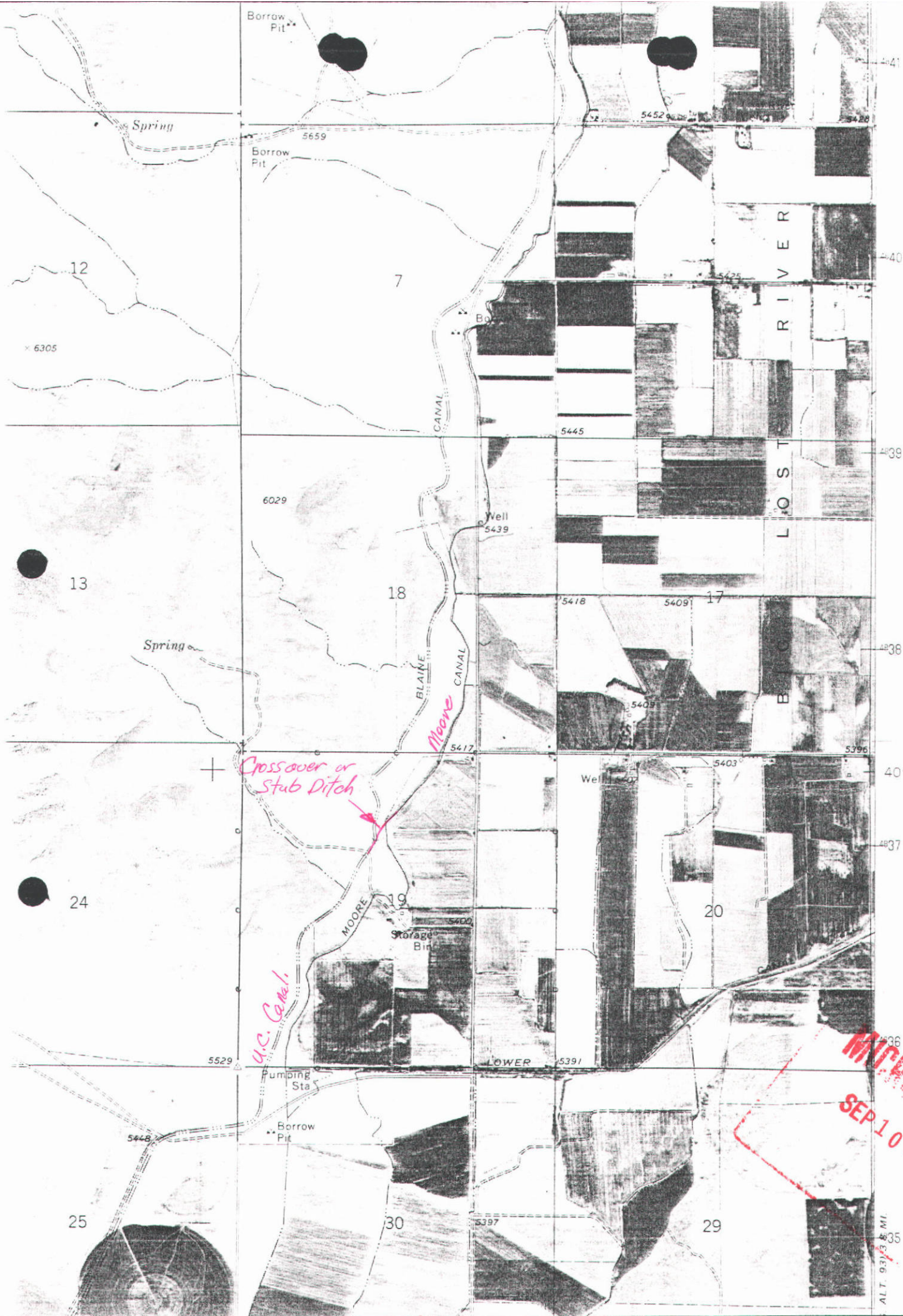


[illegible]



MICROFILMED
SEP 10 1992

ALT. 93133 ML 35



AFFIDAVIT OF PUBLICATION

I, Colleen Babcock
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 June 7, 1990

and ending with the issue dated

June 14, 1990

Colleen Babcock

STATE OF IDAHO }

COUNTY OF BUTTE }

On this 14 day of June

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

personally appeared

Colleen Babcock

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

Thomas D. Cannon
Notary Public for Idaho

Residing at Arco, ID.

My commission expires: 12-17-91

**NOTICE OF PROPOSED
CHANGE TO A WATER RIGHT
NO. 34-7079/34-2332**

NOTICE IS HEREBY GIVEN, That
Hillcreek Properties, Arco, ID, have ap-
plied to the Department of Water Re-
sources to Add a Point of Diversion to the
waters of a groundwater source. The
right sought to be changed is evidenced
by Transfer No. 3214/34-7079 & 34-
2332 which produced this right and is
recorded as follows:

NO. 34-7079

AMOUNT: 2.76 CFS

PRIORITY: SEPT. 17, 1974

NO. 34-2332

AMOUNT: 2.90 CFS

PRIORITY: MAY 6, 1955

TOTAL AMOUNT OF WATER UNDER

THIS RIGHT: 2.90 CFS

POINT OF DIVERSION: NWNW SEC
21 T 5N R 26E, B.M.

The water is used within the NWNW
SEC 21 T 5N R 26E BUTTE COUNTY
from April 1 to November 1 to irrigate
145 acres of land within the SW SEC 2 T
3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the
NWNW SEC 21 T 5N R 26E, (TWO
POINTS) BUTTE COUNTY.

Any protest against approval of the
above proposed change of water right
must be filed with the Idaho Department
of Water Resources, 150 Shoup Ave.,
Idaho Falls, ID 83401, on or before June
25, 1990.

R. KEITH HIGGINSON

Director

Published in the ARCO ADVERTISER
June 7 & 14, 1990.

RECEIVED

JUN 15 1990

Department of Water Resources
Eastern District Office

MICROFILMED
SEP 10 1992

AFFIDAVIT OF PUBLICATION

RECEIVED

State of Idaho, County of Custer, ss:

JUN 15 1990

I, Margaret Parks, Publisher of
the Challis Messenger, a weekly newspaper,
published at Challis, Idaho, do solemnly swear
that the notice hereto attached and made a part
hereof, was published in the regular and entire
issue of the Challis Messenger for 2
consecutive weeks, commencing with the issue
dated June 7 1990 and ending with the
issue dated June 14 1990.

Department of Water Resources
Eastern District Office

**NOTICE OF PROPOSED CHANGE
TO A WATER RIGHT
NO. 34-7079/34-2332**

NOTICE IS HEREBY GIVEN,
that Hillcreek Properties, Arco, ID,
have applied to the Department of
Water Resources to Add a Point of
Diversion to the waters of a
groundwater source. The right
sought to be changed is evidenced
by Transfer No. 3214/34-7079 &
34-2332 which produced this
right and is recorded as follows:

NO. 34-7079 AMOUNT: 2.76
CFS PRIORITY: SEPT. 17, 1974
NO. 34-2332 AMOUNT: 2.90
CFS PRIORITY: May 6, 1955
TOTAL AMOUNT OF WATER
UNDER THIS RIGHT: 2.90 CFS
POINT OF DIVERSION: NWNW
SEC 21 T 5N R 26E, B.M.

The water is used within the
NWNW SEC 21 T 5N R 26E BUTTE
COUNTY from April 1 to November
1 to irrigate 145 acres of land
within the SW SEC 2 T 3N R 25E,
B.M.

TO BE CHANGED AS FOL-
LOWS:

The water will be diverted from
the NWNW SEC 21 T 5N R 26E,
(TWO POINTS) BUTTE COUNTY.

Any protest against approval of
the above proposed change of wa-
ter right must be filed with the Ida-
ho Department of Water Resourc-
es, 150 Shoup Ave., Idaho Falls,
ID, 83401, on or before June 25,
1990.

R. Keith Higginson, Director
Pub: June 7 & 14, 1990.

STATE OF IDAHO

COUNTY OF CUSTER

On this 14 day of June in
the year of 90, before me, a Notary Public,

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

Mae Lopp
Notary Public for Idaho
Residing at Challis
My commission expires: 11/7/94

RECEIVED

SEP 10 1992

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

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	
3 N	25E	2									36	36	36	37					145

Total number of acres to be irrigated 145

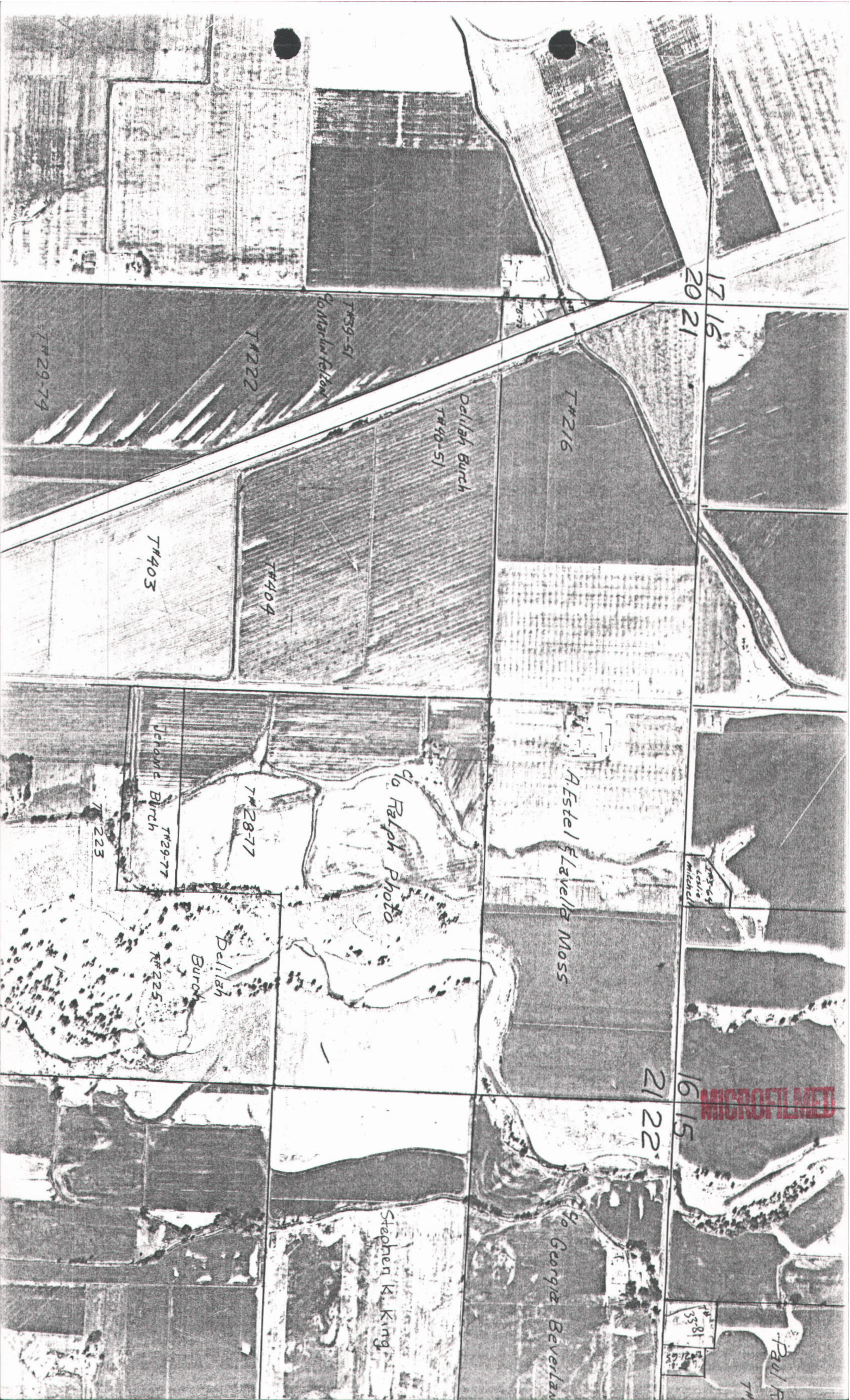
4. Describe any other water rights used for the same purpose as described above. none
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

R25E

The map shows a grid of sections. Township 3 North (T3N) is labeled on the left. Range 25 East (R25E) is labeled at the top. Section 2 is shaded with diagonal lines, indicating the land involved in the irrigation project.

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

MICROFILMED



17 16
20 21

T#39-51
Q. Martin Field

T#222

T#29-74

Delish Burch
T#40-51

T#216

T#404

T#403

T#29-77
Jerome Burch

T#28-77

Q. Ralph Photo

T#223

T#225
Delish Burch

A. Estel Elavella Moss

T#3-64
Lee/le Mitchell

21 22

16 15

MICROFILMED

Stephen K. King

Q. George Beverlan

T#38-1
T#21-6

Paul H

(Optional)
Recorded ☐
Microfilmed ☐
Indexed ☐

Platted ☐
Deed Card ☐
Compared ☐

Key Punched ☐
Master File ☐
Abstracted ☐

To Treasurer ☐

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

A. EISEL MOSS and LAVELLA MOSS husband and wife
of MOORE County of BUTTE
hereby CONVEYS, GRANTS and WARRANTS TO DEXTER DOUGLAS a married man

GRANTOR(S)
State of Idaho

of ARCO County of BUTTE
for the sum of TEN AND NO/100 ----- Dollars (\$ 10.00)
and other valuable consideration

GRANTEE(S)
State of Idaho

the following described tract(s) of land in

Butte

County, State of Idaho:

That portion of the NW1/4NW1/4 Section 21 Township 5 North,
Range 26 East, Boise Meridian described as follows:

Beginning at the NW corner of said NW1/4NW1/4 thence East
1,230 feet; thence South to the North boundary of the Moore
Canal; thence following said Moore canal boundary Southwesterly
to the Railroad right-of-way; thence Northwesterly along said
right-of-way to point where it intersects a county road running
North and South; thence North along county road right-of-way
to the point of Beginning, Containing therein 11 acres more or
less.

The only irrigation water belonging to this parcel is
represented by a well located thereon.

No. 12617

FILED

JUN 21 1983

12:20 P.M.

BUTTE COUNTY RECORDER

Entered . . .	☒
Compared . .	☒
Indexed	☒

Location of above described property Moore, Idaho

Street

House No.

WITNESS the hand of said Grantors this

day of A.D. 19

A. Eisel Moss
Lavella Moss

(NOTARY SEAL)



State of Idaho
County of Butte

ss. On the 17 day of June A.D. 1983

personally appeared before me A. Eisel Moss and Lavella Moss, husband and
wife

the signer(s) of the within instrument, who duly acknowledged to me that they
executed the same.

Residing at: Arco, Idaho

My Commission expires: Lifetime

MAIL DEED TO:

Lost River Title Co

Arco, Idaho

MAIL TAX NOTICE TO:

Name Dexter Douglas

Address R F D Arco, Idaho

City & State

Zip

MICROFILMED

EARNEST MONEY AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

RECEIVED OF:

Arco, IDAHO, July 12th, 19 85

Richard Tuthill

herein called "Buyer," the sum of Ten Thousand and no/100 (\$ 10,000.00) Dollars
 in the form of check paid to the broker as earnest money and in part payment of the purchase price for the following property
 situate in Butte County, Idaho. Legal description attached hereto and made a part hereof

That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21 Township 5 North,
 Range 26 East, Boise Meridian described as follows:

Beginning at the NW corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ thence East
 1,230 feet; thence South to the North boundary of the Moore
 Canal; thence following said Moore canal boundary Southwesterly
 to the Railroad right-of-way; thence Northwesterly along said
 right-of-way to point where it intersects a county road running
 North and South; thence North along county road right-of-way
 to the point of Beginning, Containing therein 11 acres more or
 less.

The only irrigation water belonging to this parcel is
 represented by a well located thereon.

This deal is contingent upon the buyer being allowed to transferr this water from the
 above mentioned well to other lands with all the proper papers from the Dept of water
 resources of Idaho, and also upon approval of the Big Lost River irrigation as to
 Waterways Transport Agreements being signed by them. Upon the above agreements being
 signed, all of the balance of the purchase price is due and payable, and shall not be
 later than six months from date hereof.

(Note) - This is also to say that we the below signed sellers have no objection to
 well permits # 34-7019 and 34-2312 being transferred to other lands.

(If more space is needed, continue on reverse side.)

Seller authorizes the real estate broker, hereinafter referred to as "Broker," to order and charge to Seller's account, immediately upon accep-
 tance of this offer, and of assurance of any contemplated financing, if provided for hereinabove, either a policy of Title Insurance (using a prelim-
 inary title report prior to close of sale, after which the Title Insurance Policy will be issued) or, at the Seller's option an abstract of title certified to
 a date subsequent hereto evidencing condition of the title for inspection and approval of the Buyer. If Buyer's approval of the condition of the title
 is withheld, Buyer shall have 10 days after receipt of evidence of title in which to deliver to Seller or Broker written objections thereto. Failure to
 so object within the 10 day time limit provided shall be deemed approval and acceptance of the condition of the title. The Broker shall in no way
 be responsible for delivery to Buyer, or condition of the title.

The earnest money deposited herein shall be refunded to Buyer and this agreement voided if the Seller fails to accept Buyer's offer within the
 time provided, or if merchantable title cannot be delivered within a reasonable time. Should the improvements on subject property be materially
 damaged by fire or otherwise, prior to closing this sale, this agreement shall be voidable at the option of the Buyer.

Unless otherwise provided herein, the real property shall be conveyed by warranty deed, free of encumbrances except for rights reserved in
 federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and
 rights of way and easements of record. Any encumbrances to be discharged by Seller may be paid out of the purchase money at date of closing.

The parties hereto authorize the Broker to arrange financing, if financing is required and Buyer agrees to use his best efforts to obtain such
 financing. Financing costs shall be paid by Buyer. However, if FHA or GI regulations apply to limit Buyer's loan service fee, Seller agrees to pay
 any excess thereof.

All taxes, rents, insurance premiums and interest shall be prorated as of possession date, which shall be on or before

August 1st

19 85

In case the Buyer shall fail to promptly perform any covenant or agreement aforesaid and to do all things necessary and prerequisite to
 the consummation of this sale, the Seller may declare a forfeiture of this contract, and all rights of the Buyer shall cease and payments
 made by him may be retained by the Seller as liquidated damages, and not as a penalty, or the Seller may pursue any other remedy avail-
 able under the laws of the State of Idaho. In any action brought upon this agreement, the prevailing party shall be entitled to reasonable
 attorney fees.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties hereto, and time is of
 the essence hereof. There are no verbal agreements which modify the terms and conditions hereof.

Broker: P C Schwin BUYER: Richard A. Tuthill (Address)
Chic A Jones

By: BUYER: Phone:

SELLER ACCEPTS the foregoing terms and conditions and agrees to sell the above property to Buyer and to pay the Broker's commission

which the Broker shall have the right to retain from
 the proceeds of this sale. In the event the earnest money receipted for in connection with this sale is forfeited, Seller agrees that one-
 half thereof shall be retained by the broker, provided the amount to the broker does not exceed the agreed upon commission due, and the
 balance shall be paid to the undersigned Seller.

Dated July 12th, 19 85

SELLER: Dexter Douglas and Bernadene Douglas and Richard Tuthill

STATE OF Idaho, COUNTY OF Butte ss. SELLER: Dexter Douglas and Bernadene Douglas and Richard Tuthill

On this 12th day of July, 19 85, before me, a Notary Public in and for said
 State, personally appeared Dexter Douglas and Bernadene Douglas and Richard Tuthill

known to me to be the person
 whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

Notary Public for

Idaho

Residing at

Arco

My Commission expires

EXTRA BROKER'S COPY

MICROFILMED

Buyer hereby offers to purchase the above described property in its present condition, after full inspection, on the terms and conditions herein provided for; and agrees to give the seller _____ days, from this date, to accept said terms and conditions during which time this offer shall not be revokable.

Included as part of the property sold to the buyer are such of the following items as may now be on the premises, which will be delivered free and clear of encumbrances: All existing linoleum, window screens, screen doors, television antennae, shades, venetian blinds, curtain rods, attached lighting, plumbing and bathroom fixtures, water-heating apparatus and fixtures, awnings, ventilating, cooling and heating systems, irrigation fixtures and equipment, all water and water rights, ditches, and ditch rights appurtenant thereto, and subject to the assessments therein, trees, plants and shrubs and all other attached fixtures not herein reserved or excepted; together with the following personal property:

One deep water irrigation well with a 75 HP motor pumping 300 miners inches of water together with legal rights thereto. Located on the above mentioned land. State Lic # 34-79

The total purchase price is:

Seventy Thousand and no/100----- (\$ 70,000.00) Dollars

and after deducting the sum hereinbefore receipted for the balance shall be payable as follows:

This deal is contingent upon the buyer being allowed to transferr this water from the above mentioned well to other lands with all the proper papers from the Dept of water resources of Idaho, and also upon approval of the Big Lost River irrigation as to Waterways Transport Agreements being signed by them. Upon the above agreements being signed, all of the balance of the purchase price is due and payable, and shall not be later than six months from date hereof.

(Note)--This is also to say that we the below signed sellers have no objection to well permits #s 34-70/9 and 34-2332 being transferred to other lands.

Seller authorizes the real estate broker, hereinafter referred to as "Broker," to order and charge to Seller's account, immediately upon acceptance of this offer, and of assurance of any contemplated financing, if provided for hereinabove, either a policy of Title Insurance (using a preliminary title report prior to close of sale, after which the Title Insurance Policy will be issued) or, at the Seller's option an abstract of title certified to a date subsequent hereto evidencing condition of the title for inspection and approval of the Buyer. If Buyer's approval of the condition of the title is withheld, Buyer shall have 10 days after receipt of evidence of title in which to deliver to Seller or Broker written objections thereto. Failure to so object within the 10 day time limit provided shall be deemed approval and acceptance of the condition of the title. The Broker shall in no way be responsible for delivery to Buyer, or condition of the title.

The earnest money deposited herein shall be refunded to Buyer and this agreement voided if the Seller fails to accept Buyer's offer within the time provided, or if merchantable title cannot be delivered within a reasonable time. Should the improvements on subject property be materially damaged by fire or otherwise, prior to closing this sale, this agreement shall be voidable at the option of the Buyer.

Unless otherwise provided herein, the real property shall be conveyed by warranty deed, free of encumbrances except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements of record. Any encumbrances to be discharged by Seller may be paid out of the purchase money at date of closing.

The parties hereto authorize the Broker to arrange financing, if financing is required and Buyer agrees to use his best efforts to obtain such financing. Financing costs shall be paid by Buyer. However, if FHA or GI regulations apply to limit Buyer's loan service fee, Seller agrees to pay any excess thereof.

All taxes, rents, insurance premiums and interest shall be prorated as of possession date, which shall be on or before August 1st, 1985

In case the Buyer shall fail to promptly perform any covenant or agreement aforesaid and to do all things necessary and prerequisite to the consummation of this sale, the Seller may declare a forfeiture of this contract, and all rights of the Buyer shall cease and payments made by him may be retained by the Seller as liquidated damages, and not as a penalty, or the Seller may pursue any other remedy available under the laws of the State of Idaho. In any action brought upon this agreement, the prevailing party shall be entitled to reasonable attorney fees.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties hereto, and time is of the essence hereof. There are no verbal agreements which modify the terms and conditions hereof.

Broker: P C Schwinn BUYER: Chio A Jones (Address)

By: SELLER ACCEPTS the foregoing terms and conditions and agrees to sell the above property to Buyer and to pay the Broker's commission

which the Broker shall have the right to retain from the proceeds of this sale. In the event the earnest money receipted for in connection with this sale is forfeited, Seller agrees that one-half thereof shall be retained by the broker, provided the amount to the broker does not exceed the agreed upon commission due, and the balance shall be paid to the undersigned Seller.

Dated July 12th, 1985 SELLER:

STATE OF Idaho, COUNTY OF Butte ss. SELLER:

On this 12th day of July, 1985, before me, a Notary Public in and for said State, personally appeared Dexter Douglas and Bernadene Douglas and Richard Tethill

known to me to be the person whose name are subscribed to the within instrument, and acknowledged to me that he executed the same.

Idaho Residing at My Commission expires

(SEAL) Notary Public for

EXTRA BROKER'S COPY MICROFILMED

Affidavit of Publication

CHARLES CAMMACK

I, ...
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., 1985.....

and ending with the issue dated....Oct..3., 1985

Charles Cammack

Subscribed and sworn to before me this

17th day of Oct., 1985.

Lauris Samett

Notary Public

Residence: Arco, Idaho. 1-18, 91
My commission expires....., 19.....

RECEIVED

OCT 21 1985

Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 34-0092

Notice is hereby given that Fred Burt, Moore, Idaho has applied to the Department of Water Resources for a change in place of use of the waters of the Big Lost River. The right sought to be changed is evidenced by decree to John L. Blosser in case of Utah Construction Co. vs. John F. Abbott, et al dated in 10-21-1925 in district court and is recorded as follows:

AMOUNT: 1.04 cfs

PRIORITY: 5-20-1884

DECREED POINT OF DIVERSION:
SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4, T. 5N, R. 26E, B.M., Butte County.

The water is used to irrigate lands within the N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 29, T. 5N, R. 26E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be used to irrigate 68 acres within the N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 29, T. 5N, R. 26E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho 83402, on or before October 14, 1985.

A. KENNETH DUNN
Director

Published in the Arco Advertiser, Arco, Idaho on 9-26 & 10-3-85

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS No. 34-7079-34-2332

Notice is hereby given that Hillcreek Properties, Arco, Idaho has applied to the Department of Water Resources for a change in the place of use of the waters of groundwater sources. The rights sought to be changed are evidenced as follows:

License 34-7079 — AMOUNT: 2.76 cfs,
PRIORITY: 9-17-1974

License 34-2332 — AMOUNT: 2.90 cfs,
PRIORITY: 5-06-1955

Point of diversion for both rights:
NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R. 26E, B.M., Butte County.

The water (both rights) is used to irrigate 145 acres within the N $\frac{1}{2}$ N $\frac{1}{2}$, Sec. 21, T. 5N, R. 26E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R. 26E, B.M., Butte County; and used to irrigate 145 acres within the SW $\frac{1}{4}$, Sec. 2, T. 3N, R. 25E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho 83402, on or before October 14, 1985.

A. KENNETH DUNN

Published in the Arco Advertiser, Arco, Idaho on 9-26 & 10-3-85.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

Transfer

A. GENERAL INFORMATION

Permit No. 34-7079/2332

1. Owner: Hillcreek Properties

Phone No. 527-3133

Current Address: Rt 1 Box 447 Arco Id 83215

2. Accompanied by: Tony Bailly EXAM. DATE: 11 July 1990

Address: Same Phone No. _____

Relationship to Permit Holder: operator

3. Source: GROUNDWATER tributary to _____

B. OVERLAP REVIEW

1. Other water rights with same place of use: _____

☐ Copies Attached

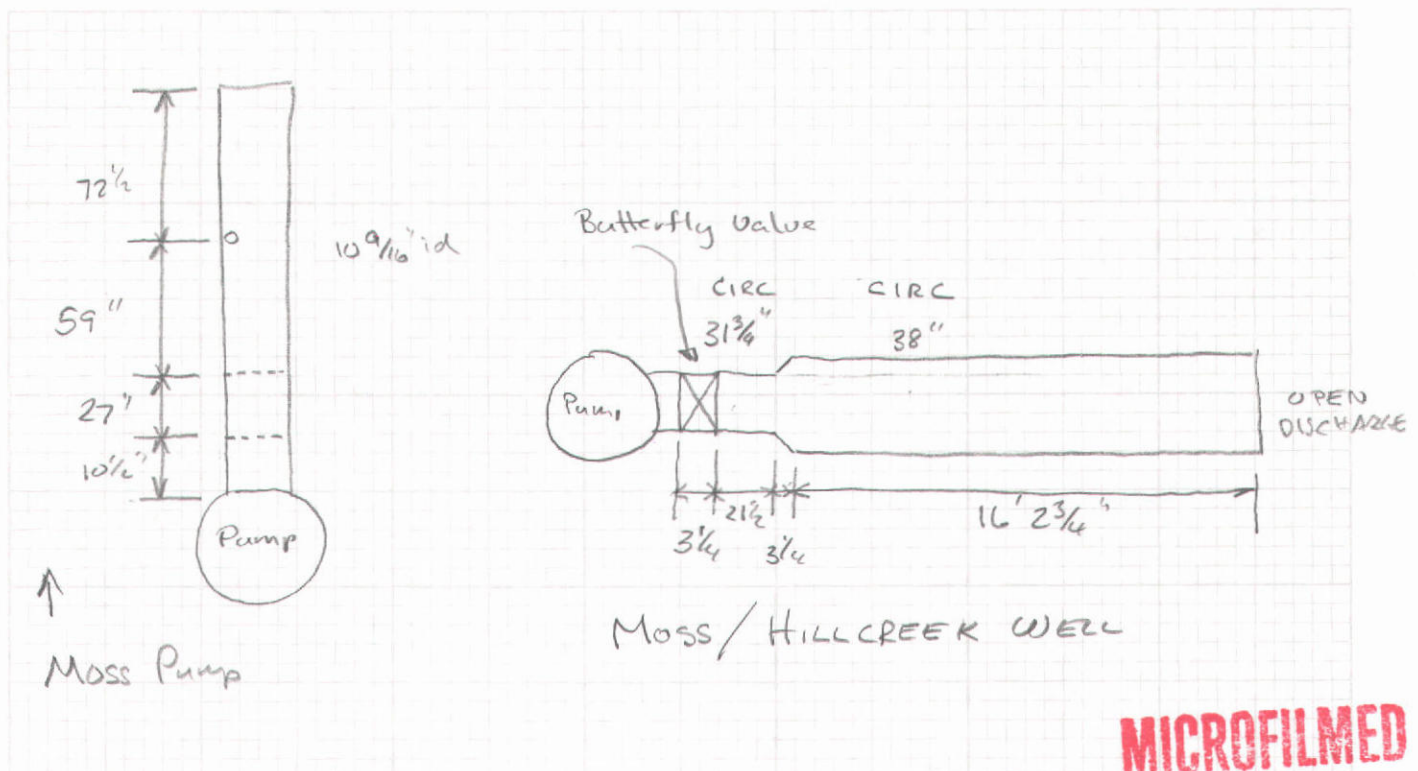
2. Other water rights with same point of diversion: _____

☐ Copies Attached

☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



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SEP 10 1992

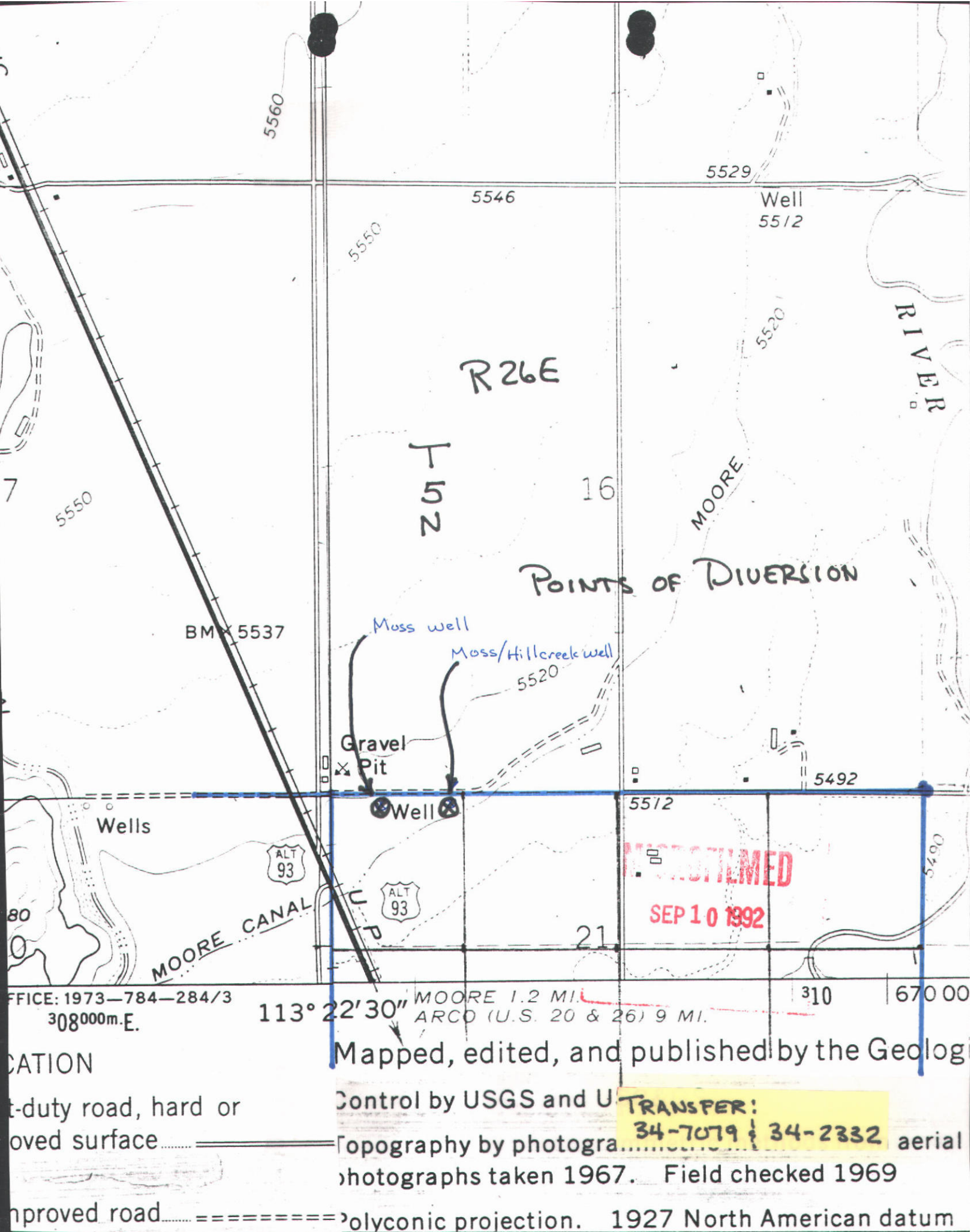
Scale: 1" = _____

2. ☐ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required).

☐ Photo of Diversion and System Attached

(required for all but single household domestic groundwater, and stockwater.

☐ Aerial Photo Attached
(required for irrigation of 10 acres or more).



LAW OFFICES

HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1968)

R. VERN KIDWELL, OF COUNSEL

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

July 2, 1990

RECEIVED

JUL - 2 1990

Department of Water Resources
Eastern District OfficeMr. Ronald D. Carlson
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Dear Mr. Carlson:

We have been requested by the owners of the P. U. Ranch to respond to your letter of June 14, 1990. We were basically aware of the background on Water Rights Nos. 34-2332 and 34-7074, including the stated condition that the pumping rate when the two licenses were combined was not to exceed 2.9 cfs.

Apparently the well was drilled when Mr. Estel Moss owned the land and later sold to Mr. Dexter Douglas, who in turn sold to Mr. Tuthill, the owner of P. U. Ranch. Mr. Tony Bailey came to the area to operate the P. U. Ranch lands in about 1984 and reports that this land and the well were acquired in 1986.

We recently revised the SRBA claims for the P. U. Ranch and in that effort, determined that the best evidence available indicates that the well pumped 400 miner's inches or more for many years. Those familiar with the use of the well feel the condition on the combination of 34-2332 and 34-7074 must have been a mistake because it is and has always been inconsistent with the intent of the owners and the actual practice.

Mr. Bailey reports that the well was still producing some 400 miner's inches in 1986 when P. U. Ranch acquired the property and that the water was delivered through a ditch into the Moore Canal of the Big Lost River Irrigation District and carried under a transport agreement with the district to the Crossover Ditch, then through the Timberdome Canal System to the place of use. Water is measured into the Moore Canal through a parshall flume.

Based on this information, we prepared SRBA claims for 2.9 cfs under 34-2332, 2.76 cfs under 34-7074, and the balance of

MICROFILMED

SEP 10 1992

Mr. Ronald D. Carlson
July 2, 1990
Page 2

2.34 cfs under a claim of expansion based on Idaho Code Section 42-2416(2). Those revised SRBA claims have now been filed.

Mr. Bailey reports that in 1988, the well produced less than 400 miner's inches; it was apparently measured at one time at 319 miner's inches. Then in 1989, the production diminished even further to less than 200 miner's inches. Hence, the application for a drilling permit was filed to drill a second well near the old one to regain the ability to pump up to the 400 inches required at that location to furnish adequate water for proper irrigation of the place of use.

The new well is several feet from the old well and nearer the Moore Canal. It was cased to about 200 feet and all perforations are below 80 feet. The well driller and Mr. Bailey were convinced they had gone through some pretty impervious material before they reached the 80 foot mark and at about 81 feet, they could hear water entering the well hole. This was before any water had been turned into the Moore Canal this season.

The intention is to operate one or both wells to the extent necessary to produce up to 400 miner's inches to be delivered into the Moore Canal. Both wells pump into the same ditch and the water is measured into the Moore Canal through the same parshall flume structure that has been used for several years. There is no desire or intention to abandon either well hole or pump. Neither is there any intention to divert more water than the total of the claimed rights.

We were not representing the P. U. Ranch when the application for drilling permit was filed or when IDWR prepared the new application for transfer. We confess that we are very skeptical about the legal need for an application for transfer. We have only heard, and that indirectly, that IDWR may have recently changed its policy about describing points of diversion. Whether that might be appropriate for new appropriations we are not prepared to say; but it seems clear to us that this new well has the same point of diversion as the old well under Licenses Nos. 34-2332 and 34-7074. We are quite doubtful that deepening of an existing well, or upgrading

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SEP 10 1992

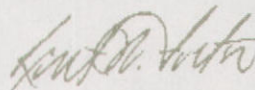
Mr. Ronald D. Carlson
July 2, 1990
Page 3

or replacing pumps or other equipment in an existing well, for the limited purpose of restoring the ability to pump up to the amount of the established rights, would be found by a court to constitute any type of change requiring a I.C.42-222 application. In many instances, such as this one, we understand it is more economical and fraught with less risk of nonsuccess to drill a new hole near the old one to effect the same objective than it would be to deepen the old one or attempt to correct the problem with new equipment. While someone who is directly injured by any of such activities would certainly be in a position to complain, we do not understand that to be the case here.

Nor can we see how this type of action, taken for the limited purpose of making it physically possible to divert the full entitlement, can constitute an injury, an enlargement, or be contrary to the local public interest, either actually or in theory.

P. U. Ranch does not object to a field inspection of either the old or new well; indeed, if you will call Mr. Bailey, or have us contact him for you, he will be happy to give you a personal tour at your convenience. However, a review of the SRBA claims should make it apparent that P. U. Ranch plans to pump either or both wells to the extent necessary to produce up to 400 miner's inches. We should also reconfirm that there is no intention to abandon either well at this point in time. In light of our understanding of the law, we do not see how we can advise our client that an approved transfer is necessary or even relevant to this particular circumstance.

Your very truly,



Kent W. Foster

cc: Norm C. Young, Administrator
Mr. Richard Tuthill
Mr. Tony Bailey

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SEP 10 1992

EXHIBIT "C"

LAW OFFICES

HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518ARTHUR W. HOLDEN (1877-1967)
ROBERT S. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF CO. INTEL

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

June 8, 1990

Ray W. Rigby, Esq.
RIGBY, THATCHER, ANDRUS,
RIGBY & KAM
P.O. Box 250
Rexburg, Idaho 83440

Dear Mr. Rigby:

Mr. Richard Tuthill's letter of May, 1990, to the Big Lost River Irrigation District, and your response to Mr. Tuthill on behalf of the district, dated May 19, 1990, have been referred to us. As you are aware, Mr. Tuthill does business also as Hillcreek Properties and P.U. Ranch. Mr. Tuthill has recently sought our advice respecting this and other questions regarding his water and conveyance rights. After our review, it appears that there has been some confusion, partially created by the filing of some applications for transfer, as well as the manner in which the water use was documented by the filing of the SRBA claims.

We have just completed a revision of the SRBA claims for Mr. Tuthill's water rights to more closely represent actual practices that have prevailed for a number of years. We have been requested to write to you to explain why we think Big Lost River Irrigation District ought to honor the existing transport agreements the same as others are being honored.

Mr. Tuthill has two farms, one of about 239 irrigated acres in Sections 15 and 22 of Township 4 North, Range 26 East, and the second consisting of some 264 irrigated acres in Sections 2, 3 and 10 of Township 3 North, Range 25 East.

The first farm is irrigated with water from Boyle Creek (Right No. 34-0557 for .4 cfs with a priority of May 1, 1886) which runs through the farm, storage water from Mackay Reservoir (this year Mr. Tuthill has been advised that there is a total of some 3,368 plus 622, or a total of 3,990 inches--we understand that the transport agreements do not provide for the

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SEP 10 1992

Ray W. Rigby, Esq.
June 8, 1990
Page 2

transport of this water to the farm on Era Flats), and with water from a well in the NW1/4 of the SW1/4 of Section 15, Township 4 North, Range 26 East (License No. 34-2512 for 4.4 cfs with a priority of June 3, 1960). The second farm is on Era Flat and receives water from decreed and licensed rights. Waters under such rights are diverted into the Moore Canal, thence to the Crossover Ditch, thence to the Blaine Canal and the Timberdome Canal Company system and on out to a private ditch from which two pivots sprinkle the land. These rights include:

<u>RIGHT NO.</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>PRIORITY</u>
34-0170 (Decree)	1.2 cfs	Big Lost River	05/01/1886
34-0556 (Decree)	2.8 cfs	Big Lost River	05/01/1886
34-2332 (License)	2.9 cfs	Groundwater	05/06/1955
34-7079 (License)	2.76 cfs	Groundwater	09/17/1979

We have reviewed a twenty-year Waterways Transport Agreement between Big Lost River Irrigation District and Mr. Tuthill dated December 6, 1983, which provides for the transport of the 4.0 cfs (200 inches) of May 1, 1886 decreed water rights through the Moore Canal for the Era Flats farm. We have also reviewed a first page of another Waterways Transport Agreement, dated July, 1985, for transport of water from a well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East, through the Moore Canal for the same farm. In addition, we have seen a first page of a document entitled "Transport Of Moss Well Agreement Issued By Lost River Irrigation District", also dated in July, 1985. The "Moss Well" and the well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East are the same well, which is the point of diversion for Rights Nos. 34-2332 and 34-7079.

It appears to us that actual transfers of Rights Nos. 34-0170, 34-0556, 34-2332 and 34-7079 occurred no later than December 6, 1983 and July of 1985, well before the SRBA commencement in November, 1987. Mr. Tony Bailey, who operates both farms for Mr. Tuthill, indicates that the well was producing at least 400 miner's inches when the transfers were effected. We have therefore documented both the transfers (under Idaho Code §42-1416(A)) and the enlargement (under Idaho Code §42-1416(2)) in the SRBA claims we have recently revised for Mr. Tuthill.

Apparently because the district refused to deliver the decreed rights pursuant to the transport agreement last year,

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Ray W. Rigby, Esq.
June 8, 1990
Page 3

IDWR advised Mr. Bailey to file an application for transfer of Rights Nos. 34-0170 and 34-0556 in March of this year, which he did. Of course, the application drew numerous protests and serves no purpose except to confuse. We think the actual transfers of all four rights were accomplished many years ago, perhaps at the time of the execution of the transport agreements and are more properly dealt with in the SRBA with other similar claims.

In addition, the well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East, has reduced substantially in capacity during the last couple of years. Another well is being drilled near the same location to bring the capacity back up to the total of the rights. Again, IDWR had Mr. Bailey file an application for transfer, although for what reason, we do not know. There is no proposed change in point of diversion, place of use, nature of use or season of use. The new well is in the same quarter--quarter section and will discharge into the same ditch which delivers the water into the Moore Canal for transport under the existing agreements. If notice of this application for transfer is published, it will undoubtedly draw numerous protests as well. We do not believe either application is necessary because the transfers, which occurred before 1987, have now been properly raised and documented in the SRBA claims and will be dealt with as all similar claimed rights in that proceeding.

We, therefore, request that Big Lost River Irrigation District honor its contractual obligations under the above-referenced transport agreements, the same as in all similar circumstances. We would be happy to discuss this matter with you or to supply any additional information that might be requested.

We will very much appreciate hearing from you as soon as possible with respect to this matter.

Yours very truly,

Kent
Kent W. Foster

#7180.00/srr

cc: Norm C. Young

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SEP 10 1992

June 14, 1990

Mr. Tony Bailey
P.U. Ranch
Rt. 1, Box 447
Arco, ID 83213

Dear Mr. Bailey:

A number of questions have recently arisen concerning water rights 34-2332 and 34-7079 held by P.U. Ranch and the replacement well presently being drilled in conjunction with these rights.

In way of background, P.U. Ranch originally acquired license 34-2332 (Transfer 3214) for 2.90 cubic feet per second. Later permit No. 34-7079 was requested to pump water from the existing well to additional acreage. Since the system pumping capacity was not increased, 34-7074 was licensed with a condition that the pumping rate in combination with right 34-2332 could not exceed 2.90 cfs. Thus, any combination of wells diverting water under these rights can not exceed a combined diversion rate of 2.90 cfs.

In October of 1989 you requested a drilling permit to deepen the well from which the above referenced rights have been diverted. In May of 1990, you again contacted this office and asked if you might abandon the existing well and drill a new well in the same forty-acre subdivision or if necessary use both wells. You were advised that:

1. If the new well was to replace the old well then this office would allow the drilling permit to be used for the new well provided that the old well be abandoned according to Rule 3,12,1 upon completion of the new well.
2. If the new well does not produce the quantity of water necessary to deliver their rights (requiring that the old well be used), then an application for transfer must be filed with the Department.

No water may be diverted from the new well until the transfer is approved, and if the transfer is not approved the well would have to be abandoned according to Rule 3,12,1.

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SEP 10 1992

Mr. Tony Bailey
June 14, 1990
Page 2

3. Since the new well is to be drilled closer to the canal, if water is encountered approximate to the depth of the canal, the well must be cased and unperforated through the first impermeable layer encountered.

We anticipate field inspecting all wells used under rights 34-2332 and 34-7079 to assure that the total rate of diversion does not exceed 2.90 cfs. If more than one well is to be used it must be clear that an approved transfer from the Department will be required prior to diverting any water from the new well. If the new well will produce 2.90 cfs, the original well must be properly abandoned.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: Kent Foster

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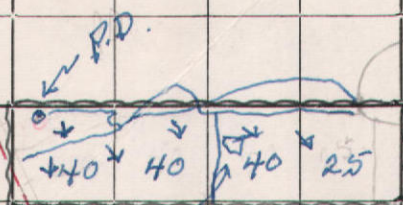
R-26E.

T.
5
N.

20

22

28



house
21

Big Lost River
U.S. HWY. 63
N. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Subdivisions = 4

Area = 145 acres.

$Q = 145''$

Pumping 225" checked over 2' Cipe. weir

Pub. notice is wrong.

Affidavit of Publication

RECEIVED
APR 15 1959
Department of Reclamation

I, Dolly Cross, 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 4 (four) consecutive weeks, commenc-
ing with the issue dated March 20, 1959
and ending with the issue dated April 10, 59,

Dolly Cross, Dolly Cross

Subscribed and sworn to before me this

14th day of April, 1959

J.H. Kester

Notary Public

Residence, Arco, Idaho.

My commission expires 9-8, 1961

LEGAL NOTICE

NOTICE OF PROOF OF COMPLETION OF WORKS AND APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 a. m., on the 14th day of April, 1959, at Arco, Idaho, County of Butte, State of Idaho, before Hartley P. Kester, Notary Public, at Memorial Building, Arco, Idaho, proof will be submitted of the completion of works for the diversion of 3.2 cubic feet per second of underground water from a well, and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. G-25678 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit is A. Etsel Moss, Moore, Idaho.

2. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 5 cubic feet per second.

3. The use to which said water has been applied is Irrigation purposes, and the amount applied to beneficial use is 5 cubic feet per second.

4. The point of diversion of said water is NW 1/4 NW 1/4, Sec. 21, Twp. 5 No., Rge. 26 E. B. M.

5. The place where said water is used is NW 1/4 NW 1/4, Sec. 21, Twp. 5 No., Rge. 26 E. B. M.

6. The date of priority which said user is prepared to establish is May 6, 1955.

GEO. N. CARTER,
State Reclamation Engineer.
Pub. Mar. 20, 27, Apr. 3, 10, 1959.

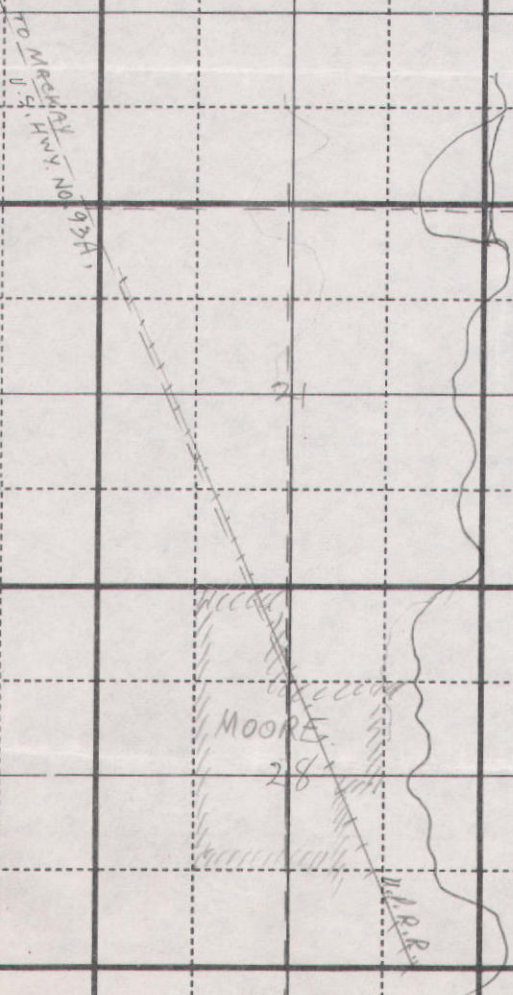
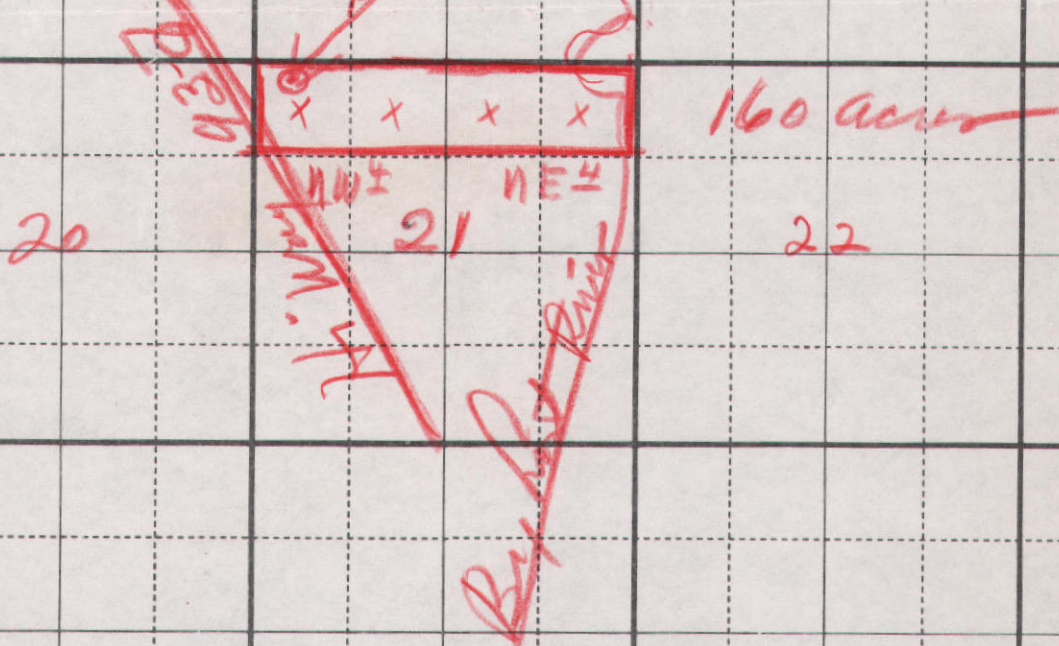
G25678

268

A Etzel Moss

Township 5 N - Range 26 E BM -
Butte County Ind -

Location of Well -



Permit Map No. 9-25678
As Approved
MAY 11 1955
MARK R. KULP
State Reclamation Engineer

25678

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 27 1993
DEPT. 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.

Tony Bailey manager
Signature

9-20-93
Date

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

OCT 19 1993

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3705

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

APPROVED

Name of applicant Hill Creek
Hillcrest Properties Phone 527-3133
Post Office address % Richard Tuftill Rt. 1 Box 447 Arco, ID 83213

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other ESTD 1885
2. Describe the reason for the proposed changes The production of the existing well has declined because of the drop in a water table.

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

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>34-02079</u>	<u>Sept. 17, 1974</u>	<u>2.76</u>	<u>Irrigation</u>	<u>April 1</u> to <u>Nov. 1</u>
<u>34-02332</u>	<u>May 6, 1955</u>	<u>2.90</u>	<u>Irrigation</u>	<u>April 1</u> to <u>Nov. 1</u>
				to
				to

2. Total amount of water being transferred 2.90 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		<u>NW</u>	<u>NW</u>	<u>21</u>	<u>5N</u>	<u>26E</u>	<u>Butte</u>	<u>[REDACTED]</u>

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>3N</u>	<u>2SE</u>	<u>2</u>									<u>36</u>	<u>36</u>	<u>36</u>	<u>37</u>					<u>145</u>

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Total acres 145.

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 rediverted into the C.H. Moore 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 Dome Canal. The point of rediversion from the Timber Dome Canal is in the SE 1/4 NE 1/4 Section 35 T4N, R. 25E.

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.

MICROFILMED**SEP 10 1992**

Witness my hand this _____

day of _____

*August*19 *92**J. Glen Saylor*
CHIEF, WATER ALLOC. BUREAU

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 10 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:

34-07079 amount 2.76 for Irrigation purposes from 4/1 to 11/1
 (cfs/ac-ft) 34-02332
 amount 2.90 for _____ purposes from 4/1 to 11/1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right 2.90 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	26E	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																	145

Total acres 145

9. Describe any other water rights used for the same purpose as described above None.

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

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

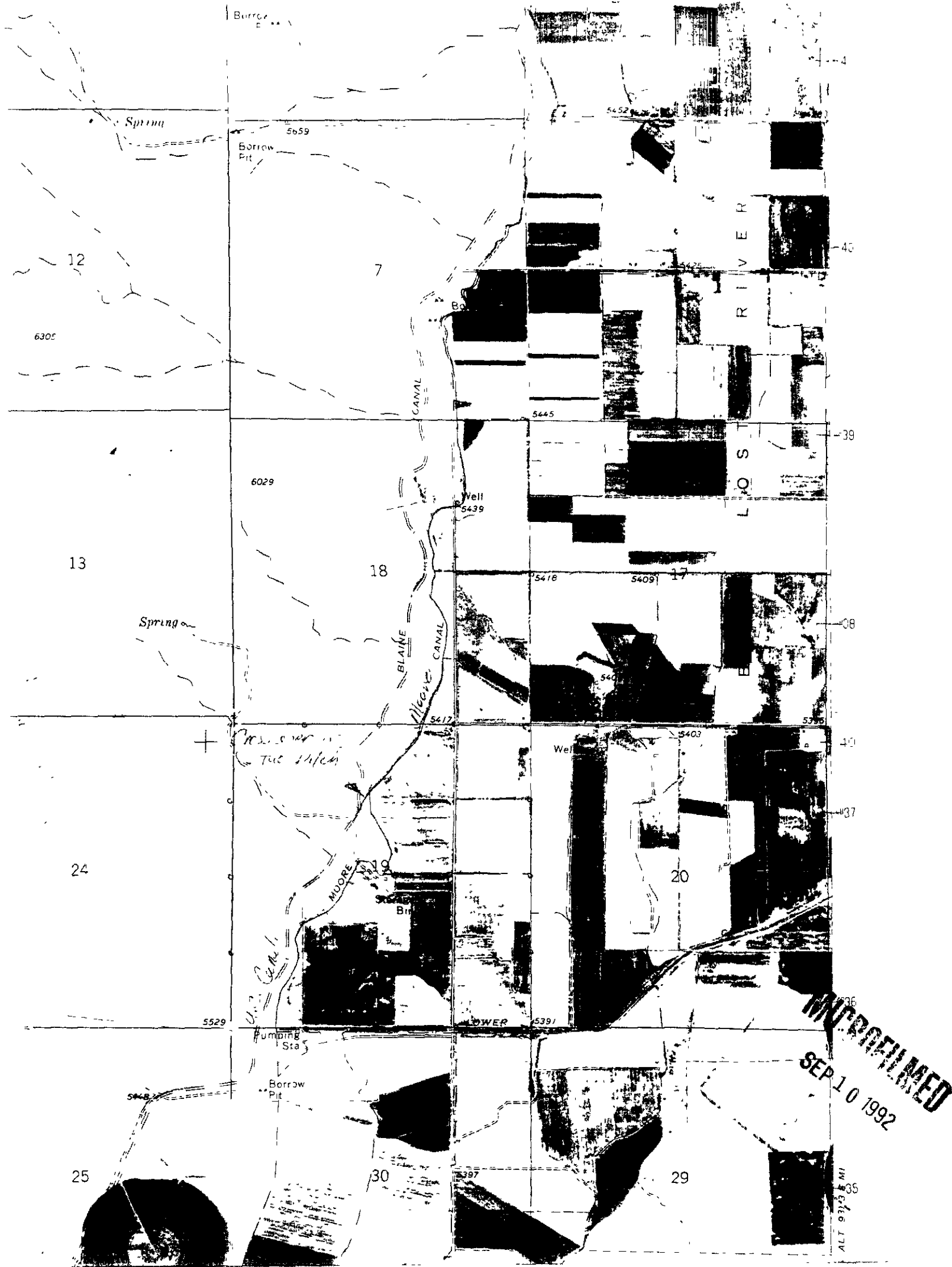
Total acres _____

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SEP 10 1992

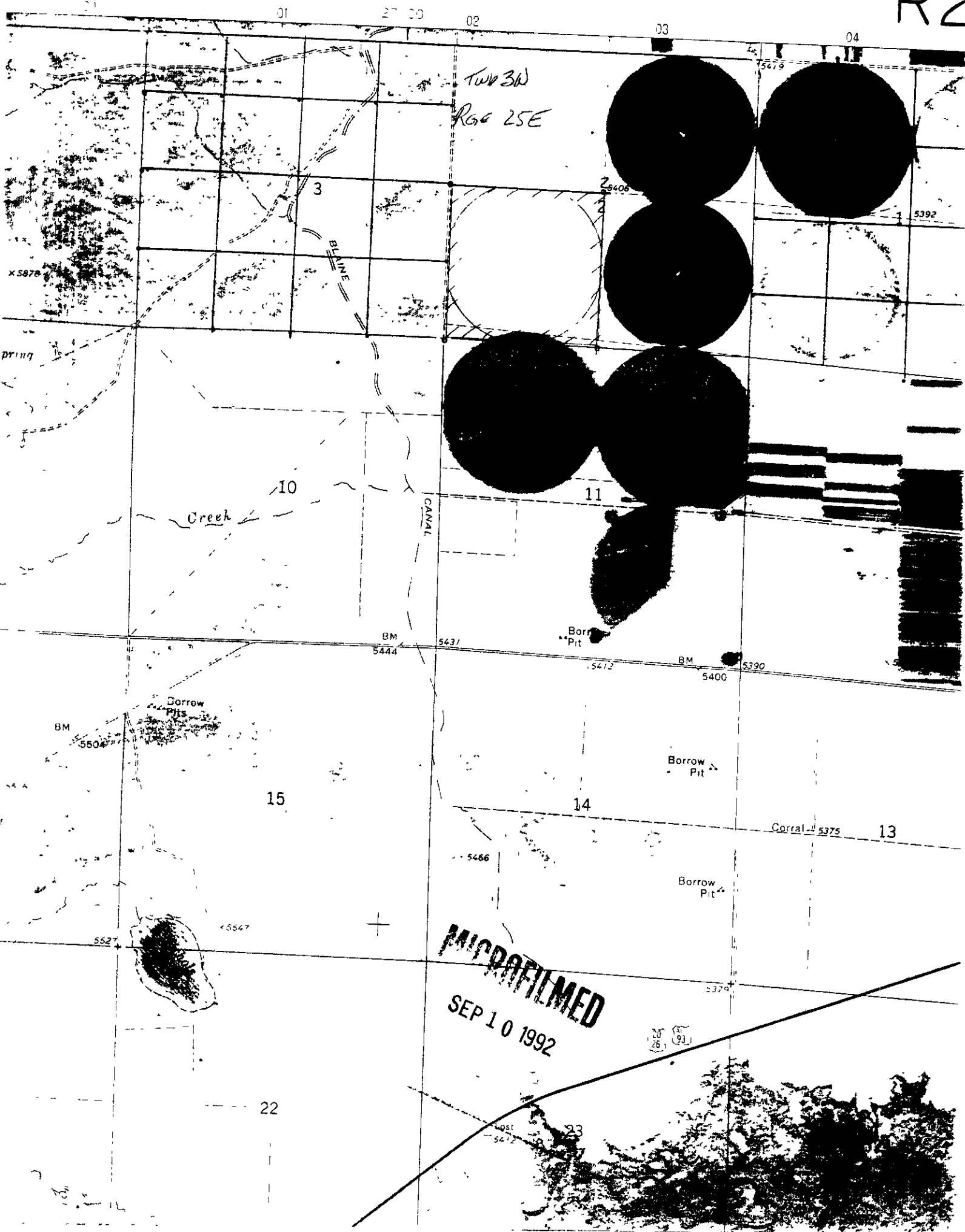
This is an aerial photograph of the Moore Canal area in California. The map shows the Moore Canal running vertically through the center. To the left of the canal, there are several rectangular fields and a road labeled 'ROAD'. To the right, there is a large area of land with various features labeled, including 'Gravel Pit', 'Pioneer Cem', and 'HILL'. A prominent label in the center reads 'POINT OF DIVERSION Moore Canal'. The map is overlaid with a grid of lines, with coordinates marked along the edges. A stamp in the bottom right corner indicates the map was 'FILMED SEP 10 1992'. Other labels include 'R26E', 'T6N', 'T5N', '5619', '5636', '5550', '5529', '5512', '5495', '5476', '5492', '5494', '5496', '5498', '5499', '5500', '5501', '5502', '5503', '5504', '5505', '5506', '5507', '5508', '5509', '5510', '5511', '5512', '5513', '5514', '5515', '5516', '5517', '5518', '5519', '5520', '5521', '5522', '5523', '5524', '5525', '5526', '5527', '5528', '5529', '5530', '5531', '5532', '5533', '5534', '5535', '5536', '5537', '5538', '5539', '5540', '5541', '5542', '5543', '5544', '5545', '5546', '5547', '5548', '5549', '5550', '5551', '5552', '5553', '5554', '5555', '5556', '5557', '5558', '5559', '5560', '5561', '5562', '5563', '5564', '5565', '5566', '5567', '5568', '5569', '5570', '5571', '5572', '5573', '5574', '5575', '5576', '5577', '5578', '5579', '5580', '5581', '5582', '5583', '5584', '5585', '5586', '5587', '5588', '5589', '5590', '5591', '5592', '5593', '5594', '5595', '5596', '5597', '5598', '5599', '5600', '5601', '5602', '5603', '5604', '5605', '5606', '5607', '5608', '5609', '5610', '5611', '5612', '5613', '5614', '5615', '5616', '5617', '5618', '5619', '5620', '5621', '5622', '5623', '5624', '5625', '5626', '5627', '5628', '5629', '5630', '5631', '5632', '5633', '5634', '5635', '5636', '5637', '5638', '5639', '5640', '5641', '5642', '5643', '5644', '5645', '5646', '5647', '5648', '5649', '5650', '5651', '5652', '5653', '5654', '5655', '5656', '5657', '5658', '5659', '5660', '5661', '5662', '5663', '5664', '5665', '5666', '5667', '5668', '5669', '5670', '5671', '5672', '5673', '5674', '5675', '5676', '5677', '5678', '5679', '5680', '5681', '5682', '5683', '5684', '5685', '5686', '5687', '5688', '5689', '5690', '5691', '5692', '5693', '5694', '5695', '5696', '5697', '5698', '5699', '5700', '5701', '5702', '5703', '5704', '5705', '5706', '5707', '5708', '5709', '5710', '5711', '5712', '5713', '5714', '5715', '5716', '5717', '5718', '5719', '5720', '5721', '5722', '5723', '5724', '5725', '5726', '5727', '5728', '5729', '5730', '5731', '5732', '5733', '5734', '5735', '5736', '5737', '5738', '5739', '5740', '5741', '5742', '5743', '5744', '5745', '5746', '5747', '5748', '5749', '5750', '5751', '5752', '5753', '5754', '5755', '5756', '5757', '5758', '5759', '5760', '5761', '5762', '5763', '5764', '5765', '5766', '5767', '5768', '5769', '5770', '5771', '5772', '5773', '5774', '5775', '5776', '5777', '5778', '5779', '5780', '5781', '5782', '5783', '5784', '5785', '5786', '5787', '5788', '5789', '5790', '5791', '5792', '5793', '5794', '5795', '5796', '5797', '5798', '5799', '5800', '5801', '5802', '5803', '5804', '5805', '5806', '5807', '5808', '5809', '5810', '5811', '5812', '5813', '5814', '5815', '5816', '5817', '5818', '5819', '5820', '5821', '5822', '5823', '5824', '5825', '5826', '5827', '5828', '5829', '5830', '5831', '5832', '5833', '5834', '5835', '5836', '5837', '5838', '5839', '5840', '5841', '5842', '5843', '5844', '5845', '5846', '5847', '5848', '5849', '5850', '5851', '5852', '5853', '5854', '5855', '5856', '5857', '5858', '5859', '5860', '5861', '5862', '5863', '5864', '5865', '5866', '5867', '5868', '5869', '5870', '5871', '5872', '5873', '5874', '5875', '5876', '5877', '5878', '5879', '5880', '5881', '5882', '5883', '5884', '5885', '5886', '5887', '5888', '5889', '5890', '5891', '5892', '5893', '5894', '5895', '5896', '5897', '5898', '5899', '5900', '5901', '5902', '5903', '5904', '5905', '5906', '5907', '5908', '5909', '5910', '5911', '5912', '5913', '5914', '5915', '5916', '5917', '5918', '5919', '5920', '5921', '5922', '5923', '5924', '5925', '5926', '5927', '5928', '5929', '5930', '5931', '5932', '5933', '5934', '5935', '5936', '5937', '5938', '5939', '5940', '5941', '5942', '5943', '5944', '5945', '5946', '5947', '5948', '5949', '5950', '5951', '5952', '5953', '5954', '5955', '5956', '5957', '5958', '5959', '5960', '5961', '5962', '5963', '5964', '5965', '5966', '5967', '5968', '5969', '5970', '5971', '5972', '5973', '5974', '5975', '5976', '5977', '5978', '5979', '5980', '5981', '5982', '5983', '5984', '5985', '5986', '5987', '5988', '5989', '5990', '5991', '5992', '5993', '5994', '5995', '5996', '5997', '5998', '5999', '6000'.

SEP 10 1992



UNCLASSIFIED
SEP 10 1992

ALT 93123 E MI 35



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

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

FILE
SEP 10 1992

SCALE 2 inches equal 1 mile. Draw plan II

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 May 22, 1990.

Tony Bailey
Manager (Signature of Applicant)

Ernest Carlson
(Notary Public)

My commission expires May 22, 1990.

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by ENC Date May 22, 1990 Protest filed by _____

Prelim. check by _____ Fee \$50.00 E014652

Receipted by ENC Date May 22, 1990

Published 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 _____

RECEIVED
SEP 10 1992

AFFIDAVIT OF PUBLICATION

I, Colleen Babcock
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 June 7, 1990

and ending with the issue dated

June 14, 1990
Colleen Babcock

STATE OF IDAHO

COUNTY OF BUTTE

On this 14 day of June

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

personally appeared

Colleen Babcock

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

Thomas D. Connell
Notary Public for Idaho

Residing at

Arco, ID.

My commission expires

12-17-91

RECEIVED

JUN 15 1990

Department of Water Resources
Eastern District Office

SEP 11 1990

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

JUN 10 1990

I, Margaret Parks, Publisher of
the Challis Messenger, a weekly newspaper,
published at Challis, Idaho, do solemnly swear
that the notice hereto attached and made a part
hereof, was published in the regular and entire
issue of the Challis Messenger for 2
consecutive weeks, commencing with the issue
dated June 7 1990 and ending with the
issue dated June 14 1990

Department of Water Resources
Eastern District Office

Margaret Parks

STATE OF IDAHO

COUNTY OF CUSTER

On this 14 day of June in
the year of 90, before me, a Notary Public,

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

Mae Kopp
Notary Public for Idaho
Residing at Challis
My commission expires: 11/7/94

sought to be changed is authorized
by Transfer No. 34-7078 &
34-2332, which is on file with the
right and is recorded as follows:

NO. 34-7078 AMOUNT: 2.50
CFS PRIORITY: SEPT. 17, 1974
NO. 34-2332 AMOUNT: 2.50
CFS PRIORITY: MAY 8, 1988

TOTAL AMOUNT OF WATER
UNDER THIS RIGHT: 5.00 CFS
POINT OF DIVERSION: NW 1/4
SEC 21 T 5N R 20E, B.M.

The water is now within the
NWNW SEC 21 T 5N R 20E, B.M.
COUNTY from April 1 to November
1 to irrigate 1.50 acres of land
within the SW SEC 2 T 3N R 20E,
B.M.

TO BE CHANGED AS FOL-
LOWS:

The water will be diverted from
the NWNW SEC 21 T 5N R 20E,
(TWO POINTS) BLAKE COUNTY.

Any protest against approval of
the above proposed change of wa-
ter right must be filed with the Id-
aho Department of Water Resource-
es, 150 Shoup Ave., Boise Falls,
ID, 83401, on or before June 25,
1990.

R. Keith Higginson, Director
Pub: June 7 & 14, 1990.

RECORDED

SEP 10 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 10 1990

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

MIROFILMED

SEP 10 1992

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 Norman C. Young
R. KEITH HIGGINSON
Director

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SEP 10 1992

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

Name of applicant Hillcreek Properties Phone 527-3151

Post 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 annum
- 7 Location of original point of diversion is NW ¼ of NW ¼ of Section 21 Township 5N Range 26E, B.M., in Butte County
- Additional points of diversion, if any
- 8 Lands irrigated or place of use:

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	26E	21	34	36			39	36											145

Total number of acres to be irrigated 145

9 Describe any other water rights used for the same purpose as described above 34-2332

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

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

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- 1 Amount of water a _____ cubic feet per second
&/or
b _____ acre feet per annum
- 2 Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B M., _____ County
Additional points _____
- 3 Place of use:

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

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 ¼ NW ¼, 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 1 acre feet per acre.

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 ¼ of NW ¼ of Section 21
Township 5 N Range 26E, B.M., in Butte County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			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 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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c Describe the land place of use to which the right will be transferred

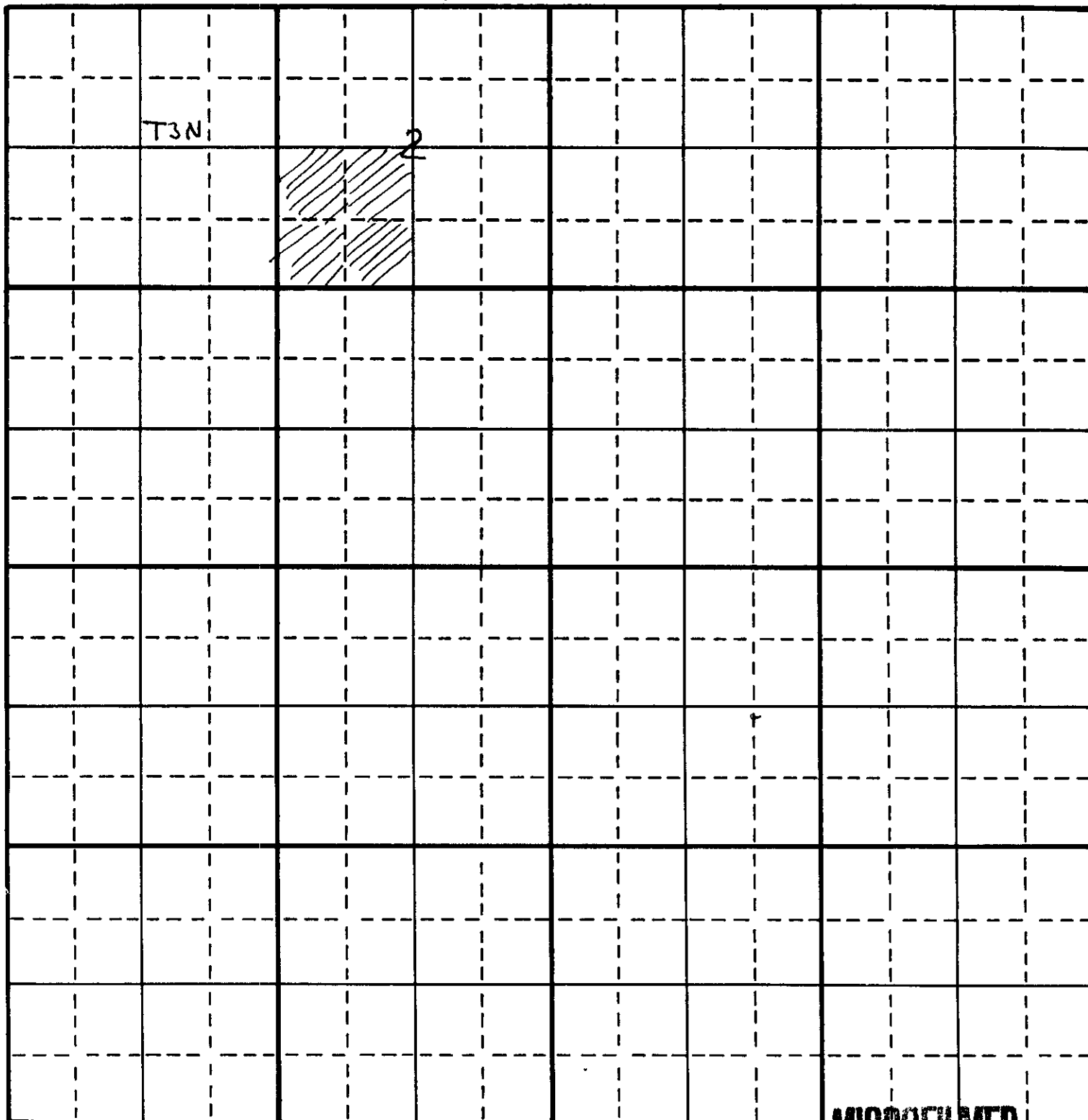
TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
3 N	25E	2									36	36	36	37					145

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



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MICROFILMED

D REMARKS

water from the well will discharged directly into the Moore canal, where it will 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 ~~SEKNEK~~ 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. Douthett, Pres
(Signature of Applicant)

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

Charles G. Jones
(Notary Public)

My commission expires life

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 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.

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 #35479
Published in Inco Advertiser Copies of protest forwarded by _____
Pub. dates 9/26 & 10/3/85 Hearing held by _____ Date _____
Watermaster recommendation requested on NH Recommended for approval denial
_____ rec'd. by RDC Jim

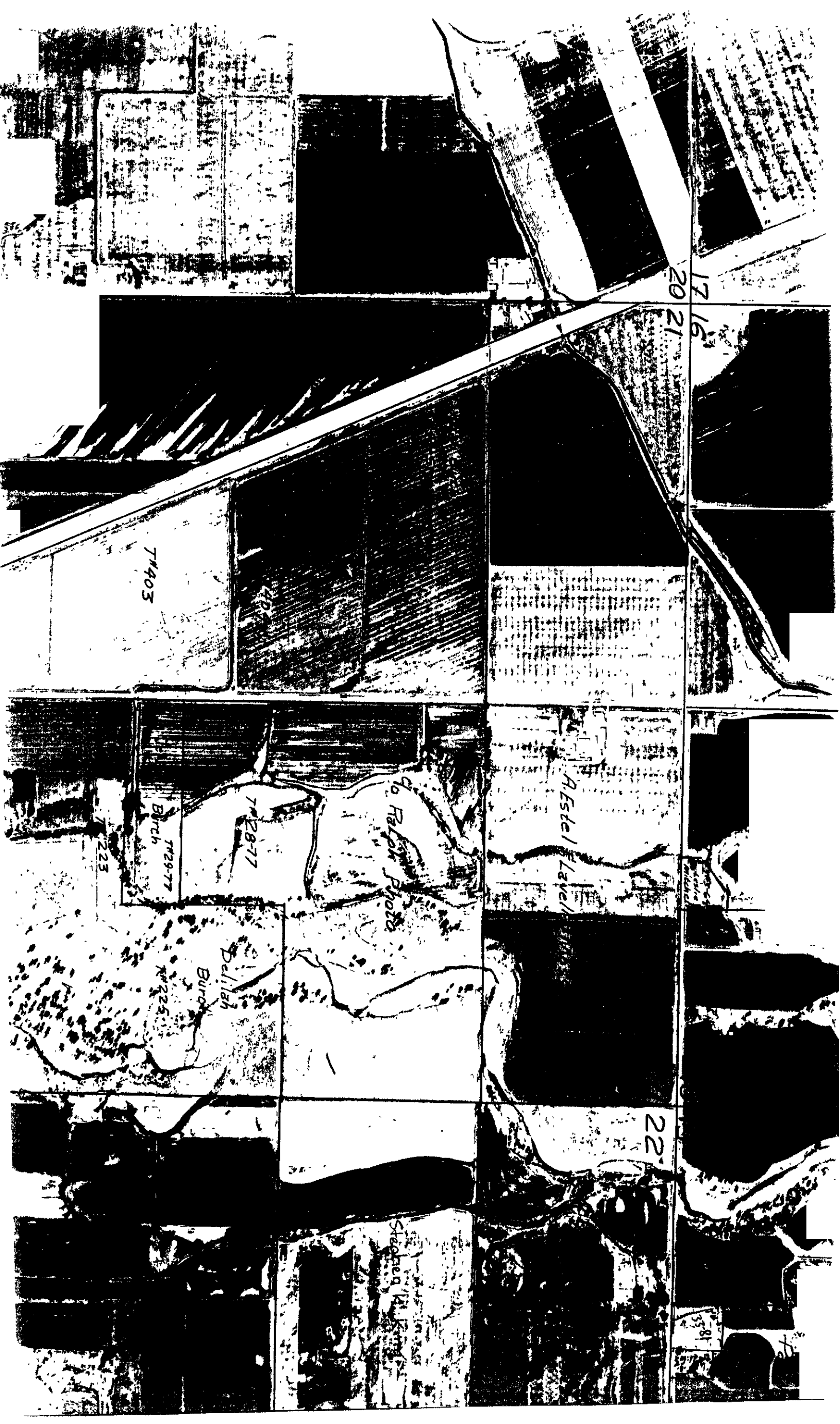
AFFIDAVIT

A Etzel Moss

deposes and says: he is owner of lands under approved water permit
numbers 31-7079 and 34-2332 and has been since the permits were issued.
He further states that he has no objection to the permits and water rights
being transferred from his land to other lands.

Residing at Arco Idaho
My Commission Expires Sept

WILKINSON



20 17

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29 8

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35 2

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A. Estel Elavell

Co. Ralph Photo

Burch

Delilah

Burch

Stephen R. King

581

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1984
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047

MARKET VALUE
248,567
57,163L
90,208I N2NE4, NE4NW4;
101,196P FR NW4NW4 ~~413-83~~
SEC 21 20-83
15,877HM

TAX CODE AREA
4-00RPO5N26E210150A

PARCEL NUMBER
2166

STATE
COUNTY
SCHOOL #111
CEMETERY
FIRE
LIBRARY
HOSP DIST
HOSP 67
LOST RIVER REC

DATE
.000005
.002872
.004353
.000040
.000554
.000445
.000552
.000143
.000600

AMOUNT
1.16
668.30
1,012.90
9.33
128.93
103.54
128.44
33.28
139.62

FULL PAYMENT
TAX 2,221.88
PEN
SUB TOT
INT
TOT
1ST INSTALLMENT
TAX 1,110.94
PEN
SUB TOT
INT
TOT

SUB TOTAL
TAX CANCELLED
TOTAL

DELINQUENT CERT
232,690*
WAC 15.230
AC 144.230
MOSS, A EITSEL
& MOSS, LAVELLA
RT. 1 BOX 102
MOORE, ID 83255

+

COPY

PLEASE READ BACK OF TAX NOTICE---THANK YOU

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT
REAL PROPERTY 1984 RPO5N26E210150A
MOSS, A EITSEL
& MOSS, LAVELLA

2166
COPY

SPECIAL CODE
TAX
CODE
AREA
TAX
TOTAL TAX

1,110.94
1,110.94
1,110.94
1,110.94
2,221.88

2ND INSTALLMENT
PEN
SUB TOT
INT
TOT

1,110.94
1,110.94
1,110.94
1,110.94
2,221.88

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO
BUTTE COUNTY TAX COLLECTOR

DELINQUENT IF NOT PAID ON OR BEFORE
DATE PAID
PAID BY

JUNE 20, 1985
CHECK #
CASH

DELINQUENT IF NOT PAID ON OR BEFORE
DATE PAID
PAID BY

DECEMBER 20, 1984
CHECK # 406
CASH

+

COPY

PLEASE READ BACK OF TAX NOTICE---THANK YOU

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT
REAL PROPERTY 1984 RPO5N26E210150A
MOSS, A EITSEL
& MOSS, LAVELLA

2166
COPY

SPECIAL CODE
TAX
CODE
AREA
TAX
TOTAL TAX

1,110.94
1,110.94
1,110.94
1,110.94
2,221.88

2ND INSTALLMENT
PEN
SUB TOT
INT
TOT

1,110.94
1,110.94
1,110.94
1,110.94
2,221.88

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO
BUTTE COUNTY TAX COLLECTOR

DELINQUENT IF NOT PAID ON OR BEFORE
DATE PAID
PAID BY

JUNE 20, 1985
CHECK #
CASH

DELINQUENT IF NOT PAID ON OR BEFORE
DATE PAID
PAID BY

DECEMBER 20, 1984
CHECK # 406
CASH

(Optional)
Record

Not Public

Not Public

Butte

Beginning at the NW corner of said NW1/4, thence East 1,230 feet; thence South to the North boundary of the Moore Canal; thence following said Moore canal boundary Southwesterly to the Railroad right-of-way; thence Northwesterly along said right-of-way to point where it intersects a county road running North and South; thence North along county road right-of-way to the point of Beginning, Containing therein 11 acres more or less.

The only irrigation water belonging to this parcel is represented by a well located thereon

Entered	☒
C	☒
	☒

JUN 11 1983

12:20 PM

[Signature]

Location of above described property

Moore, Idaho

Street

WITNESS the hand of _____ the

day of _____ AD 19

June 11, 1983

cc Butte 17 of June AD 1983

appears _____ Its _____ and _____, husband and wife

Are _____ Lifetime

MADE PUBLIC

AT CAN

Last River Title Co

Dexter Douglas

A Idaho

S F D _____, Idaho

EARNEST MONEY AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE

RECEIVED OF:

IDAHO,

July 12th

19 55

Richard Tuthill

herein called "Buyer," the sum of Ten Thousand and no/100 (\$ 10,000.00) Dollars in the form of check paid to the broker as earnest money and in part payment of the purchase price for the following property situate in Butte County, Idaho Legal description attached hereto and made a part hereof That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21 Township 5 North, Range 26 East, Boise Meridian described as follows:

Beginning at the NW corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ thence East 1,230 feet; thence South to the North boundary of the Moore Canal; thence following said Moore canal boundary Southwesterly to the Railroad right-of-way; thence Northwesterly along said right-of-way to point where it intersects a county road running North and South; thence North along county road right-of-way to the point of Beginning, Containing therein 11 acres more or less.

The only irrigation water belonging to this parcel is represented by a well located thereon.

This deed is contingent upon the buyer being allowed to transfer this water from the above mentioned well to other lands with all the proper papers from the Dept of water resources of Idaho, and also upon approval of the di. cont river irrigation as to waterways transport agreements being signed by them. Upon the above agreements being signed, all of the balance of the purchase price is due and payable, and shall not be later than six months from date hereof.

(If more space is needed continue on reverse side)
Seller authorizes the real estate broker, hereinafter referred to as "Broker," to order and charge to Seller's account, immediately upon acceptance of this offer, and of assurance of any contemplated financing, if provided for hereinabove, either a policy of Title Insurance (using a preliminary title report prior to close of sale, after which the Title Insurance Policy will be issued) or, at the Seller's option an abstract of title certified to a date subsequent hereto evidencing condition of the title for inspection and approval of the Buyer. If Buyer's approval of the condition of the title is withheld, Buyer shall have 10 days after receipt of evidence of title in which to deliver to Seller or Broker written objections thereto. Failure to so object within the 10 day time limit provided shall be deemed approval and acceptance of the condition of the title. The Broker shall in no way be responsible for delivery to Buyer, or condition of the title.

The earnest money deposited herein shall be refunded to Buyer and this agreement voided if the Seller fails to accept Buyer's offer within the time provided, or if merchantable title cannot be delivered within a reasonable time. Should the improvements on subject property be materially damaged by fire or otherwise, prior to closing this sale, this agreement shall be voidable at the option of the Buyer.

Unless otherwise provided herein, the real property shall be conveyed by warranty deed, free of encumbrances except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements of record. Any encumbrances to be discharged by Seller may be paid out of the purchase money at date of closing.

The parties hereto authorize the Broker to arrange financing, if financing is required and Buyer agrees to use his best efforts to obtain such financing. Financing costs shall be paid by Buyer. However, if FHA or GI regulations apply to limit Buyer's loan service fee, Seller agrees to pay any excess thereof.

All taxes, rents, insurance premiums and interest shall be prorated as of possession date, which shall be on or before August 1st, 19 55

In case the Buyer shall fail to promptly perform any covenant or agreement aforesaid and to do all things necessary and prerequisite to the consummation of this sale, the Seller may declare a forfeiture of this contract, and all rights of the Buyer shall cease and payments made by him may be retained by the Seller as liquidated damages, and not as a penalty, or the Seller may pursue any other remedy available under the laws of the State of Idaho. In any action brought upon this agreement, the prevailing party shall be entitled to reasonable attorney fees.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties hereto, and time is of the essence hereof. There are no verbal agreements which modify the terms and conditions hereof.

Broker: P C Schwin BUYER: [Signature] (Address)

By Chic A Jones BUYER: _____ Phone: _____

SELLER ACCEPTS the foregoing terms and conditions and agrees to sell the above property to Buyer and to pay the Broker's commission

which the Broker shall have the right to retain from the proceeds of this sale. In the event the earnest money receipted for in connection with this sale is forfeited, Seller agrees that one-half thereof shall be retained by the broker, provided the amount to the broker does not exceed the agreed upon commission due, and the balance shall be paid to the undersigned Seller.

Dated July 12th, 19 55 SELLER: [Signature]

STATE OF Idaho COUNTY OF Butte ss. SELLER: [Signature]

On this 12th day of July, 19 55, before me, a Notary Public in and for said State, personally appeared Dexter Douglas and Bernadene Douglas and Richard Tuthill

known to me to be the person whose name _____ subscribed to the within instrument, and acknowledged to me that he executed the same.

Notary Public for

Idaho

Residing at

My Commission expires

EXTRA BROKER'S COPY

(If more space is needed, continue on reverse side.)
Buyer hereby offers to purchase the above described property in its present condition, after full inspection, on the terms and conditions herein provided for, and agrees to give the seller _____ days, from this date, to accept said terms and conditions during which time this offer shall not be revokable.

Included as part of the property sold to the buyer are such of the following items as may now be on the premises, which will be delivered free and clear of encumbrances: All existing linoleum, window screens, screen doors, television antennae, shades, venetian blinds, curtain rods, attached lighting, plumbing and bathroom fixtures, water-heating apparatus and fixtures, awnings, ventilating, cooling and heating systems, irrigation fixtures and equipment, all water and water rights, ditches, and ditch rights appurtenant thereto, and subject to the assessments therein, trees, plants and shrubs and all other attached fixtures not herein reserved or excepted; together with the following personal property:

One deep water irrigation well with a 75 HP motor pumping 30-40 inches of water together with legal rights thereto. Located on the above mentioned land. State Lic # 34-38
The total purchase price is:

Seventy Thousand and no/100 (\$ 70,000.00) Dollars
and after deducting the sum hereinbefore receipted for the balance shall be payable as follows:

This deal is contingent upon the buyer being allowed to transfer this water from the above mentioned well to other lands with all the proper papers from the Dept of water resources of Idaho, and also upon approval of the B.I. West River Irrigation as to Waterways Transport Agreements being signed by them. Upon the above agreements being signed, all of the balance of the purchase price is due and payable, and shall not be later than six months from date hereof.

(If more space is needed, continue on reverse side.)
Seller authorizes the real estate broker, hereinafter referred to as "Broker," to order and charge to Seller's account, immediately upon acceptance of this offer, and of assurance of any contemplated financing, if provided for hereinabove, either a policy of Title Insurance (using a preliminary title report prior to close of sale, after which the Title Insurance Policy will be issued) or, at the Seller's option an abstract of title certified to a date subsequent hereto evidencing condition of the title for inspection and approval of the Buyer. If Buyer's approval of the condition of the title is withheld, Buyer shall have 10 days after receipt of evidence of title in which to deliver to Seller or Broker written objections thereto. Failure to so object within the 10 day time limit provided shall be deemed approval and acceptance of the condition of the title. The Broker shall in no way be responsible for delivery to Buyer, or condition of the title.

The earnest money deposited herein shall be refunded to Buyer and this agreement voided if the Seller fails to accept Buyer's offer within the time provided, or if merchantable title cannot be delivered within a reasonable time. Should the improvements on subject property be materially damaged by fire or otherwise, prior to closing this sale, this agreement shall be voidable at the option of the Buyer.

Unless otherwise provided herein, the real property shall be conveyed by warranty deed, free of encumbrances except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements of record. Any encumbrances to be discharged by Seller may be paid out of the purchase money at date of closing.

The parties hereto authorize the Broker to arrange financing, if financing is required and Buyer agrees to use his best efforts to obtain such financing. Financing costs shall be paid by Buyer. However, if FHA or GI regulations apply to limit Buyer's loan service fee, Seller agrees to pay any excess thereof.

All taxes, rents, insurance premiums and interest shall be prorated as of possession date, which shall be on or before August 1st, 19 85

In case the Buyer shall fail to promptly perform any covenant or agreement aforesaid and to do all things necessary and prerequisite to the consummation of this sale, the Seller may declare a forfeiture of this contract, and all rights of the Buyer shall cease and payments made by him may be retained by the Seller as liquidated damages, and not as a penalty, or the Seller may pursue any other remedy available under the laws of the State of Idaho. In any action brought upon this agreement, the prevailing party shall be entitled to reasonable attorney fees.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties hereto, and time is of the essence hereof. There are no verbal agreements which modify the terms and conditions hereof.

Broker: P. C. Schwinn BUYER: Chic A Jones (Address)

By Chic A Jones BUYER: _____ Phone: _____
SELLER ACCEPTS the foregoing terms and conditions and agrees to sell the above property to Buyer and to pay the Broker's commission

which the Broker shall have the right to retain from the proceeds of this sale. In the event the earnest money receipted for in connection with this sale is forfeited, Seller agrees that one-half thereof shall be retained by the broker, provided the amount to the broker does not exceed the agreed upon commission due, and the balance shall be paid to the undersigned Seller.

Dated July 12th, 19 85 SELLER: _____

STATE OF Idaho, COUNTY OF Butte SS. SELLER: _____
12th day of July, 19 85

On this 12th day of July, 19 85, before me, a Notary Public in and for said State, personally appeared Dexter Douglas and Bernadene Douglas and Richard Tet

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL) Notary Public for Idaho Residing at ARSO

My Commission expires

EXTRA BROKER'S COPY

Keith Wilson

Form No. RE-21

EARNEST MONEY AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

RECEIVED OF:

Arco, IDAHO, July 12th, 1985

Richard Tuthill

herein called "Buyer," the sum of Ten Thousand and no/100 (\$ 10,000.00) Dollars
in the form of check paid to the broker as earnest money and in part payment of the purchase price for the following property
situate in Butte Idaho Legal description attached hereto and made a part hereof

That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21 Township 5 North,
Range 26 East, Boise Meridian described as follows:

Beginning at the NW corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ thence East
1,230 feet; thence South to the North boundary of the Moore
Canal; thence following said Moore canal boundary Southwesterly
to the Railroad right-of-way; thence Northwesterly along said
right-of-way to point where it intersects a county road running
North and South; thence North along county road right-of-way
to the point of Beginning, Containing therein 11 acres more or
less.

The only irrigation water belonging to this parcel is
represented by a well located thereon.

~~This deal is contingent upon the buyer being allowed to transfer this water from the
above mentioned well to other lands with all the proper papers from the Dept of water
resources of Idaho, and also upon approval of the Big Lost River Irrigation as to
Waterways Transport Agreements being signed by them. Upon the above agreements being
signed, all of the balance of the purchase price is due and payable, and shall not be
later than six months from date hereof.~~

(Note)--This is also to say that we the below signed sellers have no objection to
well permits #s 34-7079 and 34-2332 being transferred to other lands.

Seller authorizes the real estate broker, hereinafter referred to as "Broker," to order and charge to Seller's account, immediately upon accep-
tance of this offer, and of assurance of any contemplated financing, if provided for hereinabove, either a policy of Title Insurance (using a prelimi-
nary title report prior to close of sale, after which the Title Insurance Policy will be issued) or, at the Seller's option an abstract of title certified to
a date subsequent hereto evidencing condition of the title for inspection and approval of the Buyer. If Buyer's approval of the condition of the title
is withheld, Buyer shall have 10 days after receipt of evidence of title in which to deliver to Seller or Broker written objections thereto. Failure to
so object within the 10 day time limit provided shall be deemed approval and acceptance of the condition of the title. The Broker shall in no way
be responsible for delivery to Buyer, or condition of the title.

The earnest money deposited herein shall be refunded to Buyer and this agreement voided if the Seller fails to accept Buyer's offer within the
time provided, or if merchantable title cannot be delivered within a reasonable time. Should the improvements on subject property be materially
damaged by fire or otherwise, prior to closing this sale, this agreement shall be voidable at the option of the Buyer.

Unless otherwise provided herein, the real property shall be conveyed by warranty deed, free of encumbrances except for rights reserved in
federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and
rights of way and easements of record. Any encumbrances to be discharged by Seller may be paid out of the purchase money at date of closing.

The parties hereto authorize the Broker to arrange financing, if financing is required and Buyer agrees to use his best efforts to obtain such
financing. Financing costs shall be paid by Buyer. However, if FHA or GI regulations apply to limit Buyer's loan service fee, Seller agrees to pay
any excess thereof.

All taxes, rents, insurance premiums and interest shall be prorated as of possession date, which shall be on or before

August 1st

1985

In case the Buyer shall fail to promptly perform any covenant or agreement aforesaid and to do all things necessary and prerequisite to
the consummation of this sale, the Seller may declare a forfeiture of this contract, and all rights of the Buyer shall cease and payments
made by him may be retained by the Seller as liquidated damages, and not as a penalty, or the Seller may pursue any other remedy avail-
able under the laws of the State of Idaho. In any action brought upon this agreement, the prevailing party shall be entitled to reasonable
attorney fees.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties hereto, and time is of
the essence hereof. There are no verbal agreements which modify the terms and conditions hereof.

Broker: P. C. Schwinn

BUYER:

Richard Tuthill Hill Creek Prop.

(Address)

Chic A. Jones

BUYER:

Phone:

SELLER ACCEPTS the foregoing terms and conditions and agrees to sell the above property to Buyer and to pay the Broker's commission

which the Broker shall have the right to retain from
he proceeds of this sale. In the event the earnest money receipted for in connection with this sale is forfeited, Seller agrees that one-
half thereof shall be retained by the broker, provided the amount to the broker does not exceed the agreed upon commission due, and the
balance shall be paid to the undersigned Seller.

Dated July 12th, 1985

SELLER:

STATE OF Idaho, COUNTY OF Butte ss.

SELLER:

On this 12th day of July, 1985

SELLER:

before me, a Notary Public in and for said
state, personally appeared Dexter Douglas and Bernadene Douglas and Richard Tuthill

whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)

Notary Public for

Idaho

Residing at

Arco

My Commission expires

Life

BROKER'S COPY

MICROFILMED

Keith Wilson

Form No. RE-21

EARNEST MONEY AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

RECEIVED OF: Arco, IDAHO, July 12th, 19 85
Richard Tuthill

herein called "Buyer," the sum of Ten Thousand and no/100----- (\$ 10,000.00) Dollars
in the form of check paid to the broker as earnest money and in part payment of the purchase price for the following property
situate in Butte County, Idaho Legal description attached hereto and made a part hereof

(If more space is needed, continue on reverse side.)

Buyer hereby offers to purchase the above described property in its present condition, after full inspection, on the terms and conditions herein provided for; and agrees to give the seller 10 days, from this date, to accept said terms and conditions during which time this offer shall not be revokable.

Included as part of the property sold to the buyer are such of the following items as may now be on the premises, which will be delivered free and clear of encumbrances: All existing linoleum, window screens, screen doors, television antennae, shades, venetian blinds, curtain rods, attached lighting, plumbing and bathroom fixtures, water-heating apparatus and fixtures, awnings, ventilating, cooling and heating systems, irrigation fixtures and equipment, all water and water rights, ditches, and ditch rights appurtenant thereto, and subject to the assessments therein, trees, plants and shrubs and all other attached fixtures not herein reserved or excepted; together with the following personal property:

One deep water irrigation well with a 75 HP motor pumping 300 miners inches of water together with legal rights thereto. Located on the above mentioned land. State Lic # 34-7079
The total purchase price is:

Seventy Thousand and no/100----- (\$ 70,000.00) Dollars
and after deducting the sum hereinbefore receipted for the balance shall be payable as follows:

This deal is contingent upon the buyer being allowed to transferr this water from the above mentioned well to other lands with all the proper papers from the Dept of water resouraes of Idaho, and also upon approval of the Big Lost River irrigation as to Waterways Transport Agreements being signed by them. Upon the above agreements being signed, all of the balance of the purchase price is due and payable, and shall not be later than six months from date hereof.

(Note)--This is also to say that we the below signed sellers have no objection to well permits #s 34-7079 and 34-2332 being transferred to other lands.

(If more space is needed, continue on reverse side.)

Seller authorizes the real estate broker, hereinafter referred to as "Broker," to order and charge to Seller's account, immediately upon acceptance of this offer, and of assurance of any contemplated financing, if provided for hereinabove, either a policy of Title Insurance (using a preliminary title report prior to close of sale, after which the Title Insurance Policy will be issued) or, at the Seller's option an abstract of title certified to a date subsequent hereto evidencing condition of the title for inspection and approval of the Buyer. If Buyer's approval of the condition of the title is withheld, Buyer shall have 10 days after receipt of evidence of title in which to deliver to Seller or Broker written objections thereto. Failure to so object within the 10 day time limit provided shall be deemed approval and acceptance of the condition of the title. The Broker shall in no way be responsible for delivery to Buyer, or condition of the title.

The earnest money deposited herein shall be refunded to Buyer and this agreement voided if the Seller fails to accept Buyer's offer within the time provided, or if merchantable title cannot be delivered within a reasonable time. Should the improvements on subject property be materially damaged by fire or otherwise, prior to closing this sale, this agreement shall be voidable at the option of the Buyer.

Unless otherwise provided herein, the real property shall be conveyed by warranty deed, free of encumbrances except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements of record. Any encumbrances to be discharged by Seller may be paid out of the purchase money at date of closing.

The parties hereto authorize the Broker to arrange financing, if financing is required and Buyer agrees to use his best efforts to obtain such financing. Financing costs shall be paid by Buyer. However, if FHA or GI regulations apply to limit Buyer's loan service fee, Seller agrees to pay any excess thereof.

All taxes, rents, insurance premiums and interest shall be prorated as of possession date, which shall be on or before

August 1st, 19 85

In case the Buyer shall fail to promptly perform any covenant or agreement aforesaid and to do all things necessary and prerequisite to the consummation of this sale, the Seller may declare a forfeiture of this contract, and all rights of the Buyer shall cease and payments made by him may be retained by the Seller as liquidated damages, and not as a penalty, or the Seller may pursue any other remedy available under the laws of the State of Idaho. In any action brought upon this agreement, the prevailing party shall be entitled to reasonable attorney fees.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties hereto, and time is of the essence hereof. There are no verbal agreements which modify the terms and conditions hereof.

Broker: P. C. Schwinn BUYER: Richard A. Tuthill Hillcreek Prop.
(Address)

By Chic A. Jones BUYER: _____ Phone: _____

SELLER ACCEPTS the foregoing terms and conditions and agrees to sell the above property to Buyer and to pay the Broker's commission

which the Broker shall have the right to retain from the proceeds of this sale. In the event the earnest money receipted for in connection with this sale is forfeited, Seller agrees that one-half thereof shall be retained by the broker, provided the amount to the broker does not exceed the agreed upon commission due, and the balance shall be paid to the undersigned Seller.

Dated July 12th, 19 85 SELLER: Bernadine S. Douglas

STATE OF Idaho, COUNTY OF Butte ss. SELLER: Bernadine S. Douglas

On this 12th day of July, 19 85, before me, a Notary Public in and for said State, personally appeared Dexter Douglas and Bernadene Douglas and Richard Tuthill

known to me to be the person^s

whose name s are subscribed to the within instrument, and acknowledged to me that he y executed the same.

(SEAL)

Notary Public for Idaho

Residing at Arco

My Commission expires

BROKER'S COPY

116 MICROFILMED

WATERWAYS TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this day of July
19 85, by and between Hillcreek Properties and

 of Butte County, State of Idaho and the Big
Lost River Irrigation District, an Irrigation District duly organized under
the laws of the State of Idaho, with its principal office in Mackay, Custer
County, State of Idaho.

WITNESSETH

WHEREAS, Hillcreek properties is the owner of certain
the following described tract(s) of land in Butte County, State of Idaho.

Purchaser from:
Alister Stanger
That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21 Township 5 North,
Range 26 East, Boise Meridian described as follows.

Beginning at the NW corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ thence East
1,230 feet; thence South to the North boundary of the Moore
Canal; thence following said Moore canal boundary Southwesterly
to the Railroad right-of-way; thence Northwesterly along said
right-of-way to point where it intersects a county road running
North and South; thence North along county road right-of-way
to the point of Beginning, Containing therein 11 acres more or
less.

The only irrigation water belonging to this parcel is
represented by a well located thereon.

WHEREAS, the District is the owner of a canal known as the Moore/UC
Canal, being a part of the facilities of the District for the transmission
of decreed and storage waters within the boundaries of said district, and,

WHEREAS, Hillcreek properties desires to transport said waters
described above through said Moore/UC Canal to the end of said canal at
the boundaries of the District, and thereafter beyond said boundary on to
land owned by Hillcreek properties outside the boundary lines of the district,
to the end that said waters would be used on lands described as follows
(enter legal description)

Twp 3 N. Rge 25 EBM
Section 2: SW $\frac{1}{4}$
Section 3: S $\frac{1}{2}$ SE $\frac{1}{4}$
Section 10 N $\frac{1}{2}$ NE $\frac{1}{4}$

Section 3: W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 4: N $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 9: E $\frac{1}{2}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$
Section 10 W $\frac{1}{2}$ W $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$

NOW, WHEREFORE, it is mutually agreed as follows:

1. Hillcreek properties may transport the well waters with the point of diversion at well waters in the amount of approximately 300 miners inches capacity, in and through said Moore/UC Canal owned by the District, subject to the terms and conditions of this agreement.

2. Hillcreek properties Shall construct and maintain at their own expense, any additional ditch, structures, or other improvements, other than the existing Moore/UC Canal, that might be required to make the waters available to the land of Hillcreek properties

3. The right of Hillcreek properties as set forth above is subordinated to all existing and prior rights for the transportation of waters of the District in and through said Moore/UC Canal, and the right granted herein is granted only as long as there is sufficient additional capacity in Moore/UC Canal beyond the needs and uses of District to carry said waters of Hillcreek properties. The determination of the availability of additional capacity in Moore/UC Canal shall be the sole determination of District. In the event that there is no additional capacity in the Moore/UC Canal for the transportation of said waters, Hillcreek Properties agrees to construct at their sole expense any additional carrying capacity in the Moore/UC Canal. In the event Hillcreek properties decides to forego the use of the Moore/UC Canal when there is no additional capacity, this agreement shall terminate.

4. Hillcreek properties shall pay a proportionate part of the annual operation, maintenance, assessment and overhead costs of the District as a toll charge for the use of Moore/UC Canal. The operation and maintenance portions of the toll charge shall be based upon an assessment of benefit received, said amount to be set by District on the same basis as other toll charges made concerning like rights. The assessment and overhead charges will be set against all lands benefitted hereby proportionately. Since all charges, including operation and maintenance are based on the number of irrigated acres, Hillcreek properties shall notify District of the number of acres that have been irrigated by Hillcreek Properties with said waters each year.

Notice of charges shall be given to Hillcreek Properties by the District on or after the 1st day of April and are payable in full within thirty (30) days of such notice.

5. No water rights, transmission rights, or ditch rights, in the Moore/UC Canal shall accrue to Hillcreek properties by reason of this agreement, the rights of said Hillcreek properties being contained only in the terms of this agreement.

6. This agreement shall be for a term of twenty(20) years beginning the 6 day of July-Aug, 19 85, and shall remain in full force and effect until the 6 day of Aug-July 2005, unless terminated as indicated in paragraph 7.

7. Failure to pay all charges and assessments agreed to when due shall be a breach of this agreement. Failure to accurately report the number of irrigated acres or to increase the flow of water through the Moore/UC Canal above that specified in this agreement without the written consent of the District shall also constitute a material breach of this agreement. In the event the District is required to file suit to collect past due charges or to remedy any other breach of this agreement, Hillcreek properties agrees to pay the District's costs and attorney's fees. Hillcreek properties is entitled to ten(10) days notice of any breach before suit is filed.

8. Hillcreek properties agrees that no assignment or other transfer of this agreement may be made except as hereafter provided.

In the event Hillcreek properties desires to assign this agreement to any institution as security for a farm loan, the District hereby agrees to give its written consent upon ten(10) days written notice of said assignment. In the event said assignment is consented to by the District, however, Hillcreek properties agrees to continue to remain responsible and obligated under all the terms, covenants and conditions of this agreement.

9. This document constitutes the full agreement of the parties hereto and any amendments or changes shall be invalid unless written.

ATTEST:

Richard A. Duthill

Authorized signature

dated

Secretary-Treasurer

Big Lost River Irrigation District

Big Lost River Irrigation District dated
Chairman of the Board

STATE OF IDAHO)
 ss
COUNTY OF Butte)

ON THIS 12 day of July, 19 85, before me, the under-
signed a Notary Public in and for said County and State, personally appeared
Richard A. Tuthill, President and Hillcreek Properties
known to me to be the person(s) whose name(s) are subscribed to the within
instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

S E A L

Charles E. Jones
Notary Public for the State of Idaho
Residing at Acce Idaho

STATE OF IDAHO)
 ss
COUNTY OF Custer)

ON THIS 6 day of August, 19 85, before me, the
undersigned a Notary Public in and for said county and State, personally
appeared J. Doyle Jensen and _____ known to me
to be the Chairman and Secretary respectively, of the Corporation that
executed the foregoing instrument, and acknowledged to me that such Corporation
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

S E A L

William L. Jensen
Notary Public for the State of Idaho
Residing at Mackay, Idaho

Affidavit of Publication

I, **CHARLES 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, 1985
and ending with the issue dated Oct. 3, 1985

Charles Cammack

Subscribed and sworn to before me this

17th day of Oct., 1985

Laura Samett

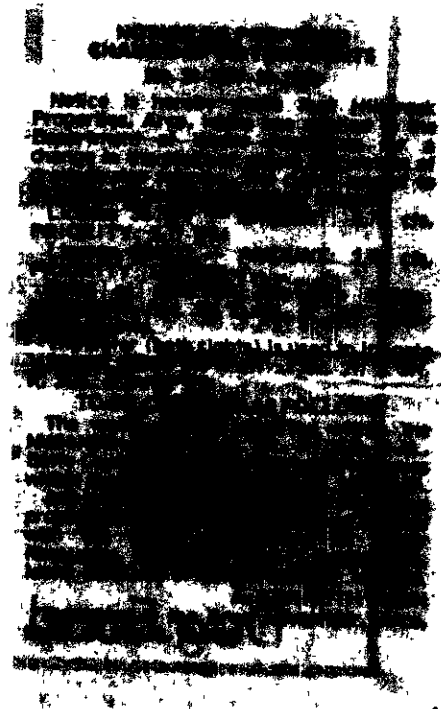
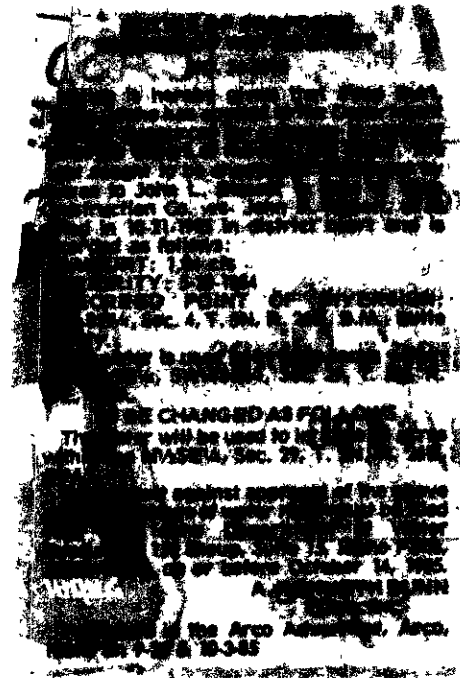
Notary Public

Residence Arco, Idaho. 1-18, 1991
My commission expires

RECEIVED

OCT 21 1985

Department of Water Resources
Eastern District Office



MICROFILMED

State of Idaho
License and Certificate of Water Right

Water License No. G-25678 Amount 2.9 C. F. S.
Water District No. Priority May 6, 1955

THIS IS TO CERTIFY that A. ETSEL MOSS
of Moore, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated May 6, 1955; that Permit No. G-25678
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
2.9 second feet, was issued thereunder on September 21, 1959, showing that said works
were completed on the 14 day of April, 1959; and that on the 14
day of April, 1959,

A. ETSEL MOSS
of Moore, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of a well
, a tributary of subterranean flow, for the purpose of irrigation
, under Use Permit No. G-25678 of the Department of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume
11 of Licenses at page 6764, on the 21 day of September, 1959;
The right hereby confirmed dates from May 6, 1955;

The Point of Diversion is located
in the NW 1/4 NW 1/4, Sec. 21, Twp. 5 N., R. 26 E, B. M. Butte County
That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
not exceed 2.9 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
5 N.	26 E.	21	NE $\frac{1}{4}$ NE $\frac{1}{4}$	40	25
			NW $\frac{1}{4}$ NE $\frac{1}{4}$	40	40
			NE $\frac{1}{4}$ NW $\frac{1}{4}$	40	40
			NW $\frac{1}{4}$ NW $\frac{1}{4}$	40	<u>40</u>
			Total number of acres to be irrigated		

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this
21 day of September, 1959.

GEO. N. CARTER
State Reclamation Engineer.

(SEAL)

State of Idaho
License and Certificate of Water Right

Water License No. 21117 Amount .16 c.f.s.
Water District No. Priority June 28, 1949

THIS IS TO CERTIFY that LAWRENCE A. LAVOIE
of Bonners Ferry, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated June 28, 1949; that Permit No. 21117
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
.25 second feet, was issued thereunder on July 1, 1954, showing that said works
were completed on the 26 day of May, 1954; and that on the 17
day of March, 1959,
LAWRENCE A. LAVOIE
of Bonners Ferry, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of Cabin Creek
, a tributary of Cow Creek and Kootenai River, for the purpose of domestic, stock &
irrigation, under Use Permit No. 21117 of the Department of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume
11 of Licenses at page 6763, on the 18 day of September, 1959;
The right hereby confirmed dates from June 28, 1949;
The Point of Diversion is located
in the SE 1/4 SW 1/4, Sec. 8, Tp. 61 N., R. 2 E., B. M. County Boundary

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
not exceed .16 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
61 N.	2 E.	7	SE 1/4 SE 1/4	10	10
		18	NE 1/4 NE 1/4	10	12
			Total number of acres to be irrigated:		22

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this
18 day of September, 1959.
GEO. N. CARTER
State Reclamation Engineer.
(SEAL)

APPLICATION FOR PERMIT

To Appropriate the Subterranean Waters of The State of Idaho

34-2332

Application No. G- 33526
 Permit No. G- 25678
 District No.

A. Etzel Moss
 Moore
 Idaho

1. Name of Applicant: A. ETZEL MOSS
 Postoffice address: MOORE County: BUTTE State: IDAHO
2. Quantity of water claimed: 160 Miners inches
 - (a) Rate of withdrawal in cubic feet per second. 3.2 or Idaho
 Miners' inches or gallons per minute.
 - (b) Annual withdrawal in acre feet per annum 3 acre feet per acre per year
3. Source of water supply: Underground --- Irrigation Well
4. Location of point of diversion or well is in the NW 1/4 of the NW 1/4 of Section 21
 Twp. 5 N, Rge. 26 E, B.M., County of Butte
5. Water is to be used for: Irrigation
6. If for municipal, industrial or recreational purposes, give:
 - (a) Point of use of water is in the NW 1/4 of the NW 1/4 of Section 21, Twp. 5 N
 Rge. 26 E, B.M.
 - (b) Waste water or sewage effluent is to be returned to Big Lost River
 at a point in the SE 1/4 of the NE 1/4 of Section 21, Twp. 5 N, Rge. 26 E, B.M.
7. Kind of works: Irrigation Well
8. Estimated cost of works: \$ 5,000.00
9. (a) Is reservoir to be used? No
 (b) Capacity of reservoir: None
10. The time required for the completion of such work and complete application of the water to the proposed use is 4 years.
11. If applicant is a corporation, give:
 - I. (a) Date and place of incorporation:
 (b) Amount of capital stock: \$ (c) Amount paid in: \$
 (d) Names and addresses of directors:
 - II. The financial resources of the applicant are (a) Cash on hand: \$ 5,000.00
 (b) Treasury stock: (c) Bonds to be issued:
 (d) Other resources: Owns 160 acres of land
12. The land to be irrigated is described in the following tabulation:
13. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: 80 inches-1894; 23 inches-1896 from Big Lost River
 - (a) 160 (cubic feet per second, inches or gallons per minute) of the water herein applied for is to be supplemental to the existing water rights.
 - (b) none (cubic feet per second, inches or gallons per minute) is for new lands.

Remarks:that is if we continue in the dry cycle that seems to be developing in this area, therefore I will appreciate it if you can grant this permit.

BE IT KNOWN THAT The undersigned hereby makes appli cation for permit to appropriate the public waters of the State of Idaho as herein set forth.

A. ETSSEL MOSS

Applicant.

By

Agent.

Date of first receipt at Department of Reclamation: 9:00 A.M. May 6, 1955

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is G-25678

Recorded in Book 91 Page 25678 Approved May 11, 1955

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$ _____ to be filed on or before _____

Work to begin on or before July 11, 1955

and to continue diligently and uninterruptedly to completion,

unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before May 11, 1957

The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made on or before May 11, 1959

Witness my hand this 11th day of May, 1955

MARK R. KULP
State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLIE, Governor of the State of Idaho,
and IRA H. MASTERS, Secretary of State of the State of Idaho, have caused this instrument to
be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 11th
day of May, 1955.

Countersigned:

STATE OF IDAHO

(SEAL)

By ROBERT E. SMYLIE
Governor

By IRA H. MASTERS
By PAULA L. FLEENOR *Secretary of State.*
Acting Secretary of State

12.

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	x x	x x			160
Permit No. G-25678 CERTIFICATE OF COMPLETION OF WORKS ✓							
TO ALL WHOM IT MAY CONCERN: This is to certify that A. ETSEL MOSS, of Moore, County of Butte, and State of Idaho, the holder of Permit No. G-25678, issued upon Application No. G-33526 bearing date or priority of May 6, 1955, authorizing the diversion of 3.2 second feet of the waters of a well, County of Butte, State of Idaho, for irrigation purposes has fully complied with the provisions of the laws of the State of Idaho, relating to the proof of completion of the works of diversion out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 2.9 second feet of the waters of a well from subterranean flow; that the point of diversion of said waters is NW¹/₄ NW¹/₄ Sec. 21, T. 5 N., R. 26 E., B. M.; and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: 145 acres in the NW¹/₄ Sec. 21, T. 5 N., R. 26 E., B. M. Witness my hand this 21 day of September, 1959 s/ GEO. N. CARTER State Reclamation Engineer Proof of Completion of Works Made: April 14, 1959							
LICENSE ISSUED FOR 2.9 SEC. FT. <i>Page 6764</i>							

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

RECEIVED

SEP 27 1993 *nd* ✓

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 Department of Water Resources

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

MINNESOTA MFD

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

September 16, 1993

HILLCREEK PROPERTIES
C/O RICHARD TUTHILL
RT 1 BOX 447
ARCO ID 83213

RE: Approved Transfer No. 3705/Water Right Nos. 34-02332 and 34-07079

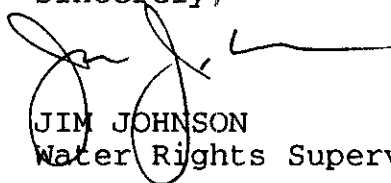
Dear Water Right Holder:

On August 14, 1992, the Department approved an application for transfer of the above referenced water right. A copy of the transfer as approved has been enclosed for your reference. One of the conditions of approval of this transfer was that the authorized change(s) be accomplished within one year of the date of approval.

Please complete and return the enclosed form to confirm that the transfer has been accomplished. If the approved transfer has not been completed or is only partially complete, please provide an explanation why the changes have not been made and give an expected date for completion. The form must be returned to this office within 14 days of the date of this letter. If you wish to return the form by FAX, the number is (208)327-7866.

Please contact me if you have questions concerning this matter.

Sincerely,



JIM JOHNSON
Water Rights Supervisor

JJ:dc

Enclosures

MICROFILMED

OCT 19 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

USE TYPEWRITER OR
BALLPOINT PEN

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

250 inches

16 inches + 1 feet

199 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

240 perforations

80 feet

200 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 80 feet below land surface.

Flowing? ☐ Yes ☒ No G.P.M. 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

☐ Bailor

☐ Air

☐ Other _____

Discharge G.P.M.

Pumping Level

Hours Pumped

9. LITHOLOGIC LOG

Bore Diam.

Depth

Material

Water

Yes

No

16'

0'

2'

gravel

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 sand small gravel

10.

Work started 5-29-90 finished 6-18-90

6. LOCATION OF WELL

Sketch map location must agree with written location.

N

X

W

E

S

Subdivision Name

Lot No.

Block No.

County Butte

NW 1/4 NW 1/4 Sec. 21, T. 5N N/S, R. 36 E/W.

11. DRILLERS CERTIFICATION

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

Firm Name Finley Drilling Firm No. 62

Address 2850 Valley Ave. Boise, Idaho Date 6-19-90

Signed by (Firm Official) Bill Finley

and (Operator) Joe Hewlett

USE ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT



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 the typed name and title.

JIM JOHNSON
Water Rights Supervisor

JJ:cz

Enclosure

MICROFILMED
SEP 10 1992

MEMORANDUM

TO: Files 34-02332/07079
FROM: Sharla
DATE: August 3, 1992
RE: Transfer Review (No. 3705)

The above referenced transfer proposes to add a point of diversion under these rights.

Advertising was completed correctly.

The protests remain unresolved and the matter has never been set for hearing before the department. These rights, however, were subject, in part, for PU's lawsuit which was consolidated with Sorensen v Big Lost River Irrigation District.

A letter was sent to Kent Foster on 9/11/91 requesting the intentions in connection with the transfer application in light of the court's Order Granting Preliminary Injunction. No response to this inquiry has been received.

The claims for these two rights were recommended in the Director's Report as licensed with a remark limiting the combined rate of diversion to 2.90 cfs for irrigation of 145 acres per season out of a permissible place of use land base of 264 acres.

The two beneficial use claims filed for the excess diversion rate (34-10904 and 34-12373) were recommended as disallowed due to no lawful appropriation or no beneficial use shown

In July of 1990, Keith Wilson conducted a field examination under the rights listed on the transfer and found the combination of the wells to be pumping 8.0 cfs. A few days later, Paul Meyer again investigated the site and again indicated the flow was 8.0 cfs.

The issue of the protests was not over the addition of a new well, but rather the blatant diversion of water in excess of the water rights. Rather than set the matter for hearing at this point, it appears reasonable to approve the transfer with conditions which will ensure the curtailed diversion of water and to notify the protestants of this action.

The transfer should be approved with the following conditions:

T07 The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

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SEP 10 1992

- T08 Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
- T09 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.
- R04 Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
- R30 This right 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.

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.

The combined rate of diversion from these wells shall not exceed 2.90 cfs.

SEP 10 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: DN

1. Right number: 34-07079, 34-02332 Applicant Hillcreek Properties
2. Type of right: ☐ Decree ☒ License ☐ Claim
3. Purpose of transfer: ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
 - b. ☒ Description of original point of diversion.
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☒ All of right.
 - b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant)
 - c. ☒ Check description of point(s) of diversion.
 - d. ☒ Check description of place of use.
 - e. ☒ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee.
 - g. ☒ Check proof of ownership of right &/or land from which water is transferred.
 - h. ☒ Check for expansion in use of right. Comments RECOMMEND THAT COMBINED
FLOW FROM BOTH P/D'S NOT EXCEED 5.66 CFS.
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) 34-07507, 07535
 - j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No Soul Copies
If yes, what district? 34- DOUG ROSENKRANZ and Rita Lundy
c/o Big Lost River
Inns. in
Mackay

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

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

4. By _____ Date _____

D.O.P.
6-25-90



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

September 11, 1991

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

RE: APPLICATION FOR TRANSFER NO. 3705 OF WATER RIGHT NOS.
34-2332 AND 34-7079 IN THE NAME OF HILLCREEK PROPERTIES

Dear Mr. Foster:

Hillcreek Properties filed the above referenced application with the department on May 22, 1990. The purpose of the application was to provide for a second point of diversion (well) which has since been constructed and used. Your letter dated June 8, 1990, suggests that the application likely does not need to be processed pursuant to Section 42-222, Idaho Code.

In view of the court's August 29, 1991 Order Granting Preliminary Injunction in Case No. 39756, please advise me of your present intent in connection with the pending application for transfer.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region

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SEP 10 1992

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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.

ORDER GRANTING PRELIMINARY INJUNCTION - 1

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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

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.

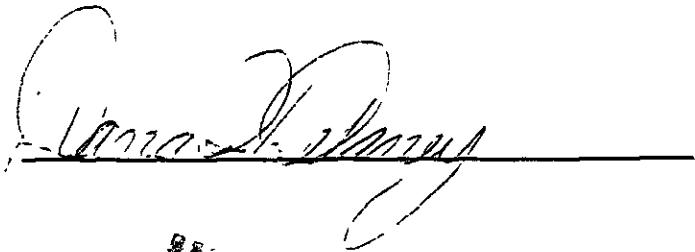

DANIEL C. HURLBUTT, JR.
District Judge

CERTIFICATE OF MAILING

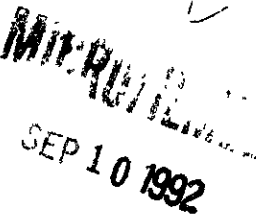
The undersigned certifies that on the 30th day of August, 1991, she caused to be mailed, or hand delivered, a copy of the foregoing ORDER GRANTING PRELIMINARY INJUNCTION to:

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



ORDER GRANTING PRELIMINARY INJUNCTION



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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 Respondents.

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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

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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

MEMORANDUM DECISION RE: PETITION FOR PRELIMINARY INJUNCTION

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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 44

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

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).

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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

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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

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.

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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.

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

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"

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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.

"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

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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.

DATED this 30 day of July, 1991.

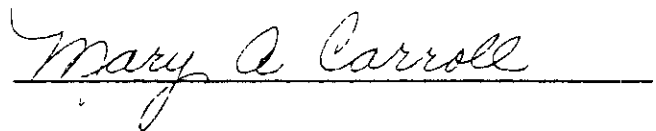

DANIEL C. HURLBUTT, JR.
District Judge

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
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1301 N. Orchard
Boise, ID 83706-2237

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Holder, Kidwell, Hahn and Crapo
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BRENT T. ROBINSON
DAVID W. HALEY

LING, NIELSEN & ROBINSON
ATTORNEYS AT LAW
615 "H" STREET
P.O. BOX 396
RUPERT, IDAHO 83350

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

February

Mr. L. Glen Saxton
Chief
Water Allocation Bureau
Department of Water Resources
1301 Orchard Street
Statehouse Mail
Boise, Idaho 83720

34-2332
RECEIVED
FEB 27 1991
Department of Water Resources

Re: Dickcon, a California Corporation, Timjon, a
California Corporation, d/b/a Hillcreek
Properties, and Richard A. Tuthill, d/b/a P.U.
Ranch, Ltd. v. Big Lost River Irrigation
District

Mitchell D. Sorensen v. Big Lost River
Irrigation District

Dear Glen:

I have enclosed a Subpoena issued by the Clerk of the Court directing you to appear in the trial of the above matters on March 5, 1991 in Arco, Idaho. As I indicated to you on the phone, copies of the documents referred to in the Subpoena and any other documents that may be relevant to the particular water rights in issue will be satisfactory, as you can identify the documents being copied in the original files of the Department. The trial is set to commence at 9:30 a.m. of said day. It is doubtful that it would be necessary for you to be present at the commencement of the trial, as the plaintiffs must present their case first. However, it now appears that you should be there by 1:30 in the afternoon of said day. If I can give you further notice as to when you should be there, I will do so.

If you require a payment of your fees and travel expenses prior to attending, please notify me immediately. I can assure you that your fees and mileage will be paid by

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SEP 10 1992

Mr. L. Glen Saxton
February 25, 1991
Page 2

Big Lost River Irrigation District. If you have any questions, please feel free to contact me.

Very truly yours,


Roger D. Ling

RDL:rah
Enclosure

RECEIVED
SEP 10 1991

ROGER D. LING
LING, NIELSEN AND ROBINS
Attorneys at Law
615 H Street, P.O. Box 396
Rupert, Idaho 83350

(208) 436-4717

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

DICKCON, a CALIFORNIA CORPORATION, et al

Plaintiff

vs.

BIG LOST RIVER IRRIGATION DISTRICT
Defendant

Case No. 12-90

SUBPOENA - DUCES TECUM

Fee Category

Fee \$ (For Clerk's Use Only)

THE STATE OF IDAHO SENDS GREETINGS TO L. Glen Saxton, Chief, Water Allocation Bureau,
Department of Water Resources

WE COMMAND YOU, That, all and singular business and excuses being laid aside, you appear and attend the
trial of the above matter consolidated with case No. 15-90 entitled Mitchell D. Sorensen
v. Big Lost River Irrigation District.
before the Honorable James C. Herndon, District Judge

our District Court of the Seventh Judicial District of the State of Idaho, in and for
the County of Butte at a term of said Court to be held at the Court House in the
County of Butte on the 5th day of March A.D. 19 91,
at 9:30 o'clock A.M., then and there to testify in the above entitled action, now pending in said District
Court, on the part of the defendant; and you are further commanded to bring with you, and then and
there produce in evidence records of the Department of Water Resources relating to the water
rights and Application to Transfer Place of Use of the plaintiffs, including water rights
34-00170, 34-00556, water license 34-7079, transfer No. 3214, Order to Cease and Desist
against Richard Tuthill dated July 13, 1990; decree No. 34-0496 and 34-0692, transfer No. 921
Application No. 34-7410, Cease and Desist Order of October 19, 1989 directed to Mitchell D.
Sorensen, Application for Transfer of Water Right by Norma K. Sorensen, proposed Memorandum
Decision and Order dated August 1, 1989, exchange No. 2354(34-0093) and exchange No. 34-0032A
and disobedience will be punished as a contempt by the said court, and you will also forfeit to the party aggrieved the
some of One Hundred Dollars, and all damages which may be sustained by your failure to attend.

WITNESS, Hon. James C. Herndon

Judge of the Seventh Judicial District, at the Court House in the County
of Butte, and the seal of said Court this _____ day
of February A.D. 19 91.

ATTEST My hand and seal of said Court, the day and year last above written.

By

Clerk of the District Court.

Deputy

SEP 10 1990

LING, NIELSEN & ROBINSON

ROGER D LING
ROBERT M NIELSEN
BRENT T ROBINSON
DAVID W HALEY

ATTORNEYS AT LAW
615 H STREET
P O BOX 396
RUPERT IDAHO 83350

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

January 8, 1991

RECEIVED
JAN 09 1991

Mr. L. Glenn Saxton, Chief
Water Allocation Bureau
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Department of Water Resources

Re: Big Lost River Irrigation District Litigation

Dear Glenn:

As you know, I am now representing Big Lost River Irrigation District. The district is presently involved in three lawsuits involving water transport agreements issued by the district to certain waterusers. In preparing for the trial of these matters, I find that we do not have the following documents which are at issue, to-wit:

License 34-2332
Decree No. 34-00170
Decree No. 34-00556

Application for Change of Place of Use in regard to the above decreed rights.

License 34-2512

Would you please provide us copies of these documents from the records of the Department of Water Resources.

This litigation also involves the transportation of water which is subject to the Order to Cease and Desist dated July 13, 1990 issued by the department. In view of the close relationship between the obligations of the district to transport water and the right of the wateruser under it's licenses and decreed rights to use the water to the place it desires to have it transported, it appears that it will be necessary for us to call an official of the Department of Water Resources. This trial is set to commence on March 5, 1991 in the Butte County Courthouse in Arco, Idaho. Would you please advise me as to whether or

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SEP 10 1992

Mr. L. Glenn Saxton
January 8, 1991
Page 2

not you would be available as a witness on that date, and if
so, what would be required to obtain your attendance.

Very truly yours,

Roger D. Ling/R.H.
Roger D. Ling

RDL:rah

RECEIVED
SEP 10 1991

July 23, 1990

RE: Application for Transfer No. 34-07079/34-02332

Hillcreek Properties
c/o Richard Tuthill
Rt. 1, Box 447
Arco, ID 83213

Gentlemen:

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

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

The applicant must be prepared to present evidence and/or testimony addressing each of the three items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

July 23, 1990

RE: Application for Transfer No. 34-07079/34-02332
HILLCREEK PROPERTIES

Dr. Jack Sowards
Moore,
ID 83255

Dear Dr. Sowards:

On June 21 and 25, 1990, signed petitions protesting the above referenced water right transfer were received by this Department. You have been selected to represent the individuals on these petitions. Therefore, any correspondence concerning this application will be directed to you. We are asking that you keep these individuals notified of any proceedings concerning this transfer. For your convenience, I have enclosed copies of the petitions submitted.

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

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

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

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

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

RECEIVED

JUN 21 1990

Department of Water Resources
Eastern District Office

Dear Mr. Higginson;

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

1. There is an apparent expansion of water rights.
2. The transfer would be against the local Public interest.
3. There would be injury to prior rights.
4. The new point of diversion is proposed to replace 34-7079 and 34-2332 because of alleged lack of production when in reality, 34-7079 and 34-2332 are producing more than the approved 2.9 CFS.

**NOTICE OF PROPOSED
CHANGE TO A WATER RIGHT
NO. 34-7079/34-2332**
NOTICE IS HEREBY GIVEN, That Hillcreek Properties, Arco, ID, have applied to the Department of Water Resources to Add a Point of Diversion to the waters of a groundwater source. The right sought to be changed is evidenced by Transfer No. 3214/34-7079 & 34-2332 which produced this right and is recorded as follows:
NO. 34-7079
AMOUNT: 2.78 CFS
PRIORITY: SEPT. 17, 1974
NO. 34-2332
AMOUNT: 2.90 CFS
PRIORITY: MAY 6, 1955
TOTAL AMOUNT OF WATER UNDER THIS RIGHT: 2.90 CFS
POINT OF DIVERSION: NWNW SEC 21 T 5N R 26E, B.M.
The water is used within the NWNW SEC 21 T 5N R 26E BUTTE COUNTY from April 1 to November 1 to irrigate 145 acres of land within the SW SEC 2 T 3N R 25E, B.M.
TO BE CHANGED AS FOLLOWS:
The water will be diverted from the NWNW SEC 21 T 5N R 26E, (TWO POINTS) BUTTE COUNTY.
Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before June 25, 1990.
R. KEITH HIGGINSON
Director
Published in the ARCO ADVERTISER
June 7 & 14, 1990.

NAME	ADDRESS
Genea Semo	P.O. Box 246
Wendell J. Andersen	Arco, Id. 83213
Albert C Babcock	P.O. Box 5
John A. Wanstrom	Arco Id. 83213
Wendell J. Andersen	PO Box 2 Arco Id. 83213
Albert C Babcock	Box 76 Moore Id. 83255
John A. Wanstrom	Box 117 Moore Id. 83255
Mary G. Babcock	Box 76 Moore, Idaho 83255
Edith M. McKenzie	Arco
Irene Bowtray	Arco
Bertie Schaefer	Moore 83255
William Burch	Arco 83213
Zelda Herbst	Arco Idaho 83213
Erma Jones	Moore Id. 83255
Jay Wanstrom	Moore Id. 83255
Jessie L. Lee	P.O. Box 496
Katie Zerkut	Arco, Id.
Matthew Andersen	P.O. Box 2 Arco
Jack E. Saunders	Moore - Id.
	83213-0100

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SEP 10 1992

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

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NAME

ADDRESS

Lewis Rothwell Rt. 1 Box 405 Arco Id. 83213
R. Wanda Smith Box AA 827 Arco 20
Cyril Maffey Box 553 Arco Idaho 83213
Theron L. Anderson Box 58 Arco Idaho 83213

RECEIVED

JUN 25 1990

Department of Water Resources
Eastern District Office

**NOTICE OF PROPOSED
CHANGE TO A WATER RIGHT
NO. 34-7079/34-2332**

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NO. 34-7079
AMOUNT: 2.76 CFS
PRIORITY: SEPT. 17, 1974

NO. 34-2332
AMOUNT: 2.90 CFS
PRIORITY: MAY 6, 1955
TOTAL AMOUNT OF WATER UNDER THIS RIGHT: 2.90 CFS
POINT OF DIVERSION: NWNW SEC 21 T 5N R 26E, B.M.

The water is used within the NWNW SEC 21 T 5N R 26E BUTTE COUNTY from April 1 to November 1 to irrigate 145 acres of land within the SW SEC 2 T 3N R 25E, B.M.

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R. KEITH HIGGINSON
Director

Published in the ARCO ADVERTISER
June 7 & 14, 1990.

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JUN 4 5 1990

Department of Water Resources
Eastern District Office

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

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R. KEITH HIGGINSON
Director
Published in the ARCO ADVERTISER
June 7 & 14, 1990.

NAME

ADDRESS

Dale Smith	Moore, Idaho 83255
Virgil J Haul	Moore Idaho 83255
Colara V Haul	Moore, Id. 83255
Albert C Babcock	Moore Idaho 83255
Mary E Babcock	Moore Idaho 83255
Lou Black	Moore, Id. 83255
David Black	Moore Id. 83255
Betty Ann Sowards	Moore Id. 83255
W. J. Sowards	Moore, Id. 83255
George Wheeler	Moore Idaho, 83255
Billie D. Wheeler	Arco Ida 83213
Stephen B. King	Moore Id. 83255
my protest here is that drilling commenced before advertisement ~~by~~	
I only protest if more water is allowed pumped than the license	
Mary E. Sowards	Moore, Idaho 83255

MICROFILMED

SEP 10 1992

RECEIVED

JUN 25 1990

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

Department of Water Resources
Eastern District Office

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R. KEITH HIGGINSON
Director
Published in the ARCO ADVERTISER
June 7 & 14, 1990.

NAME

ADDRESS

Dennis Bradwell	R1 Box 215 Arco Id.	
Tracie Bradwell	R1 Box 218 Arco Id.	
Lredy Bradwell	R1 Box 215 Arco Id.	
Lee Stenhill	R1 Box 215 Arco Id.	
D.M. Betzer	Rt-1 Box-236 Arco ID.	
Randy Betzer	Rt-1 Box 236 Arco ID.	
Chuck Betzer	Rt 1 Box 272 Arco, Id.	83213
Les Betzer	Rt#1 Box 236 Arco, Id.	83218
A.K. Neishman	Box 513 Arco, Id.	
Ardis Neishman	Box 513 Arco Id.	83213
Earl Parsons	Rt#1 Box 289 Arco Id.	83213
Sharon Parsons	Rt.1 Box 289 Arco, Id.	83213
Robert M. Thornton	Rt 1 Box 207 Arco, Id.	83213
Barbara Thornton	Ar 1 Box 207 " "	" "
Ralph M. Wynn	Rt#1 Box 412 " "	83213
Yvonne Wynn	Rt#1 Box 412 " "	83213
Marye W. Dillard	Rt 1 Box 300 - ARCO.	83213
Thelma Dillard	Rt 1 Box 300 - Arco	

SEP 10 1992

MEMORANDUM

TO: Harold Jones

FROM: Paul Meyer

DATE: 20 July, 1990

SUBJECT: Measurement of Parshall Flume at P. U. Ranches

At approximately 1000 hrs. on 19 July, 1990 I measured 1.0 foot of head in the 2' Parshall flume belonging to P. U. Ranches located in the NW $\frac{1}{4}$ of Section 21, Township 5 North, Range 26 East B. M. Using the charts for a 2' Parshall flume, the indicated flow was 8.0 cubic feet per second.

The only visible source of water through this flume were to two wells located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 21, T5N, R26E. These two wells are presently covered by the transfer of WR #'s 34-07079 and 34-02332.

A handwritten signature, possibly reading 'D. Meyer', is written in ink below the text.

MICROFILMED

SEP 10 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

Transfer

A. GENERAL INFORMATION

1. Owner: Hillcreek Properties

Permit No. 34-7079/2332

Current Address: Rt 1 Box 447 Arco ID 83215

Phone No. 527-3133

2. Accompanied by Tony Bailey

EXAM DATE: 11 July 1990

Address: Same

Phone No. _____

Relationship to Permit Holder: operator

3. Source: GROUNDWATER tributary to _____

B. OVERLAP REVIEW

1. Other water rights with same place of use: _____

☐ Copies Attached

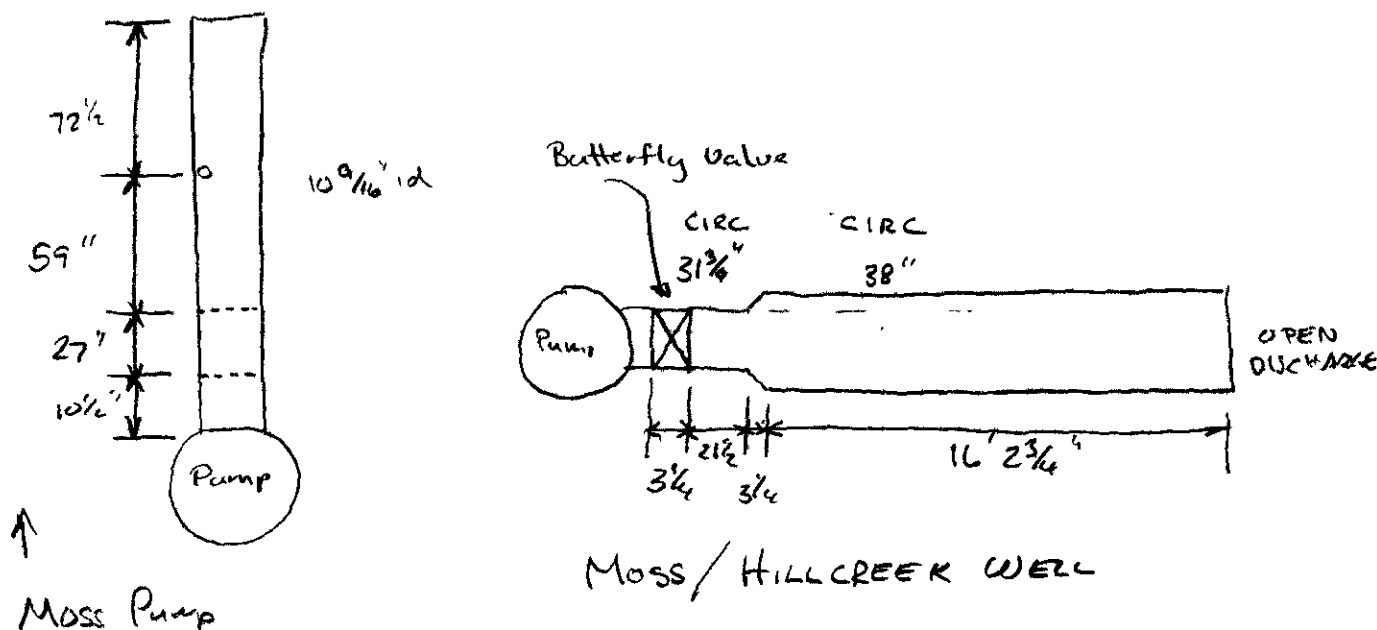
2. Other water rights with same point of diversion: _____

☐ Copies Attached

☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



MOSS/HILLCREEK WELL

MICROFILMED

SEP 10 1992

Scale: 1" = _____

- 2 ☐ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required).

- ☐ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater)

- ☐ Aerial Photo Attached
(required for irrigation of 10 acres or more)

System Description (continued)

- 3 Narrative: Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc)

Moss Well (West most well) open discharge into concrete spill box to ditch that conducts water toward the East where the Moss/Hillcreek well open discharges into ditch then all water from both wells flow thru a 24" Parshall flume.

The Moss well is the older well

The Moss/Hillcreek Well had a butterfly valve to reduce flow so that flow can be restricted to the 8.00 cfs

☐ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
Moss Pump	GE	75	TBJ616128	Layne:Boyle	# 21802
Moss / Hillcreek pump	U.S. Electric motor	100	R-6347-04-288 R433 2127	Ingersoll Rand	10"

*Code to correspond with No. on map and aerial photo

5. Point(s) of Diversion:

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
Moss			NW	NW	21	5N	26E	Butte	USGS & ON SITE INSPECTION
Moss Hillcreek		NE	NW	NW	21	5N	26E	Butte	

6. Place(s) of Use:

Indicate Method of Determination

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	

WATER RESOURCES

SEP 10 1992

Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
flow meter station	Potat	Halls	120386	120386	11"	
Flume	Parshall	NA	NA	NA	24"	

2. Measurements:

Moss pump 32.2' - 10.9" Moss Hillcrest (180' 8" - 77' 11")
 32.7' 10.9" Pump 1.0' Parshall flume
 32.4" - 10.8" (Parshall flume measurement is a combined flow of both wells)
 Pumping Depth (175' 17") - (77' 11") = 98' 6"
 Pipe id 10 9/16" id

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

2. Alternate Method for Checking Purposes.

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1), Dynamic pumping level. _____ ft (2)

Total Head (1) + (2) = _____ (3) Flow rate _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW. _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation

$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

$V_{DR} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____

$V = \text{Smaller of } V_{IR} \text{ and } V_{DR} =$ _____

2. Volume Calculations for Other Uses

MICROFILMED

SEP 10 1992

H. REMARKS AND OVERLAP REVIEW ANALYSIS

Note: flow from East Well (Moss/Hillcrest) was being restricted

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Totals:				

2. Recommended Amendments

- ☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name

Signature

Certification Date

Field Report Preparation Date

Keith C. Wilson

11 June 1990

CONSULTANT SEAL

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

MICROFILMED

SEP 10 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
LICENSING REPORT

Transfer

34-7079/2332
Permit No.

Measurement Calculations

a) Field Measurement Calculations (Include theoretical capacities and system capacity)

Moss/Hillcreek Well + Moss Well from Table #7
Water measurement Bulletin #552.

Head = 1.00' Throat width = 2'

Total Flow Both wells = $Q_T = 8.00 \text{ cfs}$

$Q_T = 8.00 \text{ cfs}$

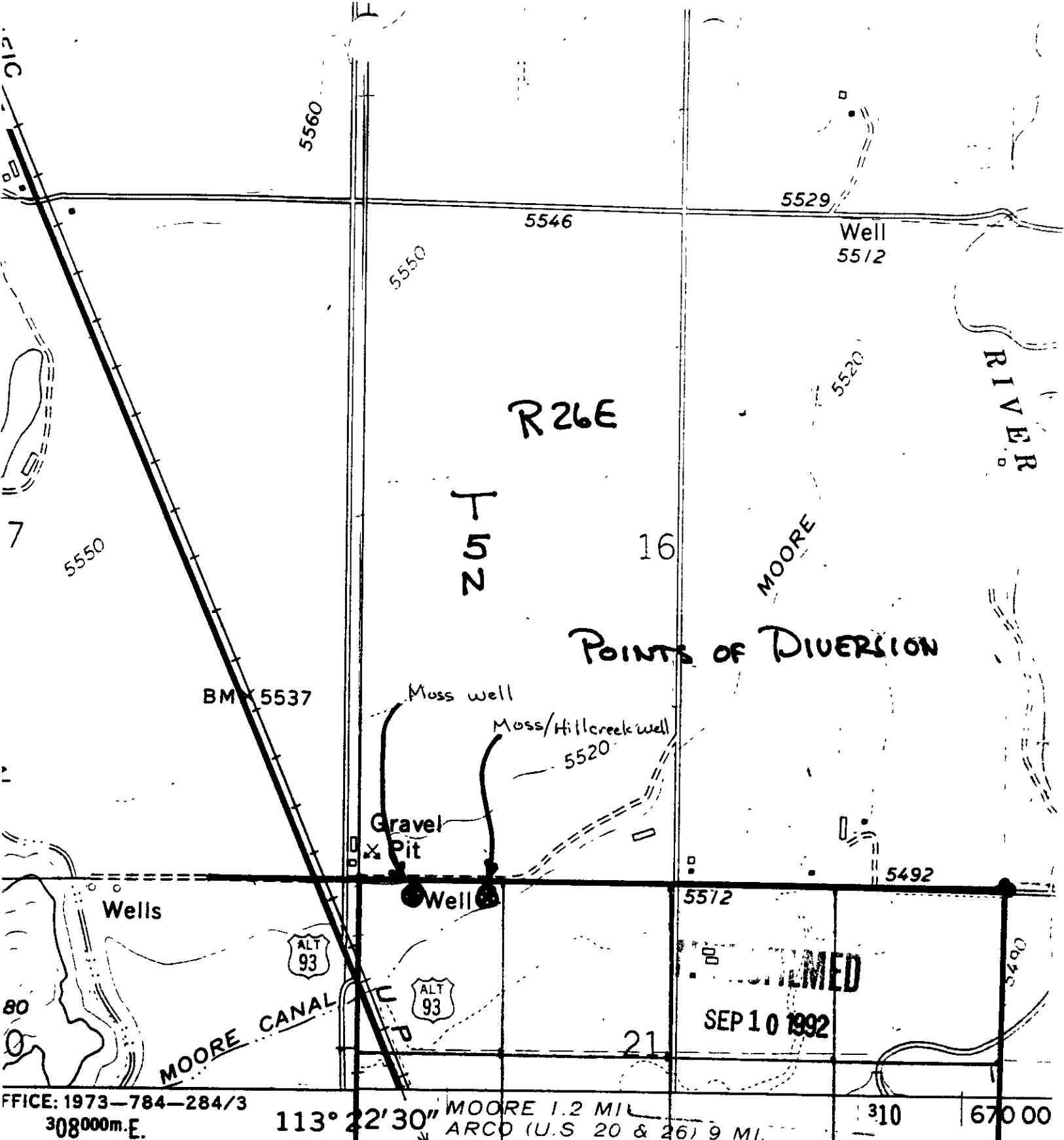
Moss well = 4.26 cfs

∴ Moss/Hillcreek well $Q = 3.74 \text{ cfs}$

NOTE: Butterfly valve on Moss/Hillcreek well
restricted discharge.

MICROFILMED

SEP 10 1992



ICATION

t-duty road, hard or
oved surface.

Improved roads.

Mapped, edited, and published by the Geological Survey of Canada

Control by USGS and USFWS

Topography by photogrammetry 14-2002 aerial
photographs taken 1967. Field checked 1969

Polyconic projection. 1927 North American datum

Table 7 (Continued). Free flow through Parshall measuring flumes
in cubic feet per second.

Head		Throat width							
Feet	Inches (approx.)	3"	6"	9"	1'	1.5'	2'	3'	4'
		(Flow in cubic feet per second)							
0.60	7-3/16	0.450	0.92	1.40	1.84	2.73	3.62	5.39	7.15
0.61	7-5/16	0.462	0.94	1.44	1.88	2.80	3.72	5.53	7.34
0.62	7-7/16	0.474	0.97	1.48	1.93	2.87	3.81	5.68	7.53
0.63	7-9/16	0.485	0.99	1.51	1.98	2.95	3.91	5.82	7.72
0.64	7-11/16	0.497	1.02	1.55	2.03	3.02	4.01	5.97	7.91
0.65	7-13/16	0.509	1.04	1.59	2.08	3.09	4.11	6.12	8.11
0.66	7-15/16	0.522	1.07	1.63	2.13	3.17	4.20	6.26	8.31
0.67	8-1/16	0.534	1.10	1.66	2.18	3.24	4.30	6.41	8.51
0.68	8-3/16	0.546	1.12	1.70	2.23	3.31	4.40	6.56	8.71
0.69	8-1/4	0.558	1.15	1.74	2.28	3.39	4.50	6.71	8.91
0.70	8-3/8	0.571	1.17	1.78	2.33	3.46	4.60	6.86	9.11
0.71	8-1/2	0.584	1.20	1.82	2.38	3.54	4.70	7.02	9.32
0.72	8-5/8	0.597	1.23	1.86	2.43	3.62	4.81	7.17	9.53
0.73	8-3/4	0.610	1.26	1.90	2.48	3.69	4.91	7.33	9.74
0.74	8-7/8	0.623	1.28	1.94	2.53	3.77	5.02	7.49	9.95
0.75	9		1.31	1.98	2.58	3.85	5.12	7.65	10.2
0.76	9-1/8		1.34	2.02	2.63	3.93	5.23	7.81	10.4
0.77	9-1/4		1.36	2.06	2.68	4.01	5.34	7.97	10.6
0.78	9-3/8		1.39	2.10	2.74	4.09	5.44	8.13	10.8
0.79	9-1/2		1.42	2.14	2.80	4.17	5.55	8.30	11.0
0.80	9-5/8		1.45	2.18	2.85	4.26	5.66	8.46	11.3
0.81	9-3/4		1.48	2.22	2.90	4.34	5.77	8.63	11.5
0.82	9-13/16		1.50	2.27	2.96	4.42	5.88	8.79	11.7
0.83	9-15/16		1.53	2.31	3.02	4.50	6.00	8.96	11.9
0.84	10-1/16		1.56	2.35	3.07	4.59	6.11	9.13	12.2
0.85	10-3/16		1.59	2.39	3.12	4.69	6.22	9.30	12.4
0.86	10-5/16		1.62	2.44	3.18	4.76	6.33	9.48	12.6
0.87	10-7/16		1.65	2.48	3.24	4.84	6.44	9.65	12.8
0.88	10-9/16		1.68	2.52	3.29	4.93	6.56	9.82	13.1
0.89	10-11/16		1.71	2.57	3.35	5.01	6.68	10.0	13.3
0.90	10-13/16		1.74	2.61	3.41	5.10	6.80	10.2	13.6
0.91	10-15/16		1.77	2.66	3.46	5.19	6.92	10.4	13.8
0.92	11-1/16		1.81	2.70	3.52	5.28	7.03	10.5	14.0
0.93	11-3/16		1.84	2.75	3.58	5.37	7.15	10.7	14.3
0.94	11-1/4		1.87	2.79	3.64	5.46	7.27	10.9	14.5
0.95	11-3/8		1.90	2.84	3.70	5.55	7.39	11.1	14.8
0.96	11-1/2		1.93	2.88	3.76	5.64	7.51	11.3	15.0
0.97	11-5/8		1.97	2.93	3.82	5.73	7.63	11.4	15.3
0.98	11-3/4		2.00	2.98	3.88	5.82	7.75	11.6	15.5
0.99	11-7/8		2.03	3.02	3.94	5.91	7.88	11.8	15.8
1.00	12		2.06	3.07	4.00	6.00	8.00	12.0	16.0
1.01	12-1/8		2.09	3.12	4.06	6.09	8.12	12.2	16.3
1.02	12-1/4		2.12	3.17	4.12	6.19	8.25	12.4	16.5
1.03	12-3/8		2.15	3.21	4.18	6.28	8.38	12.6	16.8
1.04	12-1/2		2.19	3.26	4.25	6.37	8.50	12.8	17.0
1.05	12-5/8		2.22	3.31	4.31	6.47	8.63	13.0	17.3
1.06	12-3/4		2.26	3.36	4.37	6.56	8.76	13.2	17.5
1.07	12-13/16		2.29	3.40	4.43	6.66	8.88	13.3	17.8
1.08	12-15/16		2.32	3.45	4.50	6.75	9.01	13.5	18.1
1.09	13-1/16		2.36	3.50	4.56	6.85	9.14	13.7	18.3

MICROFILMED
SEP 10 1992

Transfer 34-7079/2332

State of Idaho
DEPARTMENT OF WATER RESOURCES
Cox/Hall Meter Flow Calculations

Transfer

DATE: 11 July 1990

PERMIT # 34-7079/2332

MANOMETER READING INCHES OF WATER TO COX/HALLS METER - Vh

METER #

	.0	.1	.2	.3	.4	.5	.6	.7	.8	.9
0	109.760	109.860	109.960	110.060	110.160	110.260	110.360	110.460	110.560	110.660
1	110.760	110.860	110.960	111.060	111.160	111.260	111.360	111.460	111.560	111.660
2	111.760	111.860	111.960	112.060	112.160	112.260	112.360	112.460	112.560	112.660
3	112.760	112.860	112.960	113.060	113.160	113.260	113.360	113.460	113.560	113.660
4	113.760	113.860	113.960	114.060	114.160	114.260	114.360	114.460	114.560	114.660
5	114.760	114.860	114.960	115.060	115.160	115.260	115.360	115.460	115.560	115.660
6	115.760	115.860	115.960	116.060	116.160	116.260	116.360	116.460	116.560	116.660
7	116.760	116.860	116.960	117.060	117.160	117.260	117.360	117.460	117.560	117.660
8	117.760	117.860	117.960	118.060	118.160	118.260	118.360	118.460	118.560	118.660
9	118.760	118.860	118.960	119.060	119.160	119.260	119.360	119.460	119.560	119.660
10	119.760	119.860	119.960	120.060	120.160	120.260	120.360	120.460	120.560	120.660
11	120.760	120.860	120.960	121.060	121.160	121.260	121.360	121.460	121.560	121.660
12	121.760	121.860	121.960	122.060	122.160	122.260	122.360	122.460	122.560	122.660
13	122.760	122.860	122.960	123.060	123.160	123.260	123.360	123.460	123.560	123.660
14	123.760	123.860	123.960	124.060	124.160	124.260	124.360	124.460	124.560	124.660
15	124.760	124.860	124.960	125.060	125.160	125.260	125.360	125.460	125.560	125.660
16	125.760	125.860	125.960	126.060	126.160	126.260	126.360	126.460	126.560	126.660
17	126.760	126.860	126.960	127.060	127.160	127.260	127.360	127.460	127.560	127.660
18	127.760	127.860	127.960	128.060	128.160	128.260	128.360	128.460	128.560	128.660
19	128.760	128.860	128.960	129.060	129.160	129.260	129.360	129.460	129.560	129.660
20	129.760	129.860	129.960	130.060	130.160	130.260	130.360	130.460	130.560	130.660
21	130.760	130.860	130.960	131.060	131.160	131.260	131.360	131.460	131.560	131.660
22	131.760	131.860	131.960	132.060	132.160	132.260	132.360	132.460	132.560	132.660
23	132.760	132.860	132.960	133.060	133.160	133.260	133.360	133.460	133.560	133.660
24	133.760	133.860	133.960	134.060	134.160	134.260	134.360	134.460	134.560	134.660
25	134.760	134.860	134.960	135.060	135.160	135.260	135.360	135.460	135.560	135.660
26	135.760	135.860	135.960	136.060	136.160	136.260	136.360	136.460	136.560	136.660
27	136.760	136.860	136.960	137.060	137.160	137.260	137.360	137.460	137.560	137.660
28	137.760	137.860	137.960	138.060	138.160	138.260	138.360	138.460	138.560	138.660
29	138.760	138.860	138.960	139.060	139.160	139.260	139.360	139.460	139.560	139.660
30	139.760	139.860	139.960	140.060	140.160	140.260	140.360	140.460	140.560	140.660
31	140.760	140.860	140.960	141.060	141.160	141.260	141.360	141.460	141.560	141.660
32	141.760	141.860	141.960	142.060	142.160	142.260	142.360	142.460	142.560	142.660
33	142.760	142.860	142.960	143.060	143.160	143.260	143.360	143.460	143.560	143.660
34	143.760	143.860	143.960	144.060	144.160	144.260	144.360	144.460	144.560	144.660
35	144.760	144.860	144.960	145.060	145.160	145.260	145.360	145.460	145.560	145.660
36	145.760	145.860	145.960	146.060	146.160	146.260	146.360	146.460	146.560	146.660
37	146.760	146.860	146.960	147.060	147.160	147.260	147.360	147.460	147.560	147.660
38	147.760	147.860	147.960	148.060	148.160	148.260	148.360	148.460	148.560	148.660
39	148.760	148.860	148.960	149.060	149.160	149.260	149.360	149.460	149.560	149.660
40	149.760	149.860	149.960	150.060	150.160	150.260	150.360	150.460	150.560	150.660
41	150.760	150.860	150.960	151.060	151.160	151.260	151.360	151.460	151.560	151.660
42	151.760	151.860	151.960	152.060	152.160	152.260	152.360	152.460	152.560	152.660
43	152.760	152.860	152.960	153.060	153.160	153.260	153.360	153.460	153.560	153.660
44	153.760	153.860	153.960	154.060	154.160	154.260	154.360	154.460	154.560	154.660
45	154.760	154.860	154.960	155.060	155.160	155.260	155.360	155.460	155.560	155.660
46	155.760	155.860	155.960	156.060	156.160	156.260	156.360	156.460	156.560	156.660
47	156.760	156.860	156.960	157.060	157.160	157.260	157.360	157.460	157.560	157.660
48	157.760	157.860	157.960	158.060	158.160	158.260	158.360	158.460	158.560	158.660
49	158.760	158.860	158.960	159.060	159.160	159.260	159.360	159.460	159.560	159.660
50	159.760	159.860	159.960	160.060	160.160	160.260	160.360	160.460	160.560	160.660
51	160.760	160.860	160.960	161.060	161.160	161.260	161.360	161.460	161.560	161.660
52	161.760	161.860	161.960	162.060	162.160	162.260	162.360	162.460	162.560	162.660
53	162.760	162.860	162.960	163.060	163.160	163.260	163.360	163.460	163.560	163.660
54	163.760	163.860	163.960	164.060	164.160	164.260	164.360	164.460	164.560	164.660
55	164.760	164.860	164.960	165.060	165.160	165.260	165.360	165.460	165.560	165.660
56	165.760	165.860	165.960	166.060	166.160	166.260	166.360	166.460	166.560	166.660
57	166.760	166.860	166.960	167.060	167.160	167.260	167.360	167.460	167.560	167.660
58	167.760	167.860	167.960	168.060	168.160	168.260	168.360	168.460	168.560	168.660
59	168.760	168.860	168.960	169.060	169.160	169.260	169.360	169.460	169.560	169.660
60	169.760	169.860	169.960	170.060	170.160	170.260	170.360	170.460	170.560	170.660
61	170.760	170.860	170.960	171.060	171.160	171.260	171.360	171.460	171.560	171.660
62	171.760	171.860	171.960	172.060	172.160	172.260	172.360	172.460	172.560	172.660
63	172.760	172.860	172.960	173.060	173.160	173.260	173.360	173.460	173.560	173.660
64	173.760	173.860	173.960	174.060	174.160	174.260	174.360	174.460	174.560	174.660
65	174.760	174.860	174.960	175.060	175.160	175.260	175.360	175.460	175.560	175.660
66	175.760	175.860	175.960	176.060	176.160	176.260	176.360	176.460	176.560	176.660
67	176.760	176.860	176.960	177.060	177.160	177.260	177.360	177.460	177.560	177.660
68	177.760	177.860	177.960	178.060	178.160	178.260	178.360	178.460	178.560	178.660
69	178.760	178.860	178.960	179.060	179.160	179.260	179.360	179.460	179.560	179.660
70	179.760	179.860	179.960	180.060	180.160	180.260	180.360	180.460	180.560	180.660
71	180.760	180.860	180.960	181.060	181.160	181.260	181.360	181.460	181.560	181.660
72	181.760	181.860	181.960	182.060	182.160	182.260	182.360	182.460	182.560	182.660
73	182.760	182.860	182.960	183.060	183.160	183.260	183.360	183.460	183.560	183.660
74	183.760	183.860	183.960	184.060	184.160	184.260	184.360	184.460	184.560	184.660
75	184.760	184.860	184.960	185.060	185.160	185.260	185.360	185.460	185.560	185.660
76	185.760	185.860	185.960	186.060	186.160	186.260	186.360	186.460	186.560	186.660
77	186.760	186.860	186.960	187.060	187.160	187.260	187.360	187.460	187.560	187.660
78	187.760	187.860	187.960	188.060	188.160	188.260	188.360	188.460	188.560	188.660
79	188.760	188.860	188.960	189.060	189.160	189.260	189.360	189.460	189.560	189.660
80	189.760	189.860	189.960	190.060	190.160	190.260	190.360	190.460	190.560	190.660
81	190.760	190.860	190.960	191.060	191.160	191.260	191.360	191.460	191.560	191.660
82	191.760	191.860	191.960	192.060	192.160	192.260	192.360	192.460	192.560	192.660
83	192.760	192.860	192.960	193.060	193.160	193.260	193.360	193.460	193.560	193.660
84	193.760	193.860	193.960	194.060	194.160	194.260	194.360	194.460	194.560	194.660
85	194.760	194.860	194.960	195.060	195.160	195.260				

PS Form 3811, July 1983 447-845

SENDER: Complete items 1, 2, 3 and 4.

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

1. ☒ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:

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

4. Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

334

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

X

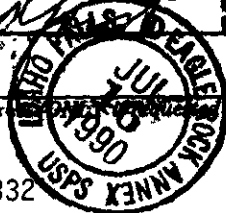
6. Signature - Agent

X

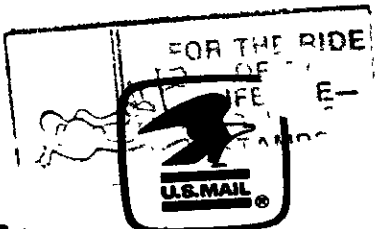
7. Date of Delivery

8. Addressee's Address (Postage, Restricted and fee paid)

34-2332



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RECEIVED
SEP 10 1992

PENALTY FOR PRIVATE USE, \$300

RETURN TO



RECEIVED
SEP 19 1990

(Name of Sender)
DEPARTMENT OF WATER RESOURCES
(No. and Street, Apt., Suite, P.O. Box or R.F.D.)
BOISE, IDAHO 83720
(City, State, and ZIP Code)

Department of Water Resources

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4.

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

1. ☒ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:

PU Ranch
Rt. 1, Box 447
Arco, ID 83213

SEP 10

4. Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number

33495

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

X *Sally Bailey*

7. Date of Delivery

7-14-90

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

34-2332

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



UNRECORDED



SEP 10 1992

**PENALTY FOR PRIVATE
USE \$300**

**RETURN
TO**

(Name of Sender)

SEP 17 1990

**DEPARTMENT OF WATER RESOURCES
STATEHOUSE**

BOISE, IDAHO 83730

Department of Water Resources



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 13, 1990

RE: Diversion of Groundwater Under Water Right Nos. 34-2332
& 34-7079

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

CERTIFIED MAIL# 33494

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

CERTIFIED MAIL# 33495

Gentlemen:

Enclosed is an Order to Cease and Desist the diversion of groundwater from wells in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T5N, R26E in excess of the 2.9 cfs rate authorized under the above referenced water rights.

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

Sincerely,

L. GLEN SAXTON
Chief, Water Alloc. Bureau

LGS:sc

Enclosures

cc: Doug Rosenkrance
Eastern Region

MICROFILMED

SEP 10 1992

C & D dated
July 13, 1990

NOTICE

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

MICROFILMED

SEP 10 1992

COPY *mk*
COPY

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

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

WEST ONE BANK BUILDING
PO BOX 50130
IDAHO FALLS, IDAHO 83405

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

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

R. VERN KIDWELL, OF COUNSEL

July 9, 1990

RECEIVED
JUL 11 1990

Department of Water Resources

Doug Rosenkrance, Watermaster
WATER DISTRICT NO. 34
Route 1, Box 24
Mackay, Idaho 83251

Dear Mr. Rosenkrance:

We are in receipt of a copy of a letter dated July 3, 1990, from Mr. Glen Saxton of Idaho Department of Water Resources to you regarding the various water rights of P.U. Ranch. After reviewing Mr. Saxton's letter, we felt it would be helpful for you to have access to some additional information because we think it affects some of the apparent conclusions Mr. Saxton expresses in his letter. In fairness to Mr. Saxton, it may be that he has not been privy to much of the recent work that has been done regarding the water rights of P.U. Ranch.

P.U. Ranch has basically two farms; the one they call the "Homeplace" consists of about 239 irrigated acres in Sections 15 and 22 of Township 4 North, Range 26 East, located within the boundaries of the Big Lost River Irrigation District, and the other farm consists of some 264 irrigated acres in Sections 2, 3 and 10 of Township 3 North, Range 25 East outside the boundaries of Big Lost River Irrigation District. The Homeplace is irrigated with water under decreed Right No. 34-0557 from Boyle Creek (.4 cfs with a priority of May 1, 1886), some storage water from Mackay Reservoir (this year we understand the total allocated was 3,990 24-hour miner's inches) and groundwater from a well located on the property under licensed Right No. 34-2512. The second farm depends upon irrigation water from the Big Lost River under decreed Rights Nos. 34-0170 and 34-0556, as well as groundwater from two wells in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East under licensed Rights Nos. 34-2332 and 34-7079, and an expansion of said rights under Idaho Code §42-1416(2).

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SEP 10 1992

Doug Rosenkrance, Watermaster
July 9, 1990
Page 2

Obviously, the water from the wells in Section 21, and from the Big Lost River can only be used on the land in Township 3 North, Range 25 East after it has been conveyed through a system of canals and ditches. P.U. Ranch has two twenty-year transport agreements with Big Lost River Irrigation District for conveyance of this water through its Moore Canal. The first of such agreements is dated December 6, 1983, and provides for Big Lost River Irrigation District to carry 200 miner's inches of decreed rights through the Moore Canal from its heading on the river to the Crossover Ditch which carries the water over to the Timberdome Canal Company's system. The second agreement is dated August 6, 1985, and provides for transport of the well water from the point where it enters the Moore Canal to the same Crossover Ditch.

Our office only recently began representing P.U. Ranch, and when we did so, we discovered that the water right claims filed in the Snake River Basin Adjudication (SRBA) were not entirely consistent with the past practice which has occurred since Mr. Bailey began to operate the property. We also discovered that IDWR had prepared an application for transfer for Rights Nos. 34-0170 and 34-0556 sometime last winter which has been protested. In light of the enactment by the Idaho legislature of Idaho Code §42-1416A, since the accomplished transfer occurred prior to 1987, it was claimed in the SRBA.

Further, it appears from the available evidence that the well operated under Licenses Nos. 34-2332 and 34-7079 has not, in fact, ever been limited to 2.9 cfs. Until 1988, it pumped an excess of 8.0 cfs. In 1988, the capacity of the well diminished some (it was measured at one time during the irrigation season at about 319 inches or 6.38 cfs), and in 1989, it dropped below 200 miner's inches. Mr. Bailey secured a drilling permit to drill an additional well near the old one and that was just recently completed. It made more economic sense and was less risky to drill an additional well at the same point of diversion than to deepen the old one or put newer or bigger equipment in it, or other wise rehabilitate the old well. It is true that IDWR prepared another application for transfer regarding the new well, but we have advised IDWR of our position that the application is unnecessary.

A review of the SRBA claims for P.U. Ranch, as they are currently filed, will reveal that the claimed expansions and

SEP 10 1992

Doug Rosenkrance, Watermaster
July 9, 1990
Page 3

transfers have been properly documented. We have understood from a memorandum prepared by Mr. Keith Higginson, Director of IDWR, dated May 7, 1990, that IDWR would not seek to prevent the use of water pursuant to rights properly filed in the SRBA without proof of certain specific facts which are not present in this case. We have sent a copy of this letter to Mr. Saxton and are requesting that he review the SRBA claims filed by P.U. Ranch through our office about June 8, 1990, to see if he does not concur with the position we have set forth in this letter.

It is also true that we obtained a restraining order from the District Court last week to compel Big Lost River Irrigation District to comply with its contractual agreements to deliver water placed in the Moore Canal by P.U. Ranch pursuant to any of its rights, to the Crossover Ditch for use on the lands in Section 2, 3 and 10 of Township 3 North, Range 25 East.

We hope this information will be of assistance to you and help to clear up misunderstandings as to the legal rights of P.U. Ranch.

Yours very truly,



Kent W. Foster

#7180.00/srr

cc: Mr. Tony Bailey
Mr. Richard Tuthill
Mr. Glen Saxton

MAILED

SEP 10 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 3, 1990

Doug Rosenkrance
Water District 34
Rt. 1, Box 24
Mackay, ID 83251

RE: APPLICATION FOR TRANSFER OF RIGHTS 34-0170 AND 34-0556 - P.U. RANCH

Dear Doug:

You advised me on July 2, 1990, that Tony Bailey of the P.U. Ranch recently inquired about delivery of water under the above referenced application for transfer (application).

The application which proposes to change the place of use of 200 miner's inches of Big Lost River water has been protested. Until the application for transfer is approved by the department, you should not deliver the water to the new proposed place of use shown on the application.

A quick review of the application shows that the applicant intends to continue the irrigation of the land from which the decreed surface water is sought to be removed by using licensed right 34-2512 which is diverted from groundwater. In most cases, removal of some of the rights appurtenant to a tract of land will result in the enlargement of a water right and cannot be approved.

Bailey also apparently inquired about use of a second well in connection with a prior transfer 3214 which involved rights 34-2332 and 34-7079. The second well can only be used to the extent that the first well does not produce 2.9 cfs, and then only after a transfer to use the new well (additional point of diversion) has been approved.

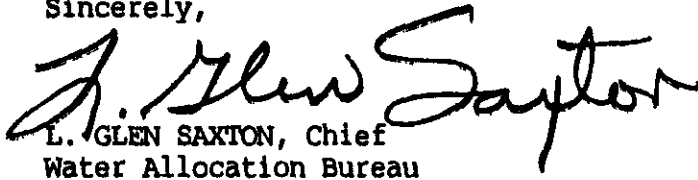
I spoke briefly with Tony Bailey on July 3, 1990. He advised me that he had just obtained an injunction of some sort to apparently force the Big Lost River Irrigation District to deliver water to him. At his request, I am also forwarding a copy of this letter to his attorney, Kent Foster.

MICROFILMED
SEP 10 1992

July 3, 1990

Please feel free to contact me if you have additional questions.

Sincerely,


L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region
Tony Bailey
Kent Foster

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SEP 10 1992

LAW OFFICES
N. MIDWELL FLAHN & CRAPO

WILLIAM H. FLAHN
WENTWORTH FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN F. MARTIN
CHARLES A. HOMER
DARYL MEIKLE
MICHAEL D. CRAPO
JAMES A. BORENSEN
JOHN D. HARRIS
JOHN R. CHIVISON
WILLIAM REED
JAMES REED
JAMES REED

BANK BUILDING
P.O. BOX 100
IDAHO FALLS, IDAHO 83405

PHONE (208) 523-0620
FAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)
N. MIDWELL FLAHN & CRAPO
OF COUNSEL

July 2, 1990

RECEIVED

JUL - 2 1990

Department of Water Resources
Eastern District Office

Ronald D. Carlson
IDAHO DEPARTMENT OF WATER RESOURCES
150 Chopin Avenue, #15
IDAHO FALLS, Idaho 83402

Mr. Carlson:

We have been requested by the owners of the P. U. Ranch to respond to your letter of June 14, 1990. We were basically unaware of the background on Water Rights Nos. 34-2332 and 34-7074, including the stated condition that the pumpage when the two licenses were combined was not to exceed

Apparently the well was drilled when Mr. Estel owned the land and later sold to Mr. Dexter Douglas, who sold to Mr. Tuthill, the owner of P. U. Ranch. Mr. Tony Bailey reports that this land and the well were acquired

We recently revised the SRBA claims for the P. U. Ranch. In that effort, determined that the best evidence available indicates that the well pumped 400 miner's inches of water per year. Those familiar with the use of the well are familiar with the condition on the combination of 34-2332 and 34-7074 that the pumpage was a mistake because it is and has always been inconsistent with the intent of the owners and the actual practice.

Mr. Bailey reports that the well was still producing some 400 miner's inches in 1986 when P. U. Ranch acquired the property and that the water was delivered through a ditch into the Moore Canal of the Big Lost River Irrigation District and carried under a transport agreement with the district to the Crossover Ditch, then through the Timberline Canal System to the place of use. Water is measured in the Moore Canal through a parshall flume.

Based on this information, we prepared SRBA claims for 200 cfs under 34-2332, 200 cfs under 34-7074, and a balance of

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SEP 10 1992

Mr. Ronald D. Carlson
July 2, 1990
Page 2

2.34 cfs under a claim of expansion based on Idaho Code Section 42-2416(2). Those revised SRBA claims have now been filed.

Mr. Bailey reports that in 1988, the well produced less than 400 miner's inches, it was apparently measured at one time at 319 miner's inches. Then in 1989, the production diminished even further to less than 200 miner's inches. Hence, the application for a drilling permit was filed to drill a second well near the old one to regain the ability to pump up to the 400 inches required at that location to furnish adequate water for proper irrigation of the place of use.

The new well is several feet from the old well and nearer Moore Canal. It was cased to about 200 feet and all perforations are below 80 feet. The well driller and Mr. Bailey were convinced they had gone through some pretty impervious material before they reached the 80 foot mark and at about 81 feet, they could hear water entering the well hole. This was before any water had been turned into the Moore Canal this season.

The intention is to operate one or both wells to the extent necessary to produce up to 400 miner's inches to be pumped into the Moore Canal. Both wells pump into the same canal and the water is measured into the Moore Canal through the Marshall flume structure that has been used for several years. There is no desire or intention to abandon either well nor to pump. Neither is there any intention to divert more water than the total of the claimed rights.

We were not representing the P. U. Ranch when the application for drilling permit was filed or when IDWR prepared the new application for transfer. We confess that we are very skeptical about the legal need for an application for transfer. We have only heard, and that indirectly, that IDWR may have recently changed its policy about describing points of diversion. Whether that might be appropriate for new appropriations we are not prepared to say; but it seems clear to us that this new well has the same point of diversion as the old well under Licenses Nos. 34-2332 and 34-7074. We are quite doubtful that deepening of an existing well, or upgrading

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SEP 10 1992

Mr. Ronald D. Carlson
July 2, 1990
Page 3

or replacing pumps or other equipment in an existing well, for the limited purpose of restoring the ability to pump up to the amount of the established rights, would be found by a court to constitute any type of change requiring a I.C.42-222 application. In many instances, such as this one, we understand it is more economical and fraught with less risk of unsuccessful to drill a new hole near the old one to effect the same objective than it would be to deepen the old one or attempt to correct the problem with new equipment. While someone who is directly injured by any of such activities would certainly be in a position to complain, we do not understand that to be the case here.

Nor can we see how this type of action, taken for the limited purpose of making it physically possible to divert the full entitlement, can constitute an injury, an enlargement, or be contrary to the local public interest, either actually or in theory.

P. U. Ranch does not object to a field inspection of either the old or new well; indeed, if you will call Mr. Bailey, or have us contact him for you, he will be happy to give you a personal tour at your convenience. However, a review of the SRBA claims should make it apparent that P. U. Ranch plans to pump either or both wells to the extent necessary to maintain up to 400 miner's inches. We should also reconfirm that there is no intention to abandon either well at this point in time. In light of our understanding of the law, we do not see how we can advise our client that an approved transfer is necessary or even relevant to this particular circumstance.

Your very truly,



Kent W. Foster

cc: Norm C. Young, Administrator
Mr. Richard Tuthill
Mr. Tony Bailey

MICROFILMED

SEP 10 1992

EXHIBIT "C"

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPOWEST ONE BANK BUILDING
PO BOX 50100
IDAHO FALLS, IDAHO 83405TELEPHONE (208) 523-0820
TELEFAX (208) 523-9518ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRYL L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

A. VERN KIDWELL OF CO. H/FEL

PETER HAHN
KENT W. FOSTER
ROBERT E. CARNAM
WILLIAM KALER
J. ENE MARTIN
WYNES A. HOMER
AR. L. MEHLE
MICHAEL D. TRAY
JAMES A. STEIN
RONALD L. JONES
BREGOR S. JONES
HANDALL S. JONES
HARRIET KELLEY
ROBERT M. FULLERTT

8, 1990

Ray W. Rigby, Esq.
RIGBY, THATCHER, ANDERSON
RIGBY & KAM
P.O. Box 250
Pexburg, Idaho 83444

Dear Mr. Rigby:

Mr. Richard Tuthill's letter of May, 1990, to the Big Lost River Irrigation District, and your response to Mr. Tuthill on behalf of the District dated May 19, 1990, have been referred to us. As you are aware, Mr. Tuthill does business also as Hillcrest Properties and P.U. Ranch. Mr. Tuthill has recently sought our advice respecting this and other questions regarding his water and conveyance rights. After our review, it appears that there has been some confusion, partially created by the filing of some applications for transfer as well as the filing in which the water use was documented. The following are the claims.

We have just completed a revision of the SRBA claims for Mr. Tuthill's water rights to more closely represent actual practices that have prevailed for a number of years. We have been requested to write to you to explain why we think Big Lost River Irrigation District ought to honor the existing transport agreements the same as others are being honored.

Mr. Tuthill has two claims, one of about 230 irrigated acres in Sections 1 and 2 of Township 4 N, Range 1 E, and the second consisting of some 264 irrigated acres in Sections 2, 3 and 10 of Township 4 N, Range 1 E.

The first farm is irrigated with water from Boyle Creek (Right No. 34-055) which has a priority of May 1, 1886) which runs through the farm. The water from Mackay Reservoir (this year the water has been advised that there is a total of some 3,268 inches of water) and a total of 3,990 inches--we understand that the transport agreements do not provide for the

FILED

SEP 10 1992

Ray W. Rigby, Esq.
June 8, 1990
Page 2

transport of this water to the farm on Era Flats), and with water from a well in the NW1/4 of the SW1/4 of Section 15, Township 4 North, Range 26 East (License No. 34-2512 for 4.4 cfs with a priority of June 3, 1960). The second farm is on Era Flat and receives water from decreed and licensed rights. Waters under such rights are diverted into the Moore Canal, thence to the Crossover Ditch, thence to the Blaine Canal and the Timberdome Canal Company system and on out to a private ditch from which two pivots sprinkle the land. These rights include:

<u>RIGHT NO.</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>PRIORITY</u>
34-0170 (Decree)	1.2 cfs	Big Lost River	05/01/1886
34-0556 (Decree)	2.8 cfs	Big Lost River	05/01/1886
34-2332 (License)	2.9 cfs	Groundwater	05/06/1955
34-7079 (License)	2.75 cfs	Groundwater	09/17/1979

We have reviewed a twenty-year Waterways Transport Agreement between Big Lost River Irrigation District and Mr. Tuthill dated December 6, 1983, which provides for the transport of the 4.9 cfs (200 inches) of May 1, 1885 decreed water rights through the Moore Canal for the Era Flats farm. We have also reviewed a first page of another Waterways Transport Agreement, dated July, 1985, for transport of water from a well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East, through the Moore Canal for the same farm. In addition, we have seen a first page of a document entitled "Transport of Moss Well Agreement Issued By Lost River Irrigation District", also dated in July, 1985. The "Moss Well" and the well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East are the same well, which is the point of diversion for Rights Nos. 34-2332 and 34-7079.

It appears to us that actual transfers of Rights Nos. 34-0170, 34-0556, 34-2332 and 34-7079 occurred no later than December 6, 1983 and July of 1985, well before the SRBA commencement in November, 1987. Mr. Tony Bailey, who operates both farms for Mr. Tuthill, indicates that the well was producing at least 400 miner's inches when the transfers were effected. We have therefore documented both the transfers (under Idaho Code §42-1416(A)) and the enlargement (under Idaho Code §42-1416(2)) in the SRBA claims we have recently revised for Mr. Tuthill.

Apparently because the district refused to deliver the decreed rights to the transport agreement last year

WHR: 8/13

SEP 10 1992

Ray W. Rigby, Esq.
June 8, 1990
Page 3

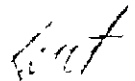
IDWR advised M. Bailey to file an application for transfer of rights Nos. 34-0170 and 34-0556 in March of this year, which he did. Of course, the application drew numerous protests and serves no purpose except to confuse. We think the actual transfers of all four rights were accomplished many years ago, perhaps at the time of the execution of the transport agreements and are more properly dealt with in the SRBA with other similar claims.

In addition, the well in the NW1/4 of the NW1/4 of Section 11, Township 5 North, Range 25 East, has reduced substantially in capacity during the last couple of years. Another well is being drilled near the same location to bring the capacity back up to the total of the rights. Again, IDWR had Mr. Bailey file an application for transfer, although for what reason, we do not know. There is no proposed change in point of diversion, place of use, nature of use or season of use. The new well is in the same quarter-quarter section and will discharge into the same ditch which delivers the water into the Moore Canal for transport under the existing agreements. If notice of this application for transfer is published, it will undoubtedly draw numerous protests as well. We do not believe either application is necessary because the transfers, which occurred before 1987, have not been properly raised and documented in the SRBA claims and will be dealt with as all similar claimed rights in that proceeding.

We, therefore, request that Big Lost River Irrigation District honor its contractual obligations under the above-referenced transport agreements, the same as in all similar circumstances. We would be happy to discuss this matter with you or to supply any additional information that might be requested.

We will very much appreciate hearing from you as soon as possible with respect to this matter.

Yours very truly,


Robert C. Foster

#1180.00/sr

cc: Norm C. Young

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SEP 10 1992

June 4, 1990

Mr. Tony Bailey
P.U. Ranch
Rt. 2, Box 447
Arden ID 83213

Dear Mr. Bailey:

A number of questions have recently arisen concerning water rights 34-2332 and 34-7079 held by P.U. Ranch and the replacement well presently being drilled in conjunction with these rights.

For background, P.U. Ranch originally acquired license 34-2332 (Transfer 3214) for 2.90 cubic feet per second. Later permit No. 34-7079 was requested to pump water from the existing well to additional acreage. Since the system pumping capacity was not increased, 34-7074 was licensed with a condition that the pumping rate in combination with right 34-2332 could not exceed 2.90 cfs. Thus, any combination of wells diverting water under these rights not exceed a combined diversion rate of 2.90 cfs.

In May of 1989 you requested a drilling permit to deepen the well on the above referenced rights have been diverted. In May of 1990 you again contacted this office and asked if you might abandon the existing well and drill a new well in the same forty-acre section or if necessary use both wells. You were advised that:

1. If the new well was to replace the old well then this office would allow the drilling permit to be used for the new well provided that the old well be abandoned according to Rule 3.12.1 upon completion of the new well.
2. If the new well does not produce the quantity of water necessary to deliver their rights (requiring that the old well be used), then an application for transfer must be filed with the Department.

No water may be diverted from the new well until the transfer is approved, and if the transfer is not approved the well would have to be abandoned according to Rule 3.12.1.

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SEP 10 1992

Mr. [unclear] [unclear]
June 24, 1990
Page 2

4. Since the well is to be drilled closer to the canal, if water is encountered approximate to the depth of the canal, the well must be cased and unperforated through the first impermeable layer encountered.

We will have field inspecting all wells used under rights 34-2332 and 34-1079 to assure that the total rate of diversion does not exceed 2.90 cfs. If more than one well is to be used it must be determined that an approved transfer from the Department will be required prior to diverting any water from the new well. If the new well will produce 2.90 cfs, the original well must be properly abandoned.

Very truly yours,

RONALD L. CARLSON
District Regional Supervisor

cc: [unclear]

cc: [unclear] Foster

MICROFILMED

SEP 10 1992

01-Jun-1990

RITA LUNDY
BIG LOST RIVER IRRIGATION
101 S. MAIN AVE.
MACKAY, ID 83251

RE: Application for Transfer No. 34-07079/34-02332

Dear Watermaster:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is June 25, 1990, and we are required to take action shortly thereafter.

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

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold Jones
Water Rights Supervisor

HJ/rb
Enclosure

RECEIVED

SEP 10 1992

01-Jun-1990

DOUG ROSENKRANCE
WATER DIST. 34
RT. 1, BOX 24
MACKAY, ID 83251

RE: Application for Transfer No. 34-07079/34-02332

Dear Watermaster:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is June 25, 1990, and we are required to take action shortly thereafter.

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

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold Jones
Water Rights Supervisor

HJ/rb
Enclosure

MICROFILMED

SEP 10 1992

01-Jun-1990

C/O RICHARD TUTHILL
RT. 1, BOX 447
ARCO, ID 83213

RE: Application for Transfer No. T34-07079/34-02332

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the ARCO ADVERTISER & CUSTER PUBLISHING CO. on JUNE 7 & 14, 1990. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

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

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

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

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

SEP 10

Big Lost River Irrigation District

P. O. Box 205
MACKAY, ID 83251

June 6, 1990

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JUN 8 1990

Department of Water Resources
Eastern District Office

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

Mr. Harold Jones

Dear Skip:

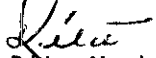
Thank you for sending us the copy of the "Application for Transfer of Water Right" for Hill Creek Properties.

The Board of Directors met yesterday and since they were not sure what the application referred to a call was placed to Glen Saxton for clarification. What he said was that it appears this transfer is to transfer the right from one well to a new well. Is this correct?

What was difficult for the Board and Ditchrider Supervisor to understand was that the existing well for 145" is working perfectly and actually is pumping 177 " right now.

I think we are missing something here and would greatly appreciate your shedding light so that the Board will know whether they should protest or pass it by. Would you help us please?

Yours truly,



Rita M. Lundy
Assistant Secretary-treasurer

SEP 10 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

RECEIVED

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

JUN 6 1990

Department of Water Resources
Eastern District Office

May 30, 1990

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

Dear Kent:

I have reviewed your letter dated May 17, 1990, in connection with use of water by certain of your clients in the Big Lost River drainage. The general approach suggested by your clients is commendable and likely will be a part of the ultimate administration of water rights in the basin. The director has suggested measures similar to those described in your letter, but the mechanics for administration simply are not in place yet.

You state that some of your clients "propose" to withdraw certain applications for permit. The department will not consider the applications withdrawn until you advise us in more specific terms that the applications are withdrawn.

Your letter also describes that your clients will divert less water in terms of cubic feet per second than in the previous year. The department cannot evaluate the effect of these "reductions" until the specific water rights, the associated acreage, the source of water and the specific wells, if groundwater, have been identified.

The location of the proposed Sorenson well (application 34-7410) which you have asked to construct on an emergency basis appears to be located in the so-called "well-orchard" area. Based on the numerous allegations of groundwater and surface water interference which the department has heard over the course of the last year and in view of the uncompleted study of water use in the drainage authorized by the last legislature, the department will not issue an emergency approval for construction of the well.

The general concept of "additional pumping" if the pumping costs are paid, perpetuates the ongoing problem in the basin of the use of water on land to which it is not appurtenant. The proposal also appears to be similar to the "pumping for credit" concept to which extensive objection has been voiced to the department. The department cannot allow the extra pumping unless a consensus is reached at least with the active protestants.

MINOR MED

SEP 10 1992

May 30, 1990

With respect to the P. U. Ranch property, Tony Bailey has contacted the department several times but has not yet provided sufficient information for the department to review his rights and to respond to his inquiries. Department records do not show that adjudication claims have been filed. The right to irrigate the S1/2SE1/4 Sec. 3 and the N1/2NE1/4, Sec. 10, Twp. 3N, Rge. 25E appears to be a major unresolved question. If the adjudication claims have not been filed, they should be soon, since the department will seek to terminate use of water for which there is not a related water right or an adjudication claim which appears to provide a color of title of a right.

Please feel free to contact me if you have questions.

Sincerely,


NORMAN C. YOUNG
Administrator

c: IDWR - E. Region
Gary Slette
Ray W. Rigby

MICROFILMED

SEP 10 1992

30-May-1990

Custer Publishing Co.
P.O. Box 405
Challis, ID 83226

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before June 25, 1990.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

MICROFILMED
SEP 10 1992

NOTICE OF PROPOSED CHANGE TO A WATER RIGHT
NO. 34-7079/34-2332

NOTICE IS HEREBY GIVEN, that Hillcreek Properties, Arco, ID, have applied to the Department of Water Resources to Add a Point of Diversion to the waters of a groundwater source. The right sought to be changed is evidenced by Transfer No. 3214 / 34-7079 & 34-2332 which produced this right and is recorded as follows:

NO. 34-7079 AMOUNT: 2.76 CFS PRIORITY: SEPT. 17, 1974

NO. 34-2332 AMOUNT: 2.90 CFS PRIORITY: MAY, 6, 1955

TOTAL AMOUNT OF WATER UNDER THIS RIGHT: 2.90 CFS

POINT OF DIVERSION: NWNW SEC 21 T 5N R 26E, B.M.

The water is used within the NWNW SEC 21 T 5N R 26E BUTTE COUNTY from April 1 to November 1 to irrigate 145 acres of land within the SW SEC 2 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the NWNW SEC 21 T 5N R 26E, (TWO POINTS) BUTTE COUNTY.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before June 25, 1990.

R. Keith Higginson

Director

OK
Published in the CUSTER PUBLISHING CO. June 7 & 14, 1990.

MICROFILMED
SEP 10 1992

30-May-1990

Arco Advertiser
P.O. Drawer C
Arco, ID 83213

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before June 25, 1990.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

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R. Keith Higginson

Director

Published in the ARCO ADVERTISER June 7 & 14, 1990.

OK
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9/89

Drilling Permit No. 34-82-E-08 5Water Right Permit No. 34-079, 34-2332/T3214 *rk*

Injection Permit No. _____

State of Idaho
Department of Water Resources

D R I L L I N G P E R M I T

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OCT 19 1989

Department of Water Resources

1. Applicant PU Ranch2. Mailing Address Rt. 1, Box 447Arco, ID 83213Telephone 527-3133

(X) Well Owner () Well Operator () Other, specify _____

3. Proposed well location NW 1/4 NW 1/4, or Gov't lot No. _____,Sec. 21, Twp. 5N, Rge. 26E, County Butte,

Street Address of Well Site _____,

Lot, block and subdivision _____

4. Proposed use of well:

() Single family or stockwater use (less than 13,000 gallons per day)

(X) Irrigation (more than 1/2 acre)

() Monitoring - A well bore schematic and map is required for each well.
No. of proposed wells: _____

() Other (describe fully) _____

5. Well construction information:

A. () New well (X) Deepen () Replace - See Condition 9.

B. Proposed surface diameter 16 Maximum depth 120

C. Anticipated bottom hole temperature:

(X) 85°F or less (Cold water well)

() 85°F to 212°F (Low temp. geothermal well)

() 212°F or more (Geothermal well)

6. Construction Start Date _____

7. Anticipated Well Driller _____

NOTE: The actual well driller must be identified prior to drilling.

8. Applicant's signature PU Ranch by Tony Bailey Date SEP 10 1992Title Manager (Owner, Firm Representative, Other)

UNRECORDED

FROM: KEITH C. WILSON

21 MAY 1990

TO: FILE DRILLING PERMIT 34-89-E-085

SUBJECT: USING DRILLING PERMIT TO DRILL A NEW WELL

NOTE: DRILLING PERMIT 34-89-E-085 WAS FILLED TO DEEPEN AN EXISTING WELL.

IN CONVERSATION WITH TONY BAILEY I WAS INFORMED THAT HE WISHED TO DRILL A NEW WELL AND IF THE TOTAL AMOUNT OF THEIR RIGHT WAS OBTAINED FROM THE NEW WELL THEN THE ORIGINAL WELL WOULD BE ABANDONED. HOWEVER, IF THE NEW WELL DID NOT PRODUCE THE AMOUNT OF WATER UNDER THEIR RIGHTS HE WANTED TO BE ABLE TO USE THE OLD WELL. MR. BAILEY INDICATED THAT THE WELL DRILLER HAD STARTED WORK LAST YEAR, BUT BECAUSE OF ALL THE PROTESTS WITHIN THE BASIN THEY HAD PULLED THE WELL DRILLER OFF OF THE PROJECT.

I TALKED WITH RON CARLSON AND RELAYED THE FOLLOWING INFORMATION TO TONY BAILEY:

1. IF THE NEW WELL WAS TO REPLACE THE OLD WELL THEN THIS OFFICE WOULD ALLOW THE DRILLING PERMIT TO BE USED FOR THE NEW WELL PROVIDED THAT THE OLD WELL BE ABANDONED ACCORDING TO RULE 3,12,1 COMPLETION OF THE NEW WELL.
2. IF THE NEW WELL DOES NOT PRODUCE THE QUANTITY OF WATER NECESSARY TO DELIVER THEIR RIGHTS (REQUIRING THAT THE OLD WELL BE USED), THEN AN APPLICATION FOR TRANSFER MUST BE FILLED WITH THE DEPARTMENT.

NOTE: THE NEW WELL CAN NOT BE USED UNTIL THE TRANSFER IS APPROVED, AND IF THE TRANSFER IS NOT APPROVED THE WELL WOULD HAVE TO BE ABANDONED ACCORDING TO RULE 3,12,1

3. SINCE THE NEW WELL IS TO BE DRILLED CLOSER TO THE CANAL, IF WATER IS ENCOUNTERED APPROXIMATE TO THE CANAL, THE WELL MUST BE CASED AS NOT TO INTERCEPT ANY WATER FROM THE CANAL.

(MR. BAILEY INFORMED ME THAT THE NEW WELL WOULD BE CASED UNPERFORATED DOWN TO AT LEAST 80 FEET.)

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SEP 10 1992

Keith C. Wilson
KEITH C. WILSON

Facsimile Transmission Cover Sheet

RIGBY, THATCHER, ANDRUS, RIGBY & KAM

25 North Second East
P.O. Box 250
Rexburg, Idaho 83440

Telephone: (208) 356-3633
FAX: (208) 356-0768

Date: July 6, 1990

Sent from: Glenn Saxton

Pages to follow Cover Sheet: 23

Fax Number: 1-327-7866

Deliver to: Glenn Saxton

Comments: _____

If any pages were not received or there are any questions, please call as soon as possible.

ORIGINAL TO BE MAILED: YES _____ NO ☒

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COPY

Served
7-2-90

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

DICKCON, a California
corporation, TIMJON, a
California corporation, d/b/a
HILLCREEK PROPERTIES, and
RICHARD A. TUTHILL, d/b/a
P. U. RANCH, LTD.,

Plaintiffs,

vs.

BIG LOST RIVER IRRIGATION
DISTRICT,

Defendant.

Case No. 12-90

~~TEMPORARY RESTRAINING~~
ORDER

Upon reading the verified Complaint herein and good cause appearing therefore, the court hereby enters the following temporary restraining order requiring the defendant Big Lost River Irrigation District to deliver such water diverted under plaintiff's water rights as is placed by plaintiffs in the Moore Canal, less a reasonable amount to be charged for transmission losses from the point where water is introduced

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SEP 10 1992

into said Moore Canal, to, and release the same into, the Crossover Ditch in Section 18, Township 4 North, Range 26 East, for transport to plaintiff's lands in Sections 2, 3 and 10 of Township 3 North, Range 25 East for the proper irrigation thereof, for the reason that the injury, loss or damage which will result to plaintiff's barley crop before a hearing can be held herein will be immediate and irreparable and further that the attorney for plaintiff has made a reasonable effort to notify counsel for defendant and it appears that defendant's counsel is out of his office and the schedules of the respective attorneys will not permit a hearing to be held herein until after significant or irreparable damage would have occurred to plaintiff's barley crop;

~~NOW, THEREFORE, IT IS HEREBY ORDERED~~ as follows:

1. ~~Defendant, Big Lost River Irrigation District, is hereby restrained and enjoined from refusing and failing to transport water placed in its Moore Canal by plaintiff,~~ pursuant to plaintiff's water rights, and defendant is hereby ordered to transport such water, less a reasonable amount to be charged for transmission losses, from the point where such water is placed in said Moore Canal to the Crossover Ditch in Section 18, Township 4 North, Range 26 East, where said water can then be transported to plaintiff's lands for the proper irrigation thereof;

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SEP 10 1992

2. IT IS FURTHER ORDERED that this restraining order is temporary, and shall expire fourteen (14) days from the time of issuance hereof or at such time as plaintiff's Motion for Preliminary Injunction can be heard, unless otherwise extended by agreement or by the court for good cause shown;

3. IT IS FURTHER ORDERED that plaintiff give security as required by Idaho Rules of Civil Procedure Rule 65(c) by depositing with the Clerk of the Court the sum of \$500.00.

RENDERED AND ENTERED this 2nd day of July, 1990 at the hour of 2:45 o'clock P.m.


District Judge

(Court Seal)

0035h/srx

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COPY

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

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

Plaintiffs,)

vs.)

BIG LOST RIVER IRRIGATION)
DISTRICT,)

Defendant.)

Case No. 12-90

S U M M O N S

THE STATE OF IDAHO SENDS GREETINGS TO:
THE BIG LOST RIVER IRRIGATION DISTRICT

YOU ARE HEREBY NOTIFIED that a Complaint has been filed
against you in the District Court of the Seventh Judicial
District of the State of Idaho, in and for Butte County, Idaho.

YOU ARE HEREBY DIRECTED to file a written answer or
written motion in defense to the said Complaint within twenty
(20) days of the service of this Summons;

SEP 10 1992

YOU ARE FURTHER NOTIFIED that unless you do so within the time herein specified, plaintiff will take judgment against you as prayed in said Complaint.

The nature of the claim against you is for injunctive relief for nondelivery of water to plaintiff.

WITNESS my hand and seal of said District Court this 3rd day of July, 1990.

Judith R. Bailey
Clerk

By: Deanna Jardine
Deputy Clerk

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SEP 10 1992

COPY

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

DICKCON, a California
corporation, TIMJON, a
California corporation, d/b/a
HILLCREEK PROPERTIES, and
RICHARD A. TUTHILL, d/b/a
P. U. RANCH, LTD.,

Plaintiffs,

vs.

BIG LOST RIVER IRRIGATION
DISTRICT,

Defendant.

Case No. 12-90

COMPLAINT

Fee Category: A.1
Fee Amount: \$53.00

COMES NOW the above-named plaintiff and for cause of action
against the above-named defendant and alleges as follows:

I.

That plaintiff is a partnership composed of two California
corporations licensed to and doing business in the State of
Idaho under the business name of Hillcreek Properties, and
Richard A. Tuthill, who is an officer and principal stockholder

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of said corporations and further does business in the State of Idaho under the name of P. U. Ranch, Ltd.; that plaintiff is the owner of the following described real property situate in the County of Butte, County of Idaho:

SW1/4 of Section 2, the S1/2 of the SE1/4 of Section 3, and the N1/2 of the NE1/4 of Section 10, all in Township 3 North, Range 25 EBM;

Together with certain water rights that are appurtenant thereto and have been used for several years for the irrigation thereof, including the following:

ID #	AMOUNT	PRIORITY	SOURCE
A34-00170	1.2 cfs	05/01/1886	Big Lost River
A34-00556	2.8 cfs	05/01/1886	Big Lost River
A34-02332	2.9 cfs	05/06/1955	Well
* MASS A34-07079	→ 2.76 cfs	09/17/1979	Well
Expansion of 34-2332	→ 2.4		
& 34-7079	2.34 cfs	04/01/1980	Well

*transfer
12-4-83*

II.

That defendant is an irrigation district organized and existing under and by virtue of the laws of the State of Idaho having the control and operation of a canal system including the Moore Canal.

III.

That for many years, water has been diverted pursuant to the above-described water rights and delivered the

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SEP 10 1992

above-described real property of the plaintiff, in part, through the Moore Canal, to the Crossover Ditch in Section 18, Township 4 North, Range 26 East under and by virtue of the provisions of two Twenty-Year Transport Agreements with defendant, copies of which are attached hereto as Exhibit "A" and Exhibit "B", and hereby made a part hereof.

IV.

That defendant has failed and refused to honor said transport agreements and has failed and still refuses to deliver water through the Moore Canal pursuant thereto for the benefit of the irrigation of plaintiff's lands.

V.

That plaintiff has approximately 264 acres of barley planted on the above-described real property which is in urgent need of irrigation at this very moment; that unless defendant is compelled to deliver the water to which the plaintiff is entitled immediately, plaintiff will suffer immediate and irreparable injury, loss and damage to said barley crop, even before the defendant or its attorney can be heard in opposition; that plaintiff, through its attorney, previously wrote to the attorney for defendant on June 8, 1990, explaining the status of plaintiff's water rights and attempting to ensure that water would be available when needed; that there has been

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SEP 10 1992

no response to such letter and that when plaintiff's attorney attempted to call defendant's attorney, he was informed that said attorney was out of town and may not be available within a timeframe sufficient to prevent further damage to the barley crop of the plaintiff; and that a copy of said letter of June 8, 1990 is attached hereto as Exhibit "C" and hereby made a part hereof.

VI.

That plaintiff is entitled, and does hereby apply to the court for, a temporary restraining order without written or oral notice to the adverse party or its attorney, to a preliminary injunction upon a hearing pursuant to notice as soon as the court is able to hear such matter, and to a permanent injunction upon trial herein on the merits.

VII.

That plaintiff has been obligated to secure the services of an attorney to prosecute this action and to seek the immediate relief required by defendant's unlawful acts and that plaintiff is therefore entitled to reasonable attorney fees to be set by the court pursuant to Idaho Code § 12-120 and/or §12-121.

WHEREFORE, plaintiff prays the judgment, order and decree of this court as follows:

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1. Temporarily restraining and enjoining defendant from failing and refusing to deliver through its Moore Canal such water as is placed therein by plaintiff pursuant to the above-described water rights, less a reasonable amount for transmission losses, and ordering defendant to release such water into the Crossover Ditch where it may then be transported to the above-described real property for plaintiff's use and benefit pending a hearing on plaintiff's application for a preliminary injunction;

2. Upon notice and hearing herein, a preliminary injunction requiring defendant to continue to deliver through its Moore Canal such water as is placed therein by plaintiff pursuant to the above-described water rights of plaintiff, less a reasonable amount for transmission losses, and ordering defendant to release such water into the Crossover Ditch where it may then be transported to plaintiff's land for the use and benefit thereof during the pendency of this proceeding;

3. Upon the final trial of this cause on the merits, a permanent injunction requiring defendant to deliver through its Moore Canal such water as is placed therein by plaintiff pursuant to plaintiff's above-described water rights, less a reasonable amount for transmission losses, and ordering and requiring defendant to release such water into the Crossover Ditch for transport to plaintiff's real property for the use

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and benefit thereof during the remaining period under the Twenty-Year Transport Agreements and any extensions thereof;

4. For plaintiff's costs and attorney fees incurred herein; and

5. For such other and further relief as the court may deem just and equitable.

DATED this 2 day of July, 1990.

HOLDEN, KIDWELL, HAHN & CRAPO

By: Kent W. Foster

Kent W. Foster
Attorneys for Plaintiffs

STATE OF IDAHO)
) ss.
County of Bonneville)

RICHARD A. TUTHILL, being first duly sworn, deposes and says: that he is an officer and principal stockholder and an authorized agent of the above-named plaintiffs as well as one of the plaintiffs in the above-entitled action; that he has read the above and foregoing Complaint, knows the contents thereof and that he verily believes the facts therein stated to be true.

By: Richard A. Tuthill

Richard A. Tuthill

SUBSCRIBED and sworn to before me this 2nd day of July, 1990.

(seal)

Kent W. Foster
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 11/10/92

SEP 10 1992

1067A/srr

EXHIBIT "A"

WATERWAYS TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of December 19 83, by and between PU Ranch, LTD and _____ of Butte County, State of Idaho and the Big Lost River Irrigation District, an Irrigation District duly organized under the laws of the State of Idaho, with its principal office in Mackay, Custer County, State of Idaho.

WITNESSETH

WHEREAS, PU RANCH, LTD is the owner of certain rights to ~~XXXX~~ waters with a point of diversion described as follows: decreed

200 " of 5/1/1886 water decreed out of the Westside Canal

and,

WHEREAS those rights to waters are in the amount of approximately 200 miners inches of capacity, and

WHEREAS PU RANCH, LTD desires to transport said waters through an existing canal of District for use at a point other than the point of diversion.

WHEREAS, the District is the owner of a canal known as the Moore/UC Canal, being a part of the facilities of the District for the transmission of decreed and storage waters within the boundaries of said district, and,

WHEREAS, PU RANCH, LTD desires to transport said waters described above through said Moore/UC Canal to the end of said canal at the boundaries of the District, and thereafter beyond said boundary on to land owned by PU RANCH, LTD outside the boundary lines of the district, to the end that said waters would be used on lands described as follows.
(enter legal description)

Twp 3 N. Rge 25 EBM

Section 2: SW $\frac{1}{4}$

Section 3: SW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$

section 3: W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$

section 4: N $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$

section 9: E $\frac{1}{2}$ and E $\frac{1}{4}$ W $\frac{1}{4}$

section 10: W $\frac{1}{2}$ W $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$

WATERWAYS TRANSPORT AGREEMENT --Page 1

from District. Lost River
July 2nd 1990

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SEP 10 1992

NOW, THEREFORE, it is mutually agreed as follows:

1. PU RANCH, LTD may transport the well waters with the point of diversion at decreed waters in the amount of approximately 200 miners inches capacity, in and through said Moore/UC Canal owned by the District, subject to the terms and conditions of this agreement.

2. PU RANCH, LTD shall construct and maintain at their own expense, any additional ditch, structures, or other improvements, other than the existing Moore/UC Canal, that might be required to make the waters available to the land of PU RANCH, LTD.

3. The right of PU RANCH, LTD as set forth above is subordinate to all existing and prior rights for the transportation of waters of the District in and through said Moore/UC Canal, and the right granted herein is granted only as long as there is sufficient additional capacity in Moore/UC Canal beyond the needs and uses of District to carry said waters of PU RANCH, LTD. The determination of the availability of additional capacity in Moore/UC Canal shall be the sole determination of District. In the event that there is no additional capacity in the Moore/UC Canal for the transportation of well waters, PU RANCH, LTD agrees to construct at their sole expense any additional carrying capacity in the Moore/UC Canal. In the event PU RANCH, LTD decides to forego the use of the Moore/UC Canal when there is no additional capacity, this agreement shall terminate.

4. PU RANCH, LTD shall pay a proportionate part of the annual operation, maintenance, assessment and overhead costs of the District as a toll charge for the use of Moore/UC Canal. The operation and maintenance portions of the toll charge shall be based upon an assessment of the benefit received, said amount to be set by District on the same basis as other toll charges made concerning like rights. The assessment and overhead charges will be set against all lands benefitted hereby proportionately. Since all charges, including operation and maintenance are based on the number of irrigated acres, PU RANCH, LTD shall notify District of the number of acres that have been irrigated by PU RANCH, LTD with said waters each year.

Notice of charges shall be given to PU RANCH, LTD by PU RANCH, LTD on or after the 1st day of April and are payable in full within 10 days of such notice.

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5. No water rights, transmission rights, or ditch rights, in the Moore/UC Canal shall accrue to PU RANCH, LTD by reason of this agreement, the rights of said PU RANCH, LTD being contained only in the terms of this agreement.

6. This agreement shall be for a term of twenty(20) years beginning: the 6th day of December, 19 83, and shall remain in full force and effect until the 6th day of Dec., 2003, unless terminated as indicated in paragraph 7.

7. Failure to pay all charges and assessments agreed to when due shall be a breach of this agreement. Failure to accurately report the number of irrigated acres or to increase the flow of water through the Moore/UC Canal above that specified in this agreement without the written consent of the District shall also constitute a material breach of this agreement. In the event the District is required to file suit to collect past due charges or to remedy any other breach of this agreement, PU RANCH, LTD agrees to pay the District's costs and attorney's fees. PU RANCH, LTD is entitled to ten(10) days notice of any breach before suit is filed.

8. PU RANCH, LTD agrees that no assignment or other transfer of this agreement may be made except as hereafter provided.

In the event PU RANCH, LTD desires to assign this agreement to any institution as security for a farm loan, the District hereby agrees to give its written consent upon ten(10) days written notice of said assignment. In the event said assignment is consented to by the District, however, PU RANCH, LTD agrees to continue to remain responsible and obligated under all the terms, covenants and conditions of this agreement.

9. This document constitutes the full agreement of the parties hereto and any amendments or changes shall be invalid unless written.

ATTEST:

P.U. RANCH, LTD.

By:

Richard A. Smith
Authorized signature

dated

James A. Babcock
Secretary-Treasurer

by: William O. Bell
Big Lost River Irrigation District dated
Chairman of the Board

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SEP 10 1992

STATE OF IDAHO }
COUNTY OF _____ }

ON THIS 8th day of March, 1984, before me, the undersigned a Notary Public in and for said County and State, personally appeared RICHARD A. TOTHILL, President of P.U. RANCH, LTD. known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that he executed the same for P.U. RANCH, LTD.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

S E A L

Clemens A. Cullen
Notary Public for the State of Idaho
Residing at Idaho, Idaho

STATE OF IDAHO }
COUNTY OF Butte }

ON THIS 3rd day of April, 1984, before me, the undersigned a Notary Public in and for said county and State, personally appeared William O. Bell and James S. Belmont known to me to be the Chairman and Secretary respectively, of the Corporation that executed the foregoing instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

S E A L

Paul J. Kennedy
Notary Public for the State of Idaho
Residing at Hackay, Idaho

WATERWAYS TRANSPORT AGREEMENT - Page 4

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SEP 10 1992

EXHIBIT "B"

The following described tract(s) of land in Butte County, State of Idaho.

See record of same:
Elmer Langston
That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11 Township 5 North,
Range 26 East, Boise Meridian described as follows:

Beginning at the NW corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ thence East
1,230 feet; thence South to the North boundary of the Moore
Canal; thence following said Moore canal boundary Southwesterly
to the Railroad right-of-way; thence Northwesterly along said
right-of-way to point where it intersects a county road running
North and South; thence North along county road right-of-way
to the point of Beginning, Containing therein 11 acres more or
less.

The only irrigation water belonging to this parcel is
represented by a well located thereon.

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SEP 10 1992

WATERWAYS TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this day of July, 19 85, by and between Hillcreek Properties and of Butte County, State of Idaho and the Big Lost River Irrigation District, an Irrigation District duly organized under the laws of the State of Idaho, with its principal office in Shockey, Custer County, State of Idaho.

WITNESSETH:

WHEREAS, Hillcreek properties is the owner of certain rights to well waters with a point of diversion described as follows:
License # 34:7077 well purchased from Dayton & Engstrom
300 inches (which had previously been 400 inches)

and,

WHEREAS these rights to waters are in the amount of approximately 300 minors inches of capacity, and

WHEREAS Hillcreek properties desires to transport said waters through an existing canal of District for use at a point other than the point of diversion.

WHEREAS, the District is the owner of a canal known as the Moore/UC Canal, being a part of the facilities of the District for the transmission of decreed and storage waters within the boundaries of said district, and,

WHEREAS, Hillcreek properties desires to transport said waters described above through said Moore/UC Canal to the end of said canal at the boundary of the District, and thereafter beyond said boundary on to land owned by Hillcreek properties outside the boundary lines of the district, to the end that said waters would be used on lands described as follows.

(enter legal description)

Twp 3 N. Rge 25 E13M
 Section 2: SW1/4
 Section 3: SW1/4
 Section 10 NW1/4.

Section 3: NW1/4 and SE1/4
 Section 4: NW1/4 and NE1/4
 Section 9: E1/2 and E1/4
 Section 10 NW1/4; SE1/4 and NW1/4

WATERWAYS TRANSPORT AGREEMENT --Page 1

from District office Lost River.
 July 2, 1990

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 SEP 10 1992

NOW, THEREFORE, it is mutually agreed as follows:

1. Hillcreek properties may transport the well waters at the point of diversion at well waters in the amount of approximately 300 miners inches capacity, in and through said Moore/UC Canal owned by the District, subject to the terms and conditions of this agreement.

2. Hillcreek properties shall construct and maintain at their own expense, any additional ditch, structures, or other improvements, other than the existing Moore/UC Canal, that might be required to make the waters available to the land of Hillcreek properties.

3. The right of Hillcreek properties as set forth above is subordinate to all existing and prior rights for the transportation of waters of the District in and through said Moore/UC Canal, and the right granted herein is granted only as long as there is sufficient additional capacity in Moore/UC Canal beyond the needs and uses of District to carry said waters of Hillcreek properties. The determination of the availability of additional capacity in Moore/UC Canal shall be the sole determination of District. In the event that there is no additional capacity in the Moore/UC Canal for the transportation of said waters, Hillcreek Properties agrees to construct at their sole expense any additional carrying capacity in the Moore/UC Canal. In the event Hillcreek properties decides to forego the use of the Moore/UC Canal when there is no additional capacity, this agreement shall terminate.

4. Hillcreek properties shall pay a proportionate part of the annual operation, maintenance, assessment and overhead costs of the District as a toll charge for the use of Moore/UC Canal. The operation and maintenance portions of the toll charge shall be based upon an assessment of the benefit received, said amount to be set by District on the same basis as other toll charges made concerning like rights. The assessment and overhead charges will be set against all lands benefitted hereby proportionately. Since all charges, including operation and maintenance are based on the number of irrigated acres, Hillcreek properties shall notify District of the number of acres that have been irrigated by Hillcreek properties with said waters each year.

Notice of charges shall be given to Hillcreek Properties by the District on or after the 1st day of April and are payable in full within thirty days of such notice.

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SEP 10 1992

5. No water rights, transmission rights, or ditch rights, in the Moore/UC Canal shall accrue to Hillcreek properties by reason of this agreement, the rights of said Hillcreek properties being contained only in the terms of this agreement.

6. This agreement shall be for a term of twenty (20) years beginning the 12 day of July-Aug, 1985, and shall remain in full force and effect until the 12 day of July 2005, unless terminated as indicated in paragraph 7.

7. Failure to pay all charges and assessments agreed to when due shall be a breach of this agreement. Failure to accurately report the number of irrigated acres or to increase the flow of water through the Moore/UC Canal above that specified in this agreement without the written consent of the District shall also constitute a material breach of this agreement. In the event the District is required to file suit to collect past due charges or to remedy any other breach of this agreement, Hillcreek properties agrees to pay the District's costs and attorney's fees. Hillcreek properties is entitled to ten (10) days notice of any breach before suit is filed.

8. Hillcreek properties agree that no assignment or other transfer of this agreement may be made except as hereafter provided.

In the event Hillcreek properties desires to assign this agreement to any institution as security for a farm loan, the District hereby agrees to give its written consent upon ten (10) days written notice of said assignment. In the event said assignment is consented to by the District, however, Hillcreek properties agrees to continue to remain responsible and obligated under all the terms, covenants and conditions of this agreement.

9. This document constitutes the full agreement of the parties hereto and any amendments or changes shall be invalid unless written.

ATTEST:

James A. B. B. B.
Secretary-Treasurer

Richard A. Duthill
Authorized signature dated _____
by: [Signature]
Big Lost River Irrigation District dated _____
Chairman of the Board

STATE OF IDAHO)
COUNTY OF Butte)

ON THIS 12 day of July, 19 85, before me, the under-
signed a Notary Public in and for said County and State, personally appeared
Richard A. Tuthill, President and Hillcreek Properties
known to me to be the person(s) whose name(s) are subscribed to the within
instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have herewith set my hand and affixed my official
seal, the day and year in this certificate first above written.

S E A L

[Signature]
Notary Public for the State of Idaho
Residing at Arco, Idaho

STATE OF IDAHO)
COUNTY OF Butte)

ON THIS 6 day of August, 19 85, before me, the
undersigned a Notary Public in and for said county and State, personally
appeared J. Doyle Lawrence and James S. [unclear] known to me
to be the Chairman and Secretary respectively, of the Corporation that
executed the foregoing instrument, and acknowledged to me that such Corporation
executed the same.

IN WITNESS WHEREOF, I have herewith set my hand and affixed my official
seal, the day and year in this certificate first above written.

S E A L

[Signature]
Notary Public for the State of Idaho
Residing at Blackfoot, Idaho

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SEP 10 1992

EXHIBIT "C"

LAW OFFICES

HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
PO BOX 50130
IDAHO FALLS IDAHO 83405

TELEPHONE (208) 523-0820
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1931-1982)
WILLIAM S. HOLDEN (1901-1966)
A. VERN KIDWELL OF CO. ATTL

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

June 8, 1990

Ray W. Rigby, Esq.
RIGBY, THATCHER, ANDRUS,
RIGBY & KAM
P.O. Box 250
Rexburg, Idaho 83440

Dear Mr. Rigby:

Mr. Richard Tuthill's letter of May, 1990, to the Big Lost River Irrigation District, and your response to Mr. Tuthill on behalf of the district, dated May 19, 1990, have been referred to us. As you are aware, Mr. Tuthill does business also as Hillcreek Properties and P.U. Ranch. Mr. Tuthill has recently sought our advice respecting this and other questions regarding his water and conveyance rights. After our review, it appears that there has been some confusion, partially created by the filing of some applications for transfer, as well as the manner in which the water use was documented by the filing of the SRBA claims.

We have just completed a revision of the SRBA claims for Mr. Tuthill's water rights to more closely represent actual practices that have prevailed for a number of years. We have been requested to write to you to explain why we think Big Lost River Irrigation District ought to honor the existing transport agreements the same as others are being honored.

Mr. Tuthill has two farms, one of about 239 irrigated acres in Sections 15 and 22 of Township 4 North, Range 26 East, and the second consisting of some 264 irrigated acres in Sections 2, 3 and 10 of Township 3 North, Range 25 East.

The first farm is irrigated with water from Boyle Creek (Right No. 34-0557 for .4 cfs with a priority of May 1, 1886) which runs through the farm, storage water from Mackay Reservoir (this year Mr. Tuthill has been advised that there is a total of some 3,368 plus 522, or a total of 3,890 inches--we understand that the transport agreements do not provide for the

SEP 10 1990

Ray W. Rigby, Esq.
 June 8, 1990
 Page 2

transport of this water to the farm on Era Flats), and with water from a well in the NW1/4 of the SW1/4 of Section 15, Township 4 North, Range 26 East (License No. 34-2512 for 4.4 cfs with a priority of June 3, 1960). The second farm is on Era Flat and receives water from decreed and licensed rights. Waters under such rights are diverted into the Moore Canal, thence to the Crossover Ditch, thence to the Blaine Canal and the Timberdome Canal Company system and on out to a private ditch from which two pivots sprinkle the land. These rights include:

<u>RIGHT NO.</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>PRIORITY</u>
34-0170 (Decree)	1.2 cfs	Big Lost River	05/01/1886
34-0556 (Decree)	2.8 cfs	Big Lost River	05/01/1886
34-2332 (License)	2.9 cfs	Groundwater	05/06/1955
34-7079 (License)	2.76 cfs	Groundwater	09/17/1979

We have reviewed a twenty-year Waterways Transport Agreement between Big Lost River Irrigation District and Mr. Tuthill dated December 6, 1983, which provides for the transport of the 4.0 cfs (200 inches) of May 1, 1886 decreed water rights through the Moore Canal for the Era Flats farm. We have also reviewed a first page of another Waterways Transport Agreement, dated July, 1985, for transport of water from a well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East, through the Moore Canal for the same farm. In addition, we have seen a first page of a document entitled "Transport Of Moss Well Agreement Issued By Lost River Irrigation District", also dated in July, 1985. The "Moss Well" and the well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East are the same well, which is the point of diversion for Rights Nos. 34-2332 and 34-7079.

It appears to us that actual transfers of Rights Nos. 34-0170, 34-0556, 34-2332 and 34-7079 occurred no later than December 6, 1983 and July of 1985, well before the SRBA commencement in November, 1987. Mr. Tony Bailey, who operates both farms for Mr. Tuthill, indicates that the well was producing at least 400 miner's inches when the transfers were effected. We have therefore documented both the transfers (under Idaho Code §42-1416(A)) and the enlargement (under Idaho Code §42-1416(2)) in the SRBA claims we have recently filed for Mr. Tuthill.

Apparently because the district refused to deliver the decreed rights pursuant to the transport agreement last year,

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 SEP 10 1992

Ray W. Rigby, Esq.
June 8, 1990
Page 3

IDWR advised Mr. Bailey to file an application for transfer of Rights Nos. 34-0170 and 34-0556 in March of this year, which he did. Of course, the application drew numerous protests and serves no purpose except to confuse. We think the actual transfers of all four rights were accomplished many years ago, perhaps at the time of the execution of the transport agreements and are more properly dealt with in the SRBA with other similar claims.

In addition, the well in the NW1/4 of the NW1/4 of Section 21, Township 5 North, Range 26 East, has reduced substantially in capacity during the last couple of years. Another well is being drilled near the same location to bring the capacity back up to the total of the rights. Again, IDWR had Mr. Bailey file an application for transfer, although for what reason, we do not know. There is no proposed change in point of diversion, place of use, nature of use or season of use. The new well is in the same quarter--quarter section and will discharge into the same ditch which delivers the water into the Moore Canal for transport under the existing agreements. If notice of this application for transfer is published, it will undoubtedly draw numerous protests as well. We do not believe either application is necessary because the transfers, which occurred before 1987, have now been properly raised and documented in the SRBA claims and will be dealt with as all similar claimed rights in that proceeding.

We, therefore, request that Big Lost River Irrigation District honor its contractual obligations under the above-referenced transport agreements, the same as in all similar circumstances. We would be happy to discuss this matter with you or to supply any additional information that might be requested.

We will very much appreciate hearing from you as soon as possible with respect to this matter.

Yours very truly,

Kent
Kent W. Foster

#7180.00/srr

cc: Norm C. Young

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LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
PO BOX 50130
IDAHO FALLS, IDAHO 83405

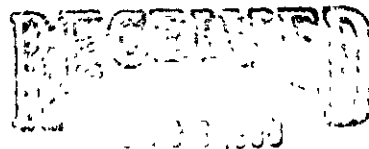
TELEPHONE (208) 523-0620
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WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

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GREGOR S. CHVISUK
RANDALL B. REED
MARIE T. FEELEY
ROBERT M. FOLLETT

June 8, 1990



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

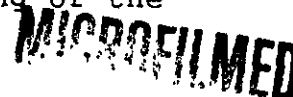
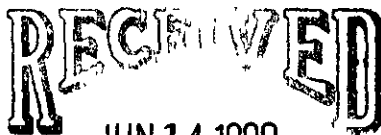
Department of Water Resources
Eastern District Office

Gentlemen:

We have prepared and are enclosing six Amended Notices of Claim and one new claim for filing in the SRBA on behalf of Hillcreek Properties. We do not know what amounts of filing fees have previously been paid, but if you can determine what adjustment needs to be made and advise us, we will be happy to see that it is promptly taken care of.

After a thorough review of the irrigation and diversion practices that have historically taken place on these two farms, it became apparent that (1) water under the decreed natural flow Rights Nos. 34-0170 and 34-0056, and that the groundwater rights Licenses Nos. 34-2332 and 34-7079 had been diverted into the Moore Canal and carried to the Timberdome Canal Company system under written transport agreements between claimant and Big Lost River Irrigation District since 1983 and 1985, for use on the 264 acres in Section 2, 3 and 10 of Township 3 North, Range 25 East; and (2) the well licensed under Rights Nos. 34-2332 and 34-7079 has historically produced up to 400 miner's inches, substantially more than the combined amounts under the two licenses.

We have, therefore, revised claims to reflect the accomplished transfers under Idaho Code §42-1416A and to reflect the expansion under Idaho Code §42-1416(2). An application for transfer under Idaho Code §42-222 for the two natural flow rights was apparently prepared by IDWR and signed by applicant last February. We would think these revised claims probably obviate the need for further processing of the §42-222 application.



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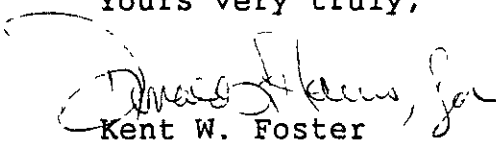
Department of Water Resources

June 8, 1990
Page 2

In addition, the well licensed under 34-2332 and 34-7079 has diminished substantially during the last two years. Claimant recently secured a drilling permit to drill a companion well near the old one. He intends to upgrade the equipment in the old well and with the companion well again be able to pump the amount he was diverting prior to 1987. Apparently another application for transfer under Idaho Code §42-222 was prepared for him and notice is now being published. We are not sure this one needs further processing either. There is no proposed change in place of use, point of diversion, nature of use, or season of use; the intent is only to make the necessary physical modifications to permit the historical diversions within the same point of diversion shown on the licenses and for the same lands which have been irrigated with water from this source for several years. We have tried to reflect the accomplished transfers and expansions under the appropriate statutes in the enclosed claims.

If we can provide any additional information or be of assistance in any manner, please feel free to call upon us. Otherwise, we will look forward to hearing from you with respect to any required adjustment in filing fees. Thank you for your kind assistance.

Yours very truly,


Kent W. Foster

#7180.00/srr

Enclosure

cc: Mr. Richard Tuthill
Mr. Tony Bailey

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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?

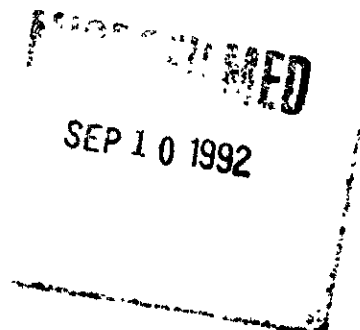
Without the proper data to review, I can not respond to your inquiries. At this point, I suggest you contact Harold Jones of our Idaho Falls office to be sure that proper adjudication claims have been filed. Once I have copies of the adjudication claims, I am willing to further research your water right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



_DIA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]NOTES.BAILEY;4

draft

03-09-90

lgs

MEMORANDUM

To: Norman C. Young
From: L. Glen Saxton
RE: TONY BAILEY/P.U. RANCHES INQUIRY
Date: March 8, 1990

I have reviewed the matter described in your March 7, 1990 memo. Pertinent water right information appears to be as follows:

License 34-2512

- Priority - June 3, 1960
- Rate of div - 4.4 cfs
- Source - groundwater
- P.D. - NWSW Sec 15, T4N, R26E
- Pl use - 220 ac in Sec 15 and 22, T4N, R26E

License 34-2332

- Priority - May 6, 1955
- Rate of div - 2.9 cfs
- Source - groundwater
- P.D. - NWNW Sec 21 T5N, R26E
- Pl use - 145 ac in Sec 21, T5N, R26E

License 34-7079

- Priority - Sept 17, 1974
- Rate of div - 2.76 cfs
- Source - groundwater
- P.D. - NWNW Sec 21, T5N, R26E (Same well as 34-2332)
- Pl use - 145 ac in Sec 21, T5N, R26E (Same land as 34-2332).
- Conditioned with general language about diversion rate, i.e. no more than to efficiently irrig land.

On December 4, 1985, the department approved transfer 3214 which involved licensed rights 34-2332 and 34-7079.

- The transfer changed the place of use of the 145 acres to the SW1/4 Section 2, T3N, R25E.

Microfilm
SEP 10 1992

DIA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]NOTES.BAILEY;4

- The transfer was conditioned that the rate of diversion not exceed 2.9 cfs nor 435 Af/yr.

General notes:

- The home place is the land associated with lic. 34-2512.
- About 2 weeks ago, Bailey filed an application with Idaho Falls in connection with 34-0170 and 34-0556.

34-0170

- May 1, 1886
- 1.2 cfs
- Big Lost River
- P.d. - SESE Sec 4, T4N, R26E
- Pl u - NW - Sec 22, T4N, R26E

34-0556

- May 1, 1886
- 2.8 cfs
- Big Lost River
- P.D. - SESE Sec 4, T4N, R26E
- Pl u - SW Sec 15, T4N, R26E

34-0557

- May 1, 1886
- 0.4 cfs
- Boyle Creek
- P.D. - Sw Sec 15, T4N, R26E
- Pl u - SW - Sec 15, T4N, R26E

- The pivots irrigate the SW - Sec 2, S1/2SE - Sec 3 and N1/2NE Sec 10, T3N, R25E.

MINNEAPOLIS

SEP 10 1992

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APR 19 1989

Department of Water Resources
Eastern District OfficeDrilling Permit No. 34-37-E-105Water Permit No. 34-2512

Injection Permit No. _____

State of Idaho
Department of Water Resources

DRILLING PERMIT

1. Applicant PU RANCH Department of Water Resources
2. Address Box 447
ARCO, Idaho 83213 Telephone 208-527-3133
- (X) Well Owner () Well Operator () Other, specify _____
3. Proposed well location NW 1/4 SW 1/4, or Gov't lot No. _____,
Sec. 15, Twp. 4N, Rge. 26E, County BUTTE,
Lot, block and subdivision _____
4. Proposed use of well: (Check all that apply)
- | | | |
|---|---|----------------|
| () Domestic
No. of households _____ | (X) Stockwater
No. of livestock <u>700</u> | () Monitoring |
| (X) Irrigation | () Industrial | () Municipal |
| () Injection | () Other, Specify _____ | |
5. Well construction information:
- () New well (X) Deepen () Replace
- Proposed surface diameter 16 Maximum depth 25 ft
- Anticipated bottom hole temperature:
- (X) 85°F or less (Cold water well)
() 85°F to 212°F (Low temp. geothermal well)
() 212°F or more (Geothermal well)
6. Anticipated construction start date May 1st 1989
7. Well Driller (if known) _____
Address _____
8. Applicant's signature PU Ranch By Tony Bailey
Title Manager
Date April 17-1989

SEP - 0 1992

ACTION OF DEPARTMENT OF WATER RESOURCES

This Permit is Approved.

If approved, this permit authorizes the construction of a well subject to the following conditions:

GENERAL CONDITIONS

1. The well must be constructed in compliance with the applicable statutes, specific conditions of approval shown on the water right permit, injection well permit, transfer or amendment and the rules and regulations of the Department for water appropriation, injection wells and well construction standards.
2. This drilling permit is valid for two (2) months from its date of issuance for the start of construction and is valid for one (1) year from the date of issuance for completion of the well unless an extension has been granted.
3. This permit does not constitute the approval of the District Health Department or the Idaho Department of Health and Welfare which may be required before construction of this well.
4. The well shall be constructed by a driller currently licensed in the State of Idaho who must maintain a copy of the drilling permit at the drilling site.
5. Issuance of this drilling permit does not authorize trespass on the land of another party.
6. This permit does not constitute other local, county, state or federal approvals which may be required for construction of a well.
7. This drilling permit does not represent a right to divert and use the water of the State of Idaho.
8. If a bottom hole temperature of 85°F or greater is encountered, well construction shall cease and the well driller and the well owner shall contact the Department immediately.

SPECIFIC CONDITIONS

Dated this 21st day of April, 1989.

Signed

Title

[Signature]
REGIONAL MANAGER

Received by HWS Fee 100.00 Date 4-21-89

Receipt No. E006976 Construction start extension to SEP 10 1992

Extension approved by _____

MEMORANDUM

TO: Glen Saxton
FROM: Norm Young *NY*
RE: Tony Bailey/P.U. Ranches
DATE: March 7, 1990

This matter is sufficiently confused that it needs a review to get the facts straightened out so that we can tell Bailey what he needs to do to continue (if possible) to get water delivered south of Arco. Apparently, we approved a transfer moving certain gw rights to the development outside of the district. He has been since at least 1983 also been using decreed natural flow rights out of the district. The BLID will not continue to deliver these decreed rights without an approved transfer. Bailey says the transfer is pending at Eastern Region, but we are withholding approval.

If he can't get approval of the transfer, he wants to amend his drilling permit (34-89-E-008) to drill a second well to restore the capacity of the gw right back to the authorized rate. The numbers of the rights that he mentioned are as follows:

34-2512 34-7079 34-2332

Can you review this to let us get back to Bailey by the end of the week?

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CONDITIONS OF APPROVAL

For Transfer 3214

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.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: KC Wilson

1. Right number 34-7079/2332 Applicant Hillcreek Properties & Richard Tutthill
2. Type of right: ☐ Decree ☒ License ☐ Claim
3. Purpose of transfer: ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
 - b. ☒ Description of original point of diversion.
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☒ All of right.
 - b. ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
 - c. ☒ Check description of point(s) of diversion.
 - d. ☒ Check description of place of use.
 - e. ☒ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee.
 - g. ☒ Check proof of ownership of right &/or land from which water is transferred. PHA
 - h. ☒ Check for expansion in use of right. Comments NONE
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to. NONE
only SURFACE RIGHTS
Right number(s) 34-0260A/0698/0288/0319B/0717
 - j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 34

County Assessor
indicates owner of
NW 1/4 as
Ethel Moss
Dexter Douglas
Leon Powell

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on N.A. Received on _____
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☐ Yes ☒ No

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny
3. Conditions* See conditions on 34-7079
See conditions on attached page

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4. By RDC Date 11/22/85

Jim 12-2-85 use above conditions

* All uses within Watermaster Districts require special conditions.

DEPARTMENT OF WATER RESOURCES

INTER-DEPARTMENT MEMO — 1

DATE 12 SEPT 1985

FROM KEITH C. WILSON

TO FILE 34-2332 & 34-7079

SUBJECT OWNERSHIP OF NW $\frac{1}{4}$ NW $\frac{1}{4}$, SEC 21, T 5 N, R.26E.

BUTTE COUNTY ASSESSORS OFFICE INDICATED THE FOLLOWING OWNERS FOR THE DESCRIBED LAND:

ETSEL MOSS, FHA(0.1ac), LEON POWELL, AND DEXTER DOUGLAS

ASSESSORS OFFICE INDICATED THAT ETSSEL MOSS HAS NEVER OWNED LAND WEST OF THE HIGHWAY WHICH WOULD EXCLUDE THAT LAND OWNED BY LEON POWELL.

WITH THE AFFIDAVIT FROM ETSSEL MOSS AND THE COPY OF THE EARNEST MONEY AGREEMENT FROM DEXTER DOUGLAS, OWNERS OF THE REMAINING PORTION OF THE DESCRIBED LAND, AND THE FACT THAT BOTH LICENSES ARE IN THE NAME OF ETSSEL MOSS THE TOTAL 145acres OF RIGHT UNDER EACH LICENSE WILL BE TRANSFERED.

MICROFILMED

SIGNATURE

October 17, 1985

The Arco Advertiser
P.O. Box "C"
Arco, Idaho 83213

RE: Application for Transfer No.34-7079/34-2332 Hillcreek
Properties

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, 1985.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

MICHAEL DAVIS
Office Secretary

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

SEPTEMBER 13, 1985

The Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before OCTOBER 14, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

RECEIVED

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHTS**

No 34-7079-34-2332

Notice is hereby given that Hillcreek Properties, Arco, Idaho has applied to the Department of Water Resources for a change in the place of use of the waters of groundwater sources. The rights sought to be changed are evidenced as follows:

License 34-7079 — AMOUNT 2.76 cfs,
PRIORITY 9-17-1974

License 34-2332 — AMOUNT 2.90 cfs,
PRIORITY 5-06-1955

Point of diversion for both rights
NW¹/₄NW¹/₄, Sec. 21, T. 5N, R. 26E, B.M.,
Butte County

The water (both rights) is used to irrigate
145 acres within the N¹/₂N¹/₂, Sec. 21, T. 5N,
R. 26E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the
NW¹/₄NW¹/₄, Sec. 21, T. 5N, R. 26E, B.M.,
Butte County, and used to irrigate 145 acres
within the SW¹/₄, Sec. 2, T. 3N, R. 25E, B.M.

Any protest against approval of the above
proposed change of water right must be filed
with the Idaho Department of Water
Resources, 150 Shoup, Suite 15, Idaho Falls,
Idaho 83402, on or before October 14, 1985.

A. KENNETH DUNN

Published in the Arco Advertiser, Arco,
Idaho on 7-26 & 10-3-85.

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS

No. 34-7079/34-2332

Notice is hereby given that Hillcreek Properties, Arco, Idaho has applied to the DepartmentTM of Water Resources for a change in the place of use of the waters of groundwater sources. The rights sought to be changed are evidenced as follows:

License 34-7079 AMOUNT: 2.76 cfs PRIORITY: 9-17-1974

License 34-2332 AMOUNT: 2.90 cfs PRIORITY: 5-06-1955

Point of diversion for both rights: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R. 26E, B.M., Butte County.

The water (both rights) is used to irrigated 145 acres within the N $\frac{1}{2}$ N $\frac{1}{2}$, Sec. 21, T. 5N, R. 26E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 5N, R. 26E, B.M., Butte County; and used to irrigated 145 acres within the SW $\frac{1}{4}$, Sec. 2, T. 3N, R. 25E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, Idaho, 83402, on or before October 14, 1985.

A. KENNETH DUNN

Published in the Arco Advertiser, Arco, Idaho on 9/25 & 10/03/85

MICROFILMED

IDENT. NO. 34-2332

I D A H O D E P A R T M E N T O F W A T E R R E S O U R C E S

WATER RIGHT
DATA ENTRY LOG

[illegible]

Sept. 21, 1959

Re: Permit No. G-25678

Mr. A. Ftsel Moss
Moore, Idaho

Dear Mr. Moss:

We enclose Certificate of Completion of Works and License
and Certificate of Water Right issued on Permit No. G-25678.

We also enclose departmental receipt no. G-4328 in the
amount of \$13.00 covering fees.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer

By:

(Mrs.) Edna P. Rutledge
Chief Clerk

EPR:ew
Enc. certificate
license
receipt

P 25678

ICT

August 11, 1959

RE: Permit No. G-25678

A. Etsel Moss
Moore, Idaho

Dear Mr. Moss:

Our field engineer's report on his inspection of the completion of works and beneficial use of the water under the terms of Permit No. G-25678 shows that the well is capable of conveying 145 miner's inches (2.9 c.f.s.) of water for irrigation of 145 acres.

Upon receipt of the statutory fees, totaling \$13.00, we will issue the Certificate of Completion of Works (for which the fee is \$5.00) and the License and Certificate of Water Right (\$8.00 at the rate of \$2.00 for each 40-acre subdivision) confirming the right with priority of May 6, 1955, to the use of 2.9 second feet of subterranean water, with point of diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, for irrigation of 145 acres in the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 21, Township 5N., Range 26E.B.M.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer
By

(Mrs.) Edna P. Rutledge
Chief Clerk

25678

RT:EPR:mr

R-26E.

T.
5
N.

20

22

house

28

319 feet
D. 5.14
R. 10.93
A.

Subdivisions = 4

Area = 145 acres.

$Q = 145''$

Pumping 225" checked over 2' Cyp. trees

Prob. notice is wrong.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. G-25678

REPORT ON PROOF OF Completion of Works & Beneficial Use

A. Etsel Moss
Moore, Idaho

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. G-25678

This proof is for Completion of Works & Beneficial Use In Water District No. _____

1. Name of applicant A. Etzel Moss

2. Source of water supply: Subterranean flow from a well

3. Location of point of diversion: Is in the NE 1/4 of Section 21

T. 5 N. R. 26 E.B.M. County of Butte

4. Describe works as they exist, giving dimensions and capacities of same:

50 hp. V.S. Motor #1023944
Layne Bowler Turbine 21802 cone base 8'x8'
Delivery 10"x6" into a box to prevent washing
water goes under canal then along south
side of canal.

5. Water is used for: Irrigation

6. State whether or not water has been turned into works of diversion: yes.

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

NE 1/4, NW 1/4, NE 1/4, NW 1/4 Section 21, Township 5 North, Range 26 East, B. M.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

Remarks:

This water was measured at 2.66" with
stream flow meter by ditch rider says Mr. Moss
Mr. Moss along.

This examination was made on the 22 day of July, 1959

(Signed) E. N. Humphrey Examiner.

G-25678

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

RECEIVED
AUG 4 1959

Department of Reclamation

Wad
2932

Permit No. 9-95579

266" by ditch rider

Investigation for

Survey of the

County

21-5N.-26E.

Q2 3.2 c.f.s

S- Well

R.D. 2 NW. NW. Sec. 21, T. 5N. - R. 20

Use - Irrigation

Forest Service

Filed - May 6, 1955

Due - May 11, 1959

208 x 18" end 200

h = 47' 5" d.d.

80°-1884; 23°-1896, Big Lost
River 1.14

.75" over 2' pipe down

4.4 cfs.

2.20

5-

2.25 or 4.5 cfs.

50 hp. U.S. 1023949

Bayne B. Lusk
21802

Cone. base 8' x 8'
no protect

10" x 6' del. to N. int
open ditch

[D] 9 Cutler Home
Controls

on post 6' NE.

April 15, 1959

Re: Permit No. G-25678

Mr. A. Etzel Moss
Moore, Idaho

Dear Mr. Moss:

We acknowledge receipt of the Deposition of Holder and two witnesses, also affidavit of publication in the Arco Advertiser, all submitted in Proof of Completion of Works and Application of Water to Beneficial Use under Permit No. G-25678.

Before final action is taken in the matter, the law requires that a field examination be made by an engineer from this department.

We cannot tell just when this examination will be made, but our field engineer will try and contact you at the time he makes the examination so that arrangements may be made to show him over the grounds.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer
By

(Mrs.) Edna P. Rutledge
Chief Clerk

EPR/lw

G-25678

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
APR 15 1959
Department of Reclamation

Permit No. G-25678

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. A. Etzel Moss, Moore, Idaho, farmer, Moore, Idaho.

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. No

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. G-25678, May 8th, 1955, May 11th, 1955

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Underground irrigation well, NW¹/₄ of NW¹/₄ of Sec. 21, Twp. 5 N., Rge 26 E., B.M., County of Butte, State of Idaho

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use. If a well, state depth of well, depth and size of casing and depth to water. If pump is used, state discharge of pump and tell how it was measured or determined. If sprinkler irrigation, give number and size of nozzles and operating pressure.

Ans. Well, 5 cu. ft. per second; 208 ft., 200 ft., 18' casing; approx. 300', measured by orifice. Depth to water, 42 ft.

From point of diversion to place of use, -- water is used directly from well. No spinklers.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Water is used for irrigation, NW¹/₄ of NW¹/₄ of Sec 21, Twp 5 N., R 26 E.B.M. ~~100x~~ NW¹/₄ of Sec. 21, Twp 5N, R. 26 cultivated land This water has made it possible to raise certified seed potatoes.

25678

Ques. 7. If for other than irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. None.....

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. None.....

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. I am present owner.....

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. None.....

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. None.....

(Sign)

A. Etzel Moss

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Arco....., County of Butte.....

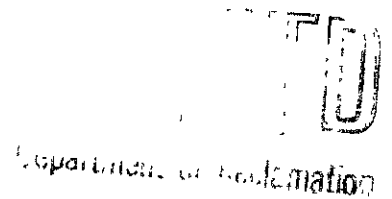
State of Idaho, on this 14th..... day of April....., A. D. 1959...

H. F. Kuster
Notary Public in and for the State of
Idaho, residing at Arco, Therein.

My commission expires 9-8-61.....

825678

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO



Permit No. G-25678

Proof of Application of Water to Beneficial Use

Deposition of Witness and Location of Works

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. John L. Dalling, 38, Moore, Idaho, mgr. Idaho Potato Growers Ware-
house, Moore, Idaho.

Ques. 2. Are you acquainted with A. Etsel Mess, the
holder of Permit No. G-25678? How long have you known him and where does
he reside?

Ans. yes, known 8½ yrs., Moore, Idaho.

Ques. 3. Have you read or heard read said Permit No. G-25678, and are you
familiar with its provisions and conditions?

Ans. yes, yes

Ques. 4. State source of water supply, place of diversion, and describe works for con-
veying water from point of diversion to place of use.

Ans. underground irrigation well, at well, pump.

Ques. 5. How many second feet of water do you estimate said works will safely con-
duct to place of use, and how much water have you seen being so conveyed?

Ans. 5 cubic feet

Ques. 6. (Pumps) How much water in cubic feet per second, miner's inches, or gallons
per minute have you seen the pump deliver, and how did you measure or estimate the
amount?

Ans. 5 cu. ft. per second, by estimate in observing delivery of water
through well drillers' orifice.

G-25678

Ques. 7. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation; NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 21, Twp 5 N., R. 26 E.B.M.
NW $\frac{1}{4}$ of Sec. 21, Twp 5 N., R. 26 E.B.M., 160 acres. Cultivated land,
well has furnished enough water to make it possible to raise certified
seed potatoes on this land.

Ques. 8. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. None

Ques. 9. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. semi-arid pasture land, 5 cu. ft. per second

Ques. 10. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None

Ques. 11. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Have observed operation ever since well was installed, and have
seen the full capacity for the delivery of water put to beneficial use.

(Signed)

John L. Dalling
John L. Dalling

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Arco,
County of Butte, State of Idaho, on this 14th day of April,
A. D. 1959.

J. H. Kester

Notary Public.

in and for the State of Idaho, residing
at Arco, therein.

My commission expires 9-8-61

25678

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
APR 15 1959
Department of Reclamation

Permit No. G-25678

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Don S. Hymas, 46, Moore, Idaho, farmer, Moore, Idaho

Ques. 2. Are you acquainted with A. Etsel Moss, the holder of Permit No. G-25678? How long have you known him and where does he reside?

Ans. yes, known about 8 1/2 years, Moore, Idaho

Ques. 3. Have you read or heard read said Permit No. G-25678, and are you familiar with its provisions and conditions?

Ans. yes, yes 2

Ques. 4. State source of water supply, place of diversion and describe works for conveying water from point of diversion to place of use.

Ans. underground irrigation well, at well, pump

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 5 cubic feet

Ques. 6. (Pumps) How much water in cubic feet per second, miner's inches, or gallons per minute have you seen the pump deliver, and how did you measure or estimate the amount?

Ans. 5 cu. ft. per secon, by estimate in observing delivery of water through well driller's orifice.

25678

Ques. 7. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation; NW¼ of NW¼ of Sec 21, Twp 5 N., R. 26 E.B.M.
NW¼ of Sec. 21, Twp 5 N., R. 26 E.B.M., 160 acres. Cultivated land,
well has furnished enough water to make it possible to raise certified
seed potatoes on this land

Ques. 8. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. None

Ques. 9. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. semi-arid pasture land, 5 cu. ft. per second

Ques. 10. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None

Ques. 11. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Have observed operation ever since well was installed, and have seen
the full capacity for the delivery of water put to beneficial use.

(Signed) Don S. Hymas

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Arco,
County of Butte, State of Idaho, on this 14th day of April,
A. D. 1959.

J. H. Kester
Notary Public.
in and for the State of Idaho,
Residing at Arco, therein.

My commission expires 9-8-61

125678

Affidavit of Publication

RECEIVED
APR 1 1959
Dene

I, Dolly Cross, 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 4 (four) consecutive weeks, commenc-
ing with the issue dated March 20, 1959
and ending with the issue dated April 10, 59,

Dolly Cross *Dolly Cross*

Subscribed and sworn to before me this

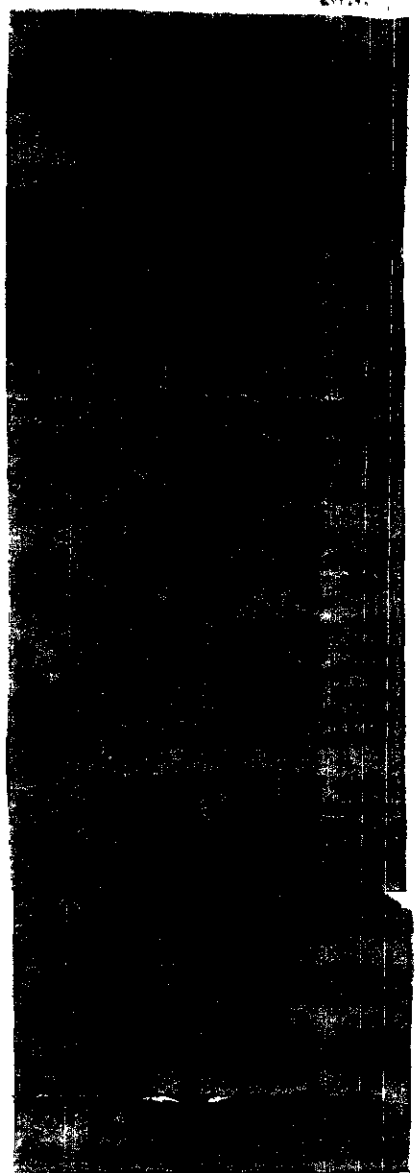
14th day of April, 1959

J.H. Foster

Notary Public

Residence, Arco, Idaho.

My commission expires 7-8, 1961



S25678

2568

March 10, 1959

Re: Permit No. G-25678

Mr. A. Etzel Moss
Moore, Idaho

Dear Mr. Moss:

This acknowledges the Notice of Proof of Completion of Works and Application of Water to Beneficial Use under Permit No. G-25678. The proofs are to be made at 10:00 A. M. on the 14th day of April, 1959, before Hartley P. Kester, Notary Public, at American Building, Arco, Idaho.

You will note that we have changed the date for making final proof to April 14, 1959, for the reason that it is a statutory requirement that the Notice be published for four consecutive weeks prior to the date set for final proof. However, your notice was not received in this department until March 16, 1959, therefore we advanced the date to allow for publication. We hope this meets with your approval.

As of this date we have mailed the notice to the Arco Advertiser, with instructions to publish it for four consecutive weeks prior to the date set for final proof and to mail the Affidavit of Publication and statement of costs to you.

It is important that the enclosed depositions be executed by you and two disinterested witnesses who are familiar with the terms of the permit and the work done thereunder, at the place, on the date, at the time and before the Notary, as advertised. It is very important and necessary that each question be answered in detail.

In returning the depositions to this office, be sure that all copies have been signed, the Notary's seal has been placed on each and that all depositions, (Holder and two witnesses) are being returned. Also be sure to enclose the Affidavit of Publication.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer
By

(Mrs.) Edna P. Rutledge
Chief Clerk

EPW/lw
Encls. (3)
cc: Hartley P. Kester
Notary Public
American Bldg., Arco, Idaho

25678

S T A T E O F I D A H O

DEPARTMENT OF RECLAMATION
Boise, Idaho

Date: March 16, 1959

Re: Permit No. G-25678
A. Etsel Moss

Arco Advertiser
Arco, Idaho

Gentlemen:

Enclosed you will find notice for publication, once a week for four consecutive weeks prior to April 14, 1959 the date set for proof; the expense of the publication is to be paid by the applicant

A. Etsel Moss

of Moore, Idaho

to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy or tear-sheet of the first publication.**

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer
By

(Mrs.) Edna P. Rutledge
Chief Clerk

** If the first copy is not received in this office for checking purposes and errors appear in subsequent issues, it is possible that re-publication of corrected copy will be at your own expense.

f 25678

NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A.M., on the 14th day of April, 1959, at Arco, Idaho, County of Butte, State of Idaho, before Hartley P. Kester, Notary Public, at (address) American Building Arco, Idaho, proof will be submitted of the completion of works for the diversion of 3.2 cubic feet per second of underground water from a well, and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. 9-25678 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit is A. Steel Moss, Moore, Idaho

2. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 5 cubic feet per second.

3. The use to which said water has been applied is Irrigation purposes, and the amount applied to beneficial use is 5 cubic feet per second.

4. The point of diversion of said water is NW 1/4 Sec. 21, Twp. 5 No., Rge. 26 E.B.M.

5. The place where said water is used is NW 1/4 Sec. 21, Twp. 5 No., Rge. 26 E.B.M.

6. The date of priority which said user is prepared to establish is May 6, 1955.

Handwritten: 25678

GEO. N. CARTER
State Reclamation Engineer

NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 7:00 A.M. ^{2:14} on the 12 day of April ^{May} ~~March~~, 1957, at Arco ~~Idaho~~, County of Butte, State of Idaho, before Hartley P. Kister, Notary Public, at (address) Memorial Building Arco, Idaho, proof will be submitted of the completion of works for the diversion of 3.2 cubic feet per second of underground water from a well, and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. 25678 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit is A. Ebel Moore Kipore, Idaho.

2. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 5 cubic feet per second.

3. The use to which said water has been applied is Irrigation of Farm Crops purposes, and the amount applied to beneficial use is 5 cubic feet per second.

4. The point of diversion of said water is NW 1/4 of the NW 1/4 Section 21 Twp 34 N, Rge 26 E, Co. of Butte.

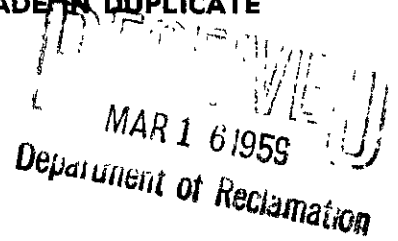
5. The place where said water is used is NW 1/4 of the NW 1/4 of Section 21 Twp 34 N, Rge 26 E, Co. of Butte.

6. The date of priority which said user is prepared to establish is 7:00 A.M. May 6, 1955.

25678

State Reclamation Engineer

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE



(Date) March 12 - 1959

(P. O.) Merre Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the

Arco Heraldizer

of Arco Idaho

published in

the county in which the works are situated.

Butte

A. E. Elmore

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

25678

RECEIVED
MAR 16 1959
Department of Reclamation

NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 1000 A.M., on the 24¹⁴ day of April^{March}, 1959, at Arco Ida., County of Butte, State of Idaho, before Hartley F. Kester, Notary Public, at (address) Memorial Building Arco Ida., proof will be submitted of the completion of works for the diversion of 3.2 cubic feet per second of underground water from a well, and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. 25678 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit is H. Etzel Mess More Idaho

2. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 5 cubic feet per second.

3. The use to which said water has been applied is Irrigation ~~of the~~ purposes, and the amount applied to beneficial use is 5 cubic feet per second.

4. The point of diversion of said water is NW 1/4 of the NW 1/4 Section 21
Twp 5 N Rge 26 E, B. M.

5. The place where said water is used is NW 1/4 of the NW 1/4 of Section 21
Twp 5 N, Rge 26 E B. M.

6. The date of priority which said user is prepared to establish is

January 11, 1955.

25678

State Reclamation Engineer

S T A T E O F I D A H O
D E P A R T M E N T O F R E C L A M A T I O N
B o i s e , I d a h o

RE: Permit No. G-25678

Date March 5, 1959

Mr. A. Etsil Moss
Moore, Idaho

Dear Sir:

The date for proofs of completion of works and application of water to beneficial use, as set out under the terms of Permit No. G-25678 are due not later than May 11, 1959.

Before these proofs can be made, the statutory requirement is that a notice of your intention of proof be published once a week for four consecutive weeks in a newspaper within the county in which the land is located. In completing the Notice of proof for publication, the information should be taken from your Permit, including any amendments made in connection with a change of point of diversion or land list which has been recorded in this department. If changes have been made and no amendments are on record, we advise that you request a form for this purpose before your Notice is published.

We enclose Form 36, in duplicate, which is to be filled out and returned to this department at least forty (40) days before the above mentioned date, (allowing for four weeks publication). Please give the name of the town, the address of the place where the depositions will be executed, and, the name of the notary public before whom you will appear to make the depositions of proof (this may be at any place convenient for you and your two witnesses), the quantity of water filed; for what purpose it is used; the point or points of diversion; and the location of use or the lands which are irrigated--all by legal land description.

Enclosed also is Form 11, which is the authorization for us to have the notice published in the designated county newspaper at your expense. This is to be returned with Form 36.

At the time we send the notice to the newspaper will will send to you the forms for the depositions of holder and two disinterested witnesses. It is important that the depositions be executed at the time, on the date set, at the place named and before the notary public, as advertised in the publication notice.

Very truly yours,

GEO. N. CARTER
State Reclamation Engineer

Enclosures

J 25678

May 17, 1955

RE: Permit No. G-25678

Mr. A. Etzel Moss
Moore
Idaho

Dear Mr. Moss:

We enclose Permit No. G-24678 and direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

We also enclose departmental receipt No. G-1176 for the \$5.75 filing fee.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

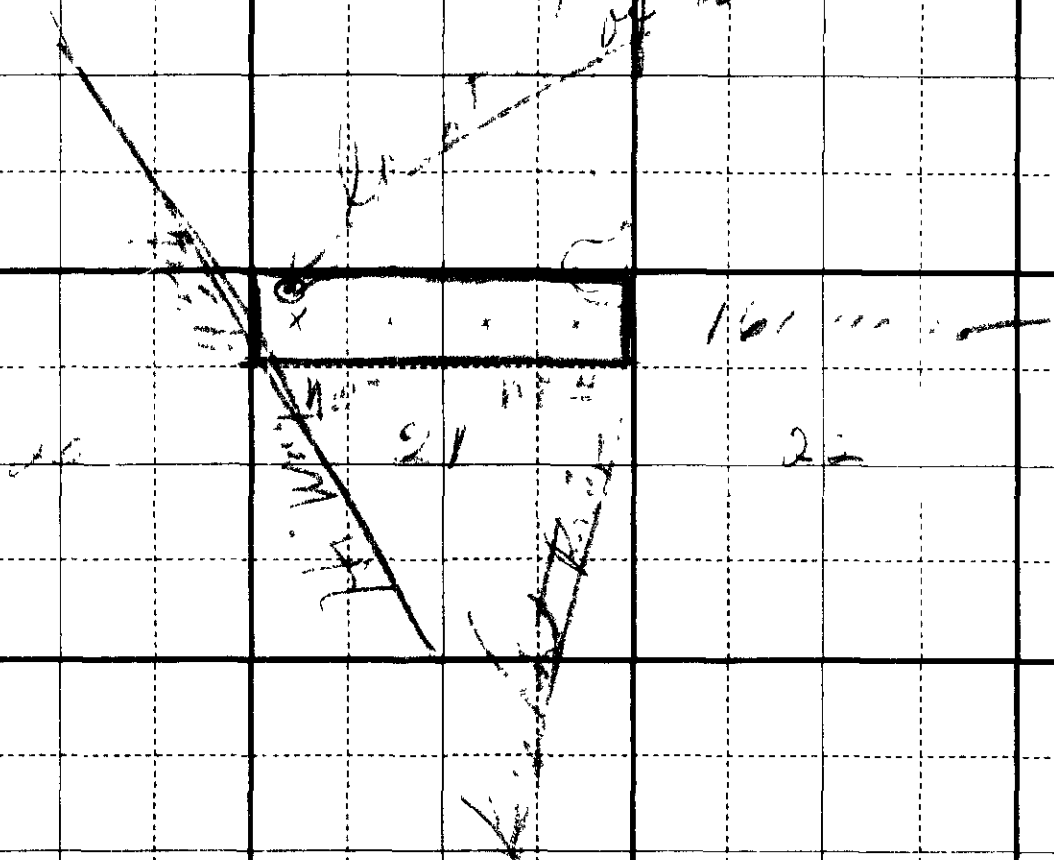
Chief Clerk

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Enc.

P 25678

F. A. G.

T. 5 N - R. 24 E - S. 6 T. 1 B. 1 N
1st - Containing 16.11



Sheet No. 9-25678
As Approved
MAY 11 1955
MARK R. KULP
State Reclamation Engineer

25678

LEGAL NOTICE

NOTICE OF OF OF COMPLE- TION OF WORKS AND APPLI- CATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 0 00 a m, on the 14th day of April, 1959, at Arco, Idaho, County of Butte, State of Idaho, before Hartley P. Kester, Notary Public, at Memorial Building, Arco, Idaho, proof will be submitted of the completion of works for the diversion of 32 cubic feet per second of underground water from a well, and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. G-25678 heretofore issued by the Department of Reclamation of the State of Idaho

1 The name and postoffice address of the person or corporation holding said permit is A. Etzel, Mass, Moore, Idaho

2 Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 5 cubic feet per second

3 The use to which said water has been applied is Irrigation purposes, and the amount applied to beneficial use is 5 cubic feet per second.

4 The point of diversion of said water is NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp. 5 No., Rge. 26 E. B. M.

5 The place where said water is used is NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp. 5 No., Rge. 26 E. B. M.

6 The date of priority which said user is prepared to establish is May 6, 1955

GEO. N. CARTER,
State Reclamation Engineer.
Pub Mar. 20, 27, Apr 3, 10, 1959.