

## PART 2

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 1.60 for Irrigation purposes from 5-1 to 10-15  
 (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
		SE	SW	3	4N	24E	Custer	
		SW	NW	10	4N	24E	Butte	
		NW	SW	10	4N	24E	BUTTE	

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	24E	2											10						10
		3												4				12	16
		10	26	28															54

Total Acres 80

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

1. amount 4.3 cfs for Irrigation purposes from 5-1 to 10-15  
 (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
		SW	NE	9	4N	24E	BUTTE	
		SW	NW	10	4N	24E	BUTTE	
		NW	SW	10	4N	24E	BUTTE	

3. Lands irrigated or place of use:

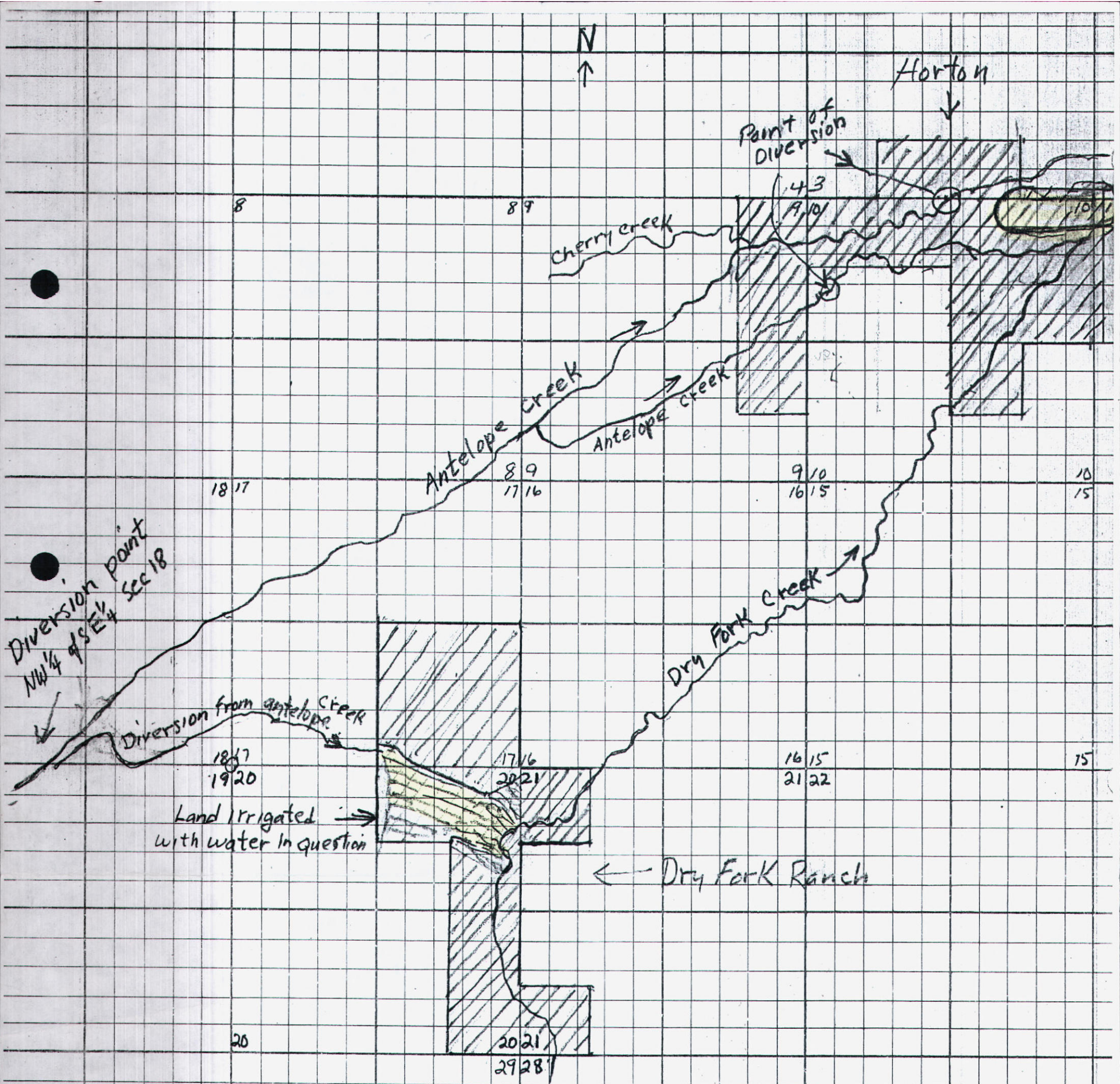
Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	24E	9	20			25									28				73
		10		4	16	3	24	35	10			12							104

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Total Acres 177





- Map is for illustration purpose only -

Department of Water Resources	
APPLICANT'S	
Exhibit	5
Date Admitted	5-22-02

*Handwritten signature*

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Dry Fork Creek as it crosses  
the county road at the Smith ranch.

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Diversion ditch from Antelope Creek  
to Dry Fork Valley

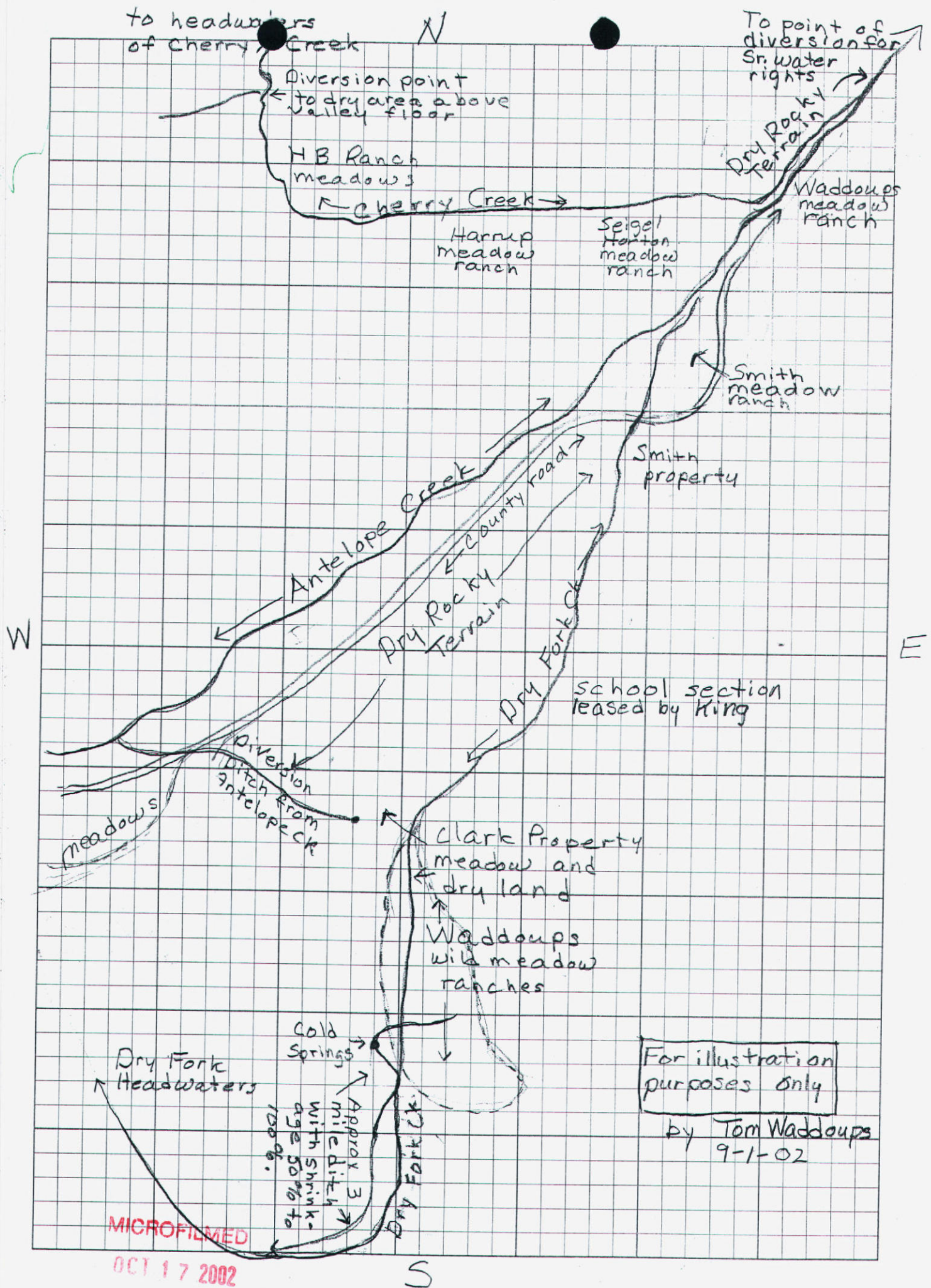


to point of use



West side of road adjacent to point  
of use







We designate Trilby McAfee of 3721 Antelope Road, Moore, ID 83255  
Phone: (208) 554-3102 to be our personal representative to address all matters  
concerning this proposed water transfer.

<u>NAME</u>	<u>ADDRESS</u>
1. Krusty Krug	HC 60 Box 285 Moore
2. John D King	4340 Antelope Moore, Id
3. Harold E. Smith Jr.	4557 Antelope Rd. Moore, Id.
4. Jim Kaulback WADDUPS Antelope Ranch	4253 Antelope Rd Moore ID 83255
5. Phil S. Sells	4095 ANTelope RD. moore ID 83255
6. Mike Seal ANTELOPE VALLEY RANCH	4615 CHERRY CR. RD MOORE ID. 83255
7. E. J. Harrop Under Protest	HC 60 Box 240 Moore ID 83255
8. David Xule	HC 60 Box 255 MOORE ID 83255
9. Robert Shawver 143 S 1200 W Blackfoot Id	

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RECEIVED

MAY 11 2001

Department of Water Resources  
Eastern Region

## 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 MAY 3, 2001

and ending with the issue dated

MAY 10, 2001  
Colleen Babcock

STATE OF IDAHO }

COUNTY OF BUTTE }

On this 10th day of May

in the year of 2001, before me, a Notary Public,

personally appeared

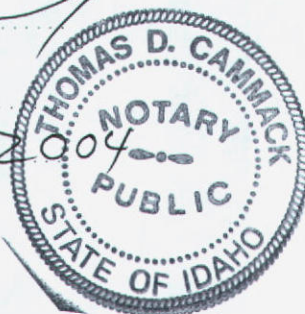
Colleen Babcock

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. Cammack  
Notary Public for Idaho

Residing at Arco, Id

My commission expires: 1-23-2004

NOTICE OF PROPOSED CHANGE  
OF WATER RIGHT

## TRANSFER NO. 69068

SIEGEL-HORTON LLC, 19501 JACKKNIFE LANE, OLA ID 83657, has filed Application No. 69068 for changes to the following water rights within BUTTE County:

Right No. 34-300

Priority 6/1/1885

Source ANTELOPE CREEK

Use IRRIGATION (257 acres) 5.90 CFS

Total Amount 5.90 CFS

Point(s) of Diversion SESW S3 T04N R24E

SWNE S9 T04N R24E

NWSE S9 T04N R24E

SWNW S10 T04N R24E

NWSW S10 T04N R24E

Place of Use S10 T04N R24E

S2 T04N R24E

S3 T04N R24E

S9 T04N R24E

The purpose of the transfer is to change a portion of the above rights as follows:

The applicant and Craig Clark (protested transfer #5823) are applying to trade 1.60 cfs of each of their water rights on Antelope Creek. The acres irrigated remain the same. Under this transfer 1.60 cfs of 34-00300 will move to 80 acres in the NE 1/4 Sec 20 T04N R24E and be diverted in the NWSE Sec 18 T04N R24E.

Any protest against the proposed change must be filed with the Department of Water Resources, together with a protest fee of \$25.00 for each application on or before May 21, 2001. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published on May 3 and 10, 2001

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OCT 17 2002



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

IN THE MATTER OF APPLICATION     )  
FOR TRANSFER NO. 69068 IN THE     )  
NAME OF SIEGEL-HORTON, LLC AND)     )  
TRANSFER NO. 5823 IN THE NAME     )  
OF CRAIG A. CLARK AND ELLEN B.     )  
CLARK                                     )  
\_\_\_\_\_                                     )

**ORDER DENYING PETITION  
FOR RECONSIDERATION**

On July 1, 2002, the hearing officer for the Department of Water Resources ("Department") issued a Preliminary Order Denying Application for Transfer No. 69068 in the name of Siegel-Horton, LLC ("applicant") and Application for Transfer No. 5823 in the name of Craig A. Clark and Ellen B. Clark ("applicant"). On July 12, 2002, the applicants submitted a Petition for Reconsideration ("petition") and requested additional time in which to prepare and submit supporting information for issues raised in the petition. The hearing officer extended the time to August 16, 2002 in which the applicants could submit the information.

On August 16, 2002, the applicants submitted supporting information to the hearing officer in the matter and on September 3, 2002, the protestants filed a response.

Having reviewed the petition, the supporting information and the response of the protestants, the hearing officer responds as follows:

Conclusion of Law 4 - In Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985), the Supreme Court held that "The burden of proof is upon the applicant to show that the project is either in the local public interest or that there are factors that outweigh the local public interest in favor of the project." Hence, this conclusion should not be changed or deleted.

Conclusion of Law 5 - The applicants did not provide evidence or testimony in the hearing to show how the changed use of the 1885 water right would not result in enlarged use, if the applications were approved. Hence, the applicants did not make the showing required to allow approval of the applications. This conclusion should not be changed or deleted.

Conclusion of Law 6 - The applicants offered a letter from the watermaster to applicant Craig Clark as Exhibit 3 that was admitted as part of the hearing record but did not call the watermaster as a witness. The record includes recommendations from the watermaster opposing approval of application nos. 5823 and 69068 due to adverse impact on other water rights. It is



not appropriate subsequent to the hearing for the hearing officer to unilaterally contact the watermaster to augment the hearing record with additional information. Hence, Conclusion of Law 6 should not be changed or deleted.


Conclusion of Law 7 - This conclusion does not conflict with Conclusion of Law 3 that requires both the applicants and protestants to provide evidence regarding public interest of which they are most aware. Conclusion of Law 7 logically follows Conclusion of Law 4 describing that the applicants have the ultimate burden of persuasion for public interest matters as well as the other issues described in Section 42-222, Idaho Code. This conclusion should not be changed.

Findings of Fact 16 and 17 describe the underlying reason the applications cannot be approved, since the transfers would enlarge water use and would injure other water rights. While the Department can approve, approve with conditions or deny an application for transfer, it is not the responsibility of the Department to develop conditions of delivery or administration that would allow approval of an application. It is the responsibility of the applicants who, in this case, did not meet their required showing and burden. The Department should not conditionally approve the applications.

#### ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration filed by the applicants is **DENIED**.

Dated 4<sup>th</sup> day of September, 2002.

  
L. GLEN SAXTON, P.E.  
Hearing Officer



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of September, 2002, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756


SIEGEL-HORTON LLC  
19501 JACKKNIFE LN  
OLA ID 83657

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

WILLIAM G GIBBS  
657 18<sup>TH</sup> AVE  
SALT LAKE CITY UT 84103

RONALD D CARLSON  
IDWR - REGIONAL MANAGER  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718

  
Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau



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

IN THE MATTER OF APPLICATION )  
FOR TRANSFER NO. 69068 IN THE )  
NAME OF SIEGEL-HORTON, LLC AND) )  
TRANSFER NO. 5823 IN THE NAME )  
OF CRAIG A. CLARK AND ELLEN B. )  
CLARK )  
\_\_\_\_\_ )

**ORDER GRANTING  
EXTENSION OF TIME TO FILE  
ADDITIONAL INFORMATION**

On July 15, 2002, the hearing officer for the Department of Water Resources ("Department") issued an ORDER GRANTING PETITION FOR RECONSIDERATION in the above captioned matter granting additional time, (to July 31, 2002), in which the applicants could submit additional information to the hearing officer in connection with the denied applications.

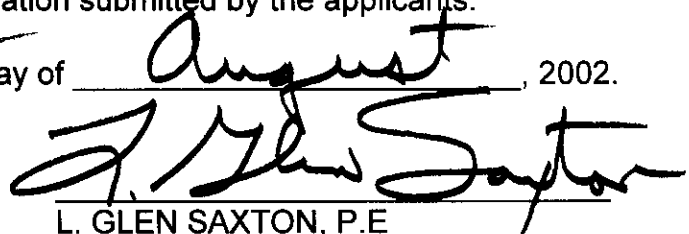
On July 31, 2002, the applicants requested additional time, (to August 16, 2002), in which to provide the additional information.

**ORDER**

The Department has reviewed the request for additional time and HEREBY ORDERS that the time in which to provide the additional information is extended to **August 16, 2002**, under the following terms:

1. Granting of additional time does not represent Department agreement with any additional information that is submitted.
2. The Department retains jurisdiction of the matter in order to review and consider any additional information submitted by the applicants.

Dated this 2<sup>nd</sup> day of August, 2002.

  
L. GLEN SAXTON, P.E.  
Hearing Officer

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OCT 17 2002



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of August, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756

BUZZ BANTA  
BOX 491  
ARCO ID 83213

SIEGEL-HORTON LLC  
19501 JACKNIFE LN  
OLA ID 83657

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

RONALD D CARLSON  
REGIONAL MANAGER  
IDAHO DEPT. OF WATER RESOURCES  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718



Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau

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OCT 17 2002

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

IN THE MATTER OF APPLICATION     )  
FOR TRANSFER NO. 69068 IN THE     )  
NAME OF SIEGEL-HORTON, LLC AND)     )  
TRANSFER NO. 5823 IN THE NAME     )  
OF CRAIG A. CLARK AND ELLEN B.     )  
CLARK                                     )  
\_\_\_\_\_ )

**ORDER GRANTING PETITION  
FOR RECONSIDERATION**

On July 2, 2002, the hearing officer for the Department of Water Resources ("Department") issued a Preliminary Order denying the above captioned applications for transfer.

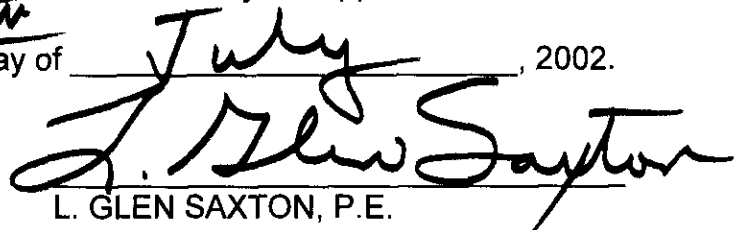
On July 12, 2002, the applicants filed a Petition for Reconsideration ("petition") with the Department asking for additional time, (to July 31, 2002), in which to provide information to the hearing officer in connection with the denied applications.

**ORDER**

The Department has reviewed the petition and HEREBY ORDERS that the petition is **GRANTED** under the following terms:

1. Granting of the petition does not represent Department agreement with any provision of the petition.
2. The applicant shall provide the additional information to the Department on or before July 31, 2002.
3. The Department retains jurisdiction of the matter in order to review and consider any additional information submitted by the applicant.

Dated this 15<sup>th</sup> day of July, 2002.

  
L. GLEN SAXTON, P.E.  
Hearing Officer

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OCT 17 2002



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16<sup>th</sup> day of July, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756


BUZZ BANTA  
BOX 491  
ARCO ID 83213

SIEGEL-HORTON LLC  
19501 JACKNIFE LN  
OLA ID 83657

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

RONALD D CARLSON  
REGIONAL MANAGER  
IDAHO DEPT OF WATER RESOURCES  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718

  
\_\_\_\_\_  
Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau

MICROFILMED  
OCT 17 2002

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

IN THE MATTER OF APPLICATION     )  
FOR TRANSFER NO. 69068 IN THE     )  
NAME OF SIEGEL-HORTON, LLC AND) )  
TRANSFER NO. 5823 IN THE NAME     )  
OF CRAIG A. CLARK AND ELLEN B.     )  
CLARK                                     )  
\_\_\_\_\_ )

**PRELIMINARY ORDER**

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

**FINDINGS OF FACT**

1. On December 5, 1997, the Snake River Basin Adjudication ("SRBA") court issued a partial decree for water right no. **34-00300** in the name of Grant Daniels and Reta Daniels as follows:

Source:	Antelope Creek tributary to Big Lost River
Priority:	June 1, 1885
Rate of diversion:	5.9 cubic feet per second ("cfs")
Points of diversion:	SE1/4SW1/4 Section 3, SW1/4NE1/4 (2 points), NW1/4SE1/4 Section 9, SW1/4NW1/4, NW1/4SW1/4 Section 10, all in T4N, R24E, B.M.
Use:	Irrigation
Season of use:	May 1 to October 15
Place of use:	257 acres within parts of Sections 2, 3, 9 and 10, T4N, R24E, B.M. in Custer and Butte Counties

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

2. On January 2, 1998, the SRBA court also issued a partial decree for water right no. **34-00442** in the name of Craig A. Clark and Ellen B. Clark as follows:

Source:	Antelope Creek tributary to the Big Lost River
Priority:	June 1, 1904
Rate of diversion:	3.2 cfs



Point of diversion: NWSE Section 18, T4N, R24E, B.M.  
Use: Irrigation  
Season of use: May 1 to October 15  
Place of use: 160 acres within parts of Sections 17, 20 and 21, T4N, R24E, B.M., Butte County

3. On June 8, 2000, Craig A. Clark and Ellen B. Clark ("Clark") filed Application for Transfer No. **5823**, renumbered to 68506, ("Clark application") with the Department proposing to essentially "trade" 1.6 cfs of water right no. 34-00442 with 1.6 cfs of water right no. 34-00300. The part of right 34-00442 being transferred is described as follows:

Identification No: **34-00442B**  
Source: Antelope Creek  
Priority: June 1, 1904  
Rate of diversion: 1.6 cfs  
Point of diversion: SESW Section 3, SWNW, NWSW Section 10, all in T4N, R24E, B.M.  
Use: Irrigation  
Season of use: May 1 to October 15  
Place of use: 80 acres in parts of Sections 2, 3, 10 and 11, T4N, R24E, B.M.

4. On August 28, 2000, Siegel-Horton, LLC ("Siegel-Horton") filed Application for Transfer No. **69068** ("Siegel-Horton application") with the Department proposing to "trade" 1.6 cfs of water right no. 34-00300 with 1.6 cfs of water right no. 34-00442. The part of right 34-00300 being transferred is described as follows:

Identification No: **34-13618**  
Source: Antelope Creek  
Priority: June 1, 1885  
Rate of diversion: 1.6 cfs  
Point of diversion: NWSE Section 18, T4N, R24E, B.M.  
Use: Irrigation  
Season of use: May 1 to October 15  
Place of use: 80 acres in parts of Section 20, T4N, R24E, B.M.

5 The remaining parts of the rights that are not involved in the applications for transfer are described as follows:

Identification No: **34-00442A**  
Source: Antelope Creek  
Priority: June 1, 1904  
Rate of diversion: 1.6 cfs  
Point of diversion: NWSE Section 18, T4N, R24E, B.M.  
Use: Irrigation  
Season of use: May 1 to October 15

Place of use: 80 acres in parts of Sections 17, 20 and 21, all in T4N, R24E, B.M

Identification No: **34-13617**

Source: Antelope Creek

Priority: June 1, 1885

Rate of diversion: 4.3 cfs

Point of diversion: SE1/4SW1/4 Section 3, SW1/4NE1/4 (2 points), NW1/4SE1/4 Section 9, SW1/4NW1/4, NW1/4SW1/4 Section 10, all in T4N, R24E, B.M.

Use: Irrigation

Season of use: May 1 to October 15

Place of use: 177 acres within parts of Sections 2, 3, 9 and 10, T4N, R24E, B.M. in Custer and Butte Counties

6. The Department published notice of the applications that were subsequently protested by Trilby McAfee and Johnny King.

7. On May 22, 2002, the Department conducted a hearing in the matter. Applicant Clark was present and represented himself. Clark also addressed the Siegel-Horton, LLC. application as it related to the Clark application. The protestants were present and were represented by Johnny King and Tom Waddoups.

8. Issues the Department can consider in the matter are described as follows:

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

9. Exhibits accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 - Agreement Regarding Water Rights
- b. Applicant's Exhibit 2 - Affidavit of Don A. Barnett
- c. Applicant's Exhibit 3 - Letter dated November 5, 2001 to Craig Clark from Doug Rosenkrance
- d. Applicant's Exhibit 4 - Responses to Objections to Water Right Transfer No T5823
- e. Applicant's Exhibit 5 - Schematic map of the general location of lands involved in the applications for transfer

10. The intent of the applicants is to trade equal portions of two water rights with different priorities between two different parcels of land that were historically in the same ownership. Both water rights divert from Antelope Creek. The upstream right



has a 1904 priority and has historically been used to irrigate a parcel known as the Dry Fork Ranch owned by Craig A. Clark and the downstream right has an 1885 priority and has historically been used to irrigate meadow land owned by Siegel-Horton

11. The Clark application and Siegel-Horton application are interconnected and must be considered together. The applications will allow the Dry Fork Ranch to irrigate with a better priority than in the past and in return, a portion of the Siegel-Horton property will be irrigated with a later-in-time priority.

12. Right no. 34-13618 is presently used to irrigate 80 acres of meadow land. If the transfers are approved, this right would be used to irrigate 80 acres of alfalfa. The places of use under both the Clark application and Siegel-Horton application are presently irrigated and the applications do not propose the construction or use of new points of diversion.

13. The applicants contend that water use relative to forage production is more beneficial (more productive) raising alfalfa hay than raising grass hay in poorly-drained, wet meadow areas.

14. Watermaster records for Antelope Creek show that, as the rights presently are diverted from Antelope Creek and used, a water right with an 1885 priority is generally available for use 18 days longer each season than a water right with a 1904 priority.

15. The applicants did not present any information relative to water loss or gain in Antelope Creek between the point of diversion to the Dry Fork Ranch and the points of diversion to the meadow land of Siegel-Horton to show whether gains or losses in the creek would enlarge the water supply for diversion under the rights as requested in the applications for transfer. The applicants also did not show the effect, if any, of the inflow of Cherry Creek to Antelope Creek upon the period of water availability for right no. 34-00442B with a 1904 priority to be diverted at downstream points to the meadow land of Siegel-Horton.

16. The applicants did not show that return flow to Antelope Creek resulting from the use of water right no. 34-13618 on the Dry Fork Ranch would be as much as the return flow to Antelope Creek from use of the water right on the meadow land of Siegel-Horton. A reduction in return flows could reduce the water available at points of diversion downstream owned by the protestants or other water right holders.

17. The protestants contend that the transfer of right no. 34-13618 to the Dry Fork Ranch will enlarge water use because there will be less return flow to Antelope Creek via Dry Fork Creek, alfalfa produced on upland acreage is more consumptive of irrigation water than grass hay grown on naturally-wet meadow lands, and there will be a larger conveyance loss in the delivery ditch to the Dry Fork Ranch due to the more arid nature of the area

18. The protestants also contend that the proposed changes will decrease the natural vegetation and animal habitat along Antelope Creek and will damage economic and aesthetic values of their property.

### ANALYSIS

As originally decreed, right no. 34-00300, with an 1885 priority, authorized the irrigation of 257 acres of land. As proposed in the applications for transfer, 1.6 cfs of this right (34-13618) could physically be used to irrigate 160 acres of land decreed under right no. 34-00442, rather than on only 80 acres to which the right is sought to be transferred. The remaining 4.3 cfs of the right (34-13617) could physically be used to irrigate the original 257 acres of land decreed under the right rather than only on the 177 acres remaining after the transfer of 1.8 cfs of the right.

The applicants' use of the 1885 water right on more acres than the right was originally used will enlarge the water use. While the rate of diversion is not enlarged, if the right is used for a longer period of time or upon more acres, a larger volume of water will be diverted from the water source, enlarging the use and injuring other water rights. The applicants did not offer any proposals or suggest administrative means to prevent this type of enlargement in use and injury.

The applicants did not provide information on gains or losses to Antelope Creek in the reach from the point of diversion of the junior priority right held by the Clarks for Dry Fork Ranch to the most downstream point of diversion for the earlier priority right held by Siegel-Horton. Without this information, including information on the effect of Cherry Creek flows on the availability of water for the junior priority right, a determination cannot be made whether the use of water will be enlarged under one or both of the water rights sought to be transferred.

### CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

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

2. The applicants carry the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with conservation of the water resources within the state of Idaho.



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

4 The applicants have the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. Although the applications do not propose to irrigate more acres than are already irrigated and do not propose to use points of diversion that are not already in existence, the record does not establish that an enlargement in the use of water will not occur if the transfer applications are approved. Because changes are not proposed to the existing irrigation systems, the entire acreage now irrigated can be irrigated with the earlier priority water right. Clark did not describe or demonstrate how the 1.6 cfs sought for transfer under 34-13618 (with an 1885 priority) would not be used on more than 80 acres of land. Siegel-Horton did not show how water right 34-13617 (the remainder of the 1885 right) would not be used on more meadowland than the remaining 177 acres if the applications for transfer were approved.

6. The applicants did not meet their burden of proof to establish that moving the rights as proposed in the applications would not enlarge the supply of water available to the rights.

7. The applicants did not show how use of water under the applications overcome the public interest concerns raised by the protestants.

8. The applications will enlarge water use and are not in the local public interest.

9. The Department should deny the applications, since the applicants did not meet their burden of proof.

#### ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. **T5823** in the name of Craig A. Clark and Ellen B. Clark is **DENIED**.

IT IS FURTHER hereby ORDERED that Application for Transfer No. **T69068** in the name of Siegel-Horton, LLC is **DENIED**.

Signed this 1<sup>st</sup> day of July, 2002.

  
L. GLEN SAXTON, P.E.  
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of July, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756

BUZZ BANTA  
BOX 491  
ARCO ID 83213

SIEGEL-HORTON LLC  
19501 JACKNIFE LN  
OLA ID 83657

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

RONALD D CARLSON  
REGIONAL MANAGER  
IDAHO DEPT. OF WATER RESOURCES  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718



Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau



Receipt # E026729

RECEIVED

MAY 21 2001

**WATER RIGHT OBJECTION**

Department of Water Resources  
Eastern Region

**We the undersigned object to the proposed Notice of Water Right Transfer No. 69068.**

We object to diverting water from main Antelope Creek and its wetlands ecosystem through a ditch located in dry, rocky cultivated land resulting in massive water loss.

This proposed transfer would permanently reduce Antelope Creek stream flow disturbing the natural habitat that is now present in the stream and surrounding lands. Diverting water from the Antelope Valley to the Dry Fork Valley would adversely affect the surface and sub-irrigation structure that now prevails in Antelope Valley where portions of the sub-water is returned to the creek.

Water in Antelope Valley is generally in short supply during the latter part of the irrigation season and is not adequate to fill existing water rights. Moving the diversion point of this 1885 water right to a location above its current diversion point, further from users on the lower part of the valley, will result in more water shrinkage. This will adversely affect users on the lower end of Antelope Creek during this critical water usage period for 1904 water is generally not available. The net effect of this transfer would be to divert more water to recently cultivated land on dry alluvial plains from wild meadowlands. These meadowlands accumulate water during the early irrigation season, when water is usually plentiful, and return water to the lower portions of Antelope Creek during the late irrigation season when water is scarce. Transferring water from lush meadow sub-irrigated land to dry cultivated ground is not consistent with sound water management. This does not constitute the efficient use of the limited supply of water in Antelope Valley.

We, the residents of Antelope Valley who oppose this transfer, are extremely concerned with any action that will affect our water source during the latter part of the irrigation season. It is during this time that water is generally in short supply and water rights often go unfilled. We want to maintain our beautiful valley with the natural vegetation and animal habitat that is dependent on late season water supply. This is our home. We are not land speculators. Our only interest is to maintain the valley in its present state and continue to make a living with the limited water available for our ranches and farms.

We vigorously object to this water transfer for all aforementioned reasons.

**MICROFILMED**

SEP 17 2002

We designate Trilby McAfee of 3721 Antelope Road, Moore, ID 83255  
Phone: (208) 554-3102 to be our personal representative to address all matters  
concerning this proposed water transfer.

<u>NAME</u>	<u>ADDRESS</u>
1. Krusty King	HC 60 Box 285 Moore
2. John D King	4540 Antelope Moore, Id
3. Harold E. Smith Jr.	4557 Antelope Rd. Moore, Id
4. Jack Ballou Waddoups Antelope Ranch	4253 Antelope Rd Moore ID 83255
5. Philip Keller	4295 Antelope Rd. moore ID 83255
6. Mike Seal Antelope Valley Ranch	4615 CHERRY CR. RD MOORE ID. 83255
7. E. Haman Under Protest	HC 60 Box 240 Moore id 83255
8. David Tule	HC 60 Box 255 MOORE ID 83255
9. Peter Shawne 143 S 1200 W Blackfoot IDA	

MICROFILMED

OCT 17 2002



- |     | NAME  | ADDRESS                                  |
|-----|---|--|
| 10. | Donald Barnum   | Rt 1 Box 65 Moore 83255                  |
| 11. | Alce Van Eten   | Rt. 1 Box 61A Moore, Id.<br>83255        |
| 12. | Brester H. Bell                                       | Rt. 1 Box 58 Moore, Id<br>83255          |
| 13. | Maj. Doherty<br>County Divide Ranch<br>A. M. Bradford | 3776 W <del>to</del> 3000 N. Darlington  |
| 14. |   |  |
| 15. | Tim Sayer   | 3526 W Antelope Road                     |
| 16. | Rick  | Rt #1 Box 60 Moore Id<br>3550N 3668W     |
| 17. | Gandy McAffee<br>Tilby McAffee                        | 7721 Antelope Rd<br>Moore Idaho<br>83255 |

MICROFILMED

OCT 17 2002

Transfer No 69068

Name of Applicant SIEGEL - HORTON LLC Phone 208-584-3232  
Post Office address 19501 JACKKNIFE LN. O/A, ID. 83657

- 1 ☒ Change point of diversion      ☐ Add diversion point(s)      ☒ Change place of use  
☐ Change nature of use      ☐ Change period of use      ☐ Other \_\_\_\_\_

2. Describe the reason for the proposed changes. Parties purchasing Grant Daniels property on Antelope Creek have agreed to swap 1.60 d/b of rights 34-00300 & 34-00442. This application reflects the resulting change to 34-00300.

- | 1 | <u>Right Number</u> | <u>Priority</u> | <u>Amount (cfs/ac-ft)</u> | <u>Nature of Use</u> | <u>Period of Use</u> |
|---|---------------------|-----------------|---------------------------|----------------------|----------------------|
|   | 34-00300            | 6-01-1885       | 1.6                       | Irrigation           | 5-01 to 10-15        |
|   |                     |                 |                           |                      | to                   |
|   |                     |                 |                           |                      | to                   |
|   |                     |                 |                           |                      | to                   |

2. Total amount of water being transferred 1.6 cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.
3. Source of water Antelope Creek tributary to Big Lost River.
4. Point(s) of Diversion:

[illegible][illegible]

**MICROFILMED**

2002

Total Acres

80

## PART 1

## 6 General Information

- a Description of diversion system Headgates & open ditches
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?  
\_\_\_\_\_ Yes x No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes
- c Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer.  
Land will be irrigated with right 34-004428.
- d. Remarks  
Application based on agreement dated March 30, 1999,  
copy attached.

## ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. \_\_\_\_\_

And the said application is hereby \_\_\_\_\_, subject to the following conditions:

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
For the Director

MICROFILMED

OCT 17 2002



## PART 2

## A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. R34-00300

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	05/01 to 10/15	5.90 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
ANTELOPE CREEK	BIG LOST RIVER

Priority: 06/01/1885

LOCATION OF POINT(S) OF DIVERSION:

SESW , Sec. 3, Township 04N, Range 24E  
 SWNE , Sec. 9, Township 04N, Range 24E  
 CUSTER County  
 NWSE , Sec. 9, Township 04N, Range 24E  
 SWNW , Sec. 10, Township 04N, Range 24E  
 NWSW , Sec. 10, Township 04N, Range 24E  
 BUTTE County

PLACE OF USE:

## IRRIGATION

				NE				NW				SW				SE				
				NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
04N	24E	2	:											10						10.0
04N	24E	3	:											04					12	16.0
04N	24E	9	:	20			25									28				73.0
04N	24E	10	:	26	32	16	03	24	35	10			12							158.0
																			TOTAL ACRES	257.0

CONDITIONS/REMARKS:

- RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
- TWO POINTS OF DIVERSION IN T04N, R24E, S09, SWNE.
- THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE WATERMASTER FOR WATER DISTRICT 34.

MICROFILMED  
 OCT 17 2002

Claim No. R34-00300

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

None

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:

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 \_\_\_\_\_

MICROFILMED

OCT 17 2002

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 1.60 for Irrigation purposes from 5-1 to 10-15  
 (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
		SE	SW	3	4N	24E	Custer	
		SW	NW	10	4N	24E	BUTTE	
		NW	SW	10	4N	24E	BUTTE	

## 3 Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	24E	2																	10
		3												4					16
		10	20	20															54

Total Acres 80

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

1 amount 4.3 cfs for Irrigation purposes from 5-1 to 10-15  
 (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
		SW	NE	9	4N	24E	BUTTE	
		SW	NW	10	4N	24E	BUTTE	
		NW	SW	10	4N	24E	BUTTE	

## 3 Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	24E	9	20			25									20				73
		10		4	10	3	24	35	10			12							104

MICROFILMED  
OCT 17 2002Total Acres 177



## PART 3

## B. CHANGES IN NATURE OF USE

- | 1 | New Nature of Use | Amount(cfs/af-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.

SIEGEL - HORTON LLC  
(Signature of Applicant)

Subscribed and sworn to before me this 26 day of July, 2000

Cheryl Lee  
(Notary Public)

My commission expires 2-01-03

## FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 5 attachments

Received by HWT Date 8-28-00 Protest filed by \_\_\_\_\_

Prelim Check by \_\_\_\_\_ Fee 295.00

Received by HWT # E026116 Date 8-28-00

Published in Arco Advertiser Copies of protest forwarded by \_\_\_\_\_

Pub Dates May 3 & 10, 2001 Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Watermaster recommendations requested on 4/25/01 Recommended for ☐ approval ☒ denial

received 4/27/01 by \_\_\_\_\_

Copy of transfer sent to lien holder MICROFILMED

11/1/2002

# AGREEMENT REGARDING WATER RIGHTS

This agreement made this 30<sup>th</sup> day of March 1999 between Jack Horton and his wife and Craig A. Clark and his wife, Ellen Clark.

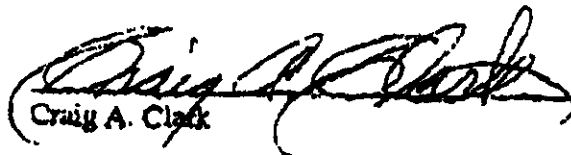
Grant Daniels, recently deceased and his surviving wife are selling parts of the Daniels Ranch to the Hortons as to the parcel known as the "Meadows Ranch" or Home Place and to the Clarks as to the parcel known as the Dry Fork Ranch. The two sales are being closed shortly by the First American Title Company in Blackfoot, Idaho.

As part of the Agreements for the sale and purchase of the separate parcels the buyers, the Hortons and the Clarks, have agreed to exchange 80" of water in Water License Number 34-00300 for water 80" in Water Right Number 34-00442.

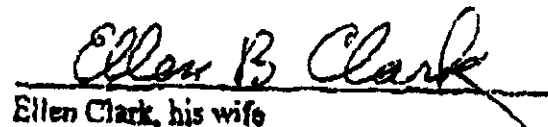
By agreement the parties confirm and ratify this agreement and further agree that the exchange shall survive the closings on the ranch properties.

This agreement may be executed on separate pages by the parties and a facsimile copy thereof shall be accepted as a valid execution hereof by each party.

  
Jack Horton

  
Craig A. Clark

  
Cami Horton, his wife

  
Ellen Clark, his wife

MICROFILMED

T 69068  
ATTACHMENT 1 OF 5

LAURIE GAMETT  
BUTTE COUNTY ASSESSOR  
PO BOX 157  
ARCO ID 83213

ASSESSMENT NOTICE

PRESORTED  
FIRST-CLASS MAIL  
U S POSTAGE PAID  
ARCO ID 83213  
PERMIT NO 006

ADDRESS SERVICE REQUESTED

CATEGORY DESCRIPTION

4 MEADOW

Tax Code 5-00  
LOTS/ACRES

39.800 AC

MARKET VALUE

7,204

Taxes are based on the  
valuation listed on this statement

FOR ANY QUESTIONS  
PLEASE NOTIFY THE  
ASSESSOR'S OFFICE BEFORE

JUNE 25, 1999

TOTAL:

39.800

7,204

PARCEL #  
RP 04N24E097200 A

FR NE4SE4 T# 383  
SEC 9

PROPERTY ADDRESS

PRIOR YEAR

CURRENT YEAR

Mail To

VALUE

7,204

7,204

SIEGEL-HORTON LLC

TAX

PRIOR YEAR  
107.78

ESTIMATED  
107.78

19501 JACKNIFE LANE

OLA

ID 83657

See back for details

DO NOT PAY ESTIMATE

LAURIE GAMETT  
BUTTE COUNTY ASSESSOR  
PO BOX 157  
ARCO ID 83213

ASSESSMENT NOTICE

PRESORTED  
FIRST-CLASS MAIL  
U S POSTAGE PAID  
ARCO ID 83213  
PERMIT NO 006

ADDRESS SERVICE REQUESTED

CATEGORY DESCRIPTION

4 MEADOW  
19 WASTE

Tax Code 5-00  
LOTS/ACRES

145.300 AC  
9.500 AC

MARKET VALUE

26,299

Taxes are based on the  
valuation listed on this statement

FOR ANY QUESTIONS  
PLEASE NOTIFY THE  
ASSESSOR'S OFFICE BEFORE

JUNE 25, 1999

TOTAL:

154.800

26,299

PARCEL #  
RP 04N24E100135 A

FR N2 T# 385  
S2NE4  
NW4SE4

SEC 10

PROPERTY ADDRESS

PRIOR YEAR

CURRENT YEAR

Mail To

VALUE

26,299

26,299

SIEGEL-HORTON LLC

TAX

PRIOR YEAR  
393.46

ESTIMATED  
393.46

19501 JACKNIFE LANE

OLA

ID 83657

See back for details

DO NOT PAY ESTIMATE

MICROFILMED

T 69068  
ATTACHMENT 2 OF 5

475.3 ac



CHRIS JAMES  
CUSTER COUNTY ASSESSOR  
PO BOX 597  
CHALLIS ID 83226

ASSESSMENT NOTICE

1999

RETURN SERVICE REQUESTED

CATEGORY DESCRIPTION

1 IRRGTD AG  
4 MEADOW  
5 DRY GRAZING  
10 RURAL HOMESITE  
19 WASTE  
31 RURAL RES BLDG  
32 RURAL IMP ON AG

Tax Code

LOTS/ACRES

4-00

MARKET VALUE

24.000 AC 7,182  
46.800 AC 10,249  
4.000 AC 132  
1.000 AC 10,000  
.700 AC 39,449  
12,192

Taxes are based on the  
valuation listed on this statement

FOR ANY QUESTIONS  
PLEASE NOTIFY THE  
ASSESSOR'S OFFICE BEFORE

JUNE 25, 1999

TOTAL:  
LESS HOMEOWNERS:

76.500

79,204  
19,725

PARCEL #  
RP 04N24E090002 A

NE4NF4  
TRACT 518  
SEC 9 T4N R24E  
PROPERTY ADDRESS

PRIOR YEAR

CURRENT YEAR

Mail To

VALUE

57,979

59,479

SIEGEL-HORTON LLC

PRIOR YEAR

ESTIMATED

TAX

774.48

792.58

19501 JACKKNIFE LANE  
OLA

ID 83657

See back for details.

DO NOT PAY ESTIMATE

CHRIS JAMES  
CUSTER COUNTY ASSESSOR  
PO BOX 597  
CHALLIS ID 83226

ASSESSMENT NOTICE

1999

RETURN SERVICE REQUESTED

CATEGORY DESCRIPTION

1 IRRGTD AG  
4 MEADOW

Tax Code

LOTS/ACRES

4-00

MARKET VALUE

31.000 AC 9,765  
93.200 AC 20,411

Taxes are based on the  
valuation listed on this statement

FOR ANY QUESTIONS  
PLEASE NOTIFY THE  
ASSESSOR'S OFFICE BEFORE

JUNE 25, 1999

TOTAL:

124.200

30,176

PARCEL #  
RP 04N24E100001 A

TRACTS 515,517  
SEC 10 T4N R24E

PROPERTY ADDRESS

PRIOR YEAR

CURRENT YEAR

Mail To

VALUE

30,176

30,176

SIEGEL-HORTON LLC

PRIOR YEAR

ESTIMATED

TAX

364.06

364.06

19501 JACKKNIFE LANE  
OLA

ID 83657

See back for details

DO NOT PAY ESTIMATE

CHRIS JAMES  
CUSTER COUNTY ASSESSOR  
PO BOX 597  
CHALLIS ID 83226

ASSESSMENT NOTICE

1999

RETURN SERVICE REQUESTED

CATEGORY DESCRIPTION

4 MEADOW  
5 DRY GRAZING  
19 WASTE

Tax Code

LOTS/ACRES

4-00

MARKET VALUE

19.000 AC 4,161  
58.000 AC 1,914  
3.000 AC

Taxes are based on the  
valuation listed on this statement

FOR ANY QUESTIONS  
PLEASE NOTIFY THE  
ASSESSOR'S OFFICE BEFORE

JUNE 25, 1999

TOTAL:

80.000

6,075

PARCEL #  
RP 04N24E036601 A

SW4SE4, SE4SW4  
SEC 3 T4N R24E

PROPERTY ADDRESS

PRIOR YEAR

CURRENT YEAR

Mail To

VALUE

6,075

6,075

SIEGEL-HORTON LLC

PRIOR YEAR

ESTIMATED

TAX

73.26

73.26

19501 JACKKNIFE LANE  
OLA

ID 83657

See back for details

DO NOT PAY ESTIMATE

MICROFILM

T 69068  
ATTACHMENT 3 OF 5

Skip,  
Here is the check for  
Jack Hortons part of the  
water transfer on Antelope Creek.

Sincerely,  
Craig Clark

MICROFILMED

OCT 17 2002

RECEIVED

AUG 28 2000

Department of Water Resources  
Eastern Region

ATTACHMENT T 690.68  
4 OF 5

7-31-2000

Mr. Ernie Carlsson,  
Water Rights Re: Craig Clark

Dear Mr. Carlsson,

Enclosed is the application  
from the Hortons, executed  
by the title owner.

If there is another filing  
fee involved, please either  
call Craig and he will  
mail it to to you, or let  
me know and I will  
forward it to you.

Thank you for your help -  
Glad this one is done

T 69068  
ATTACHMENT 5 OF 5



1998 JAN -2 AM 8:12

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

FILED

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

In Re SRBA	)	<b>ORDER OF PARTIAL DECREE</b>
	)	
Case No. 39576	)	<b>For Water Right 34-00300</b>
_____	)	

On November 18, 1997, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 34-00300 is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED JAN 2 1998.



DANIEL C. HURLBUTT, JR.  
Presiding Judge  
Snake River Basin Adjudication

**MICROFILMED**

**OCT 17 2002**

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

In Re SRBA )  
 )  
Case No. 39576 )  
 )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 34-00300

1997 JUN -2 AM 8:12  
DISTRICT COURT - SR3A  
TWIN FALLS, IDAHO

NAME & ADDRESS: GRANT DANIELS  
RETA J DANIELS  
ANTELOPE ROUTE  
DARLINGTON ID 83231

SOURCE: ANTELOPE CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 5.9 CFS

PRIORITY DATE: 06/01/1885

POINT OF DIVERSION: T04N R24E S03 SESW Within CUSTER County  
S09 SWNE

T04N R24E S09 NWSE Within BUTTE County  
S10 SWNW  
NWSW

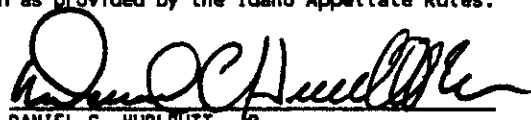
TWO POINTS OF DIVERSION IN T04N, R24E, S09, SWNE.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	5.9 CFS

PLACE OF USE:	IRRIGATION	Within CUSTER and BUTTE Counties
	T04N R24E S02	SWSW 10
	S03	SESW 4
	S09	SESE 12
	S10	SENE 25
		NESE 28
		NENE 26
		NWNE 32
		SWNE 16
		NWNW 35
		SWNW 10
		SENE 3
		NWSW 12
	257 ACRES TOTAL	

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

MICROFILMED  
OCT 17 2002

1998 JAN 02 PM 02:00  
DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

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

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 34-00300

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE  
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 34-00300 was mailed  
on January 02, 1998, with sufficient first-class postage prepaid  
to the following:

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

STATE OF IDAHO  
Represented by:  
CLIVE STRONG  
OFFICE OF ATTORNEY GENERAL  
STATE OF IDAHO  
PO BOX 44449  
BOISE, ID 83711-4449  
Phone: 208-334-2400

USDI BLM  
Represented by:  
U.S. DEPT. OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724  
Phone: 208-387-0835

CERTIFICATE OF MAILING

MICROFILMED  
OCT 17 2002

PAGE 1  
01/02/98

## SENDER COMPLETE THIS SECTION

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1 Article Addressed to:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756

34-300

2 Article Number (Copy from service label)

7000 1670 0013 9129 8037

PS Form 3811, July 1999

## COMPLETE THIS SECTION ON DELIVERY

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

ELLEN B. CLARK 9/9/02

C Signature

X

Ellen B Clark

☐ Agent☒ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3 Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4 Restricted Delivery? (Extra Fee)

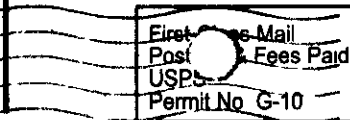
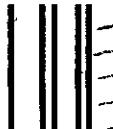
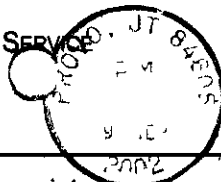
☐ YesMICROFILMED  
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Domestic Return Receipt

102595-00-M-0952



UNITED STATES POSTAL SERVICE



First-class Mail  
Postage Fees Paid  
USPS  
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• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER  
RESOURCES

ATTN DEBORAH GIBSON

1301 N ORCHARD ST

BOISE ID 83706

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SEP 11 2002

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SEP 11 2002

Department of Water Resources



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1 Article Addressed to

SIEGEL-HORTON LLC  
19501 JACKNIFE LN  
OLA ID 83657

2. Article Number (Copy from service label)

34-300  
7000 1670 0013 9129 8013

PS Form 3811, July 1999

## COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

9-7-02

C. Signature

X C. Horton

☒ Agent☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below

☒ NoMICROFILMED  
OCT 17 2002

3 Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

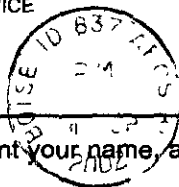
4 Restricted Delivery? (Extra Fee)

☐ Yes

Domestic Return Receipt

102595-00-M-0952

UNITED STATES POSTAL SERVICE



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Postage & Fees Paid  
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IDAHO DEPT OF WATER  
RESOURCES  
ATTN DEBORAH GIBSON  
1301 N ORCHARD ST  
BOISE ID 83706

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Department of Water Resources



## SENDER. COMPLETE THIS SECTION

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1 Article Addressed to

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

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OCT 17 2002

34-300

2. Article Number (Copy from service label)

7000 1670 0013 9129 8020

PS Form 3811, July 1999

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102595-00-M-0952

## COMPLETE THIS SECTION ON DELIVERY

A Received by (Please Print Cls

B Date of Delivery

09/12/02

C Signature

X

M. J. King

☐ Agent☐ Addressee

D Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below

☐ No

3 Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C O D

4 Restricted Delivery? (Extra Fee)

☐ Yes



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RESOURCES  
ATTN DEBORAH GIBSON  
1301 N ORCHARD ST

BOISE ID 83706

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Department of Water Resources



- Complete items 1, 2, and so complete item 4 if Restricted Delivery is desired.
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1 Article Addressed to:

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

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SEP 17 2002

34-300

2. Article Number (Copy from service label)

7000 1670 0013 9129 7993

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# SECTION ON DELIVERY

A. Received by (Please Print C)	B. Date of Delivery
Randy McAfee	9/9/02
C. Signature	D. Agent
Randy McAfee	Addressed
E. Is delivery address different from item 1? <input type="checkbox"/> Yes	
If YES, enter delivery address below <input type="checkbox"/> No	
3. Service Type	
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
4 Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

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USPS  
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IDAHO DEPT OF WATER  
RESOURCES  
ATTN DEBORAH GIBSON  
1301 N ORCHARD ST  
EDISE ID 83706

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SEP 12 2002

Department of Water Resources

43



- Complete items 1, 2, 3. Also complete item 4 if Restricted Delivery is desired.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1 Article Addressed to:

WILLIAM G GIBBS  
657 18<sup>TH</sup> AVE  
SALT LAKE CITY UT 84103

34-300

2. Article Number (Copy from service label)

7000 1670 0013 9129 8006

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

SECTION ON DELIVERY

A. Received by (Please Print Name) B. Date of Delivery

C. Signature

☒ Addressee ☐ Agent

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

3 Service Type

☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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RESOURCES  
ATTN DEBORAH GIBSON  
1301 N ORCHARD ST  
BOISE ID 83706

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Department of Water Resources

83706/2237





**CERTIFIED MAIL RECEIPT**

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**POSTAL USE**

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)Restricted Delivery Fee  
(Endorsement Required)

Total Postage &amp; Fees \$

9/5/02

Postmark  
Here*Jg***MICROFILMED**

Sent To

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

City, State, ZIP+4

*Trilby McAfee*  
*3721 Antelope Rd*  
*Moore, SD. 57801*

7000 1670 0013 9129 7993

7000 1670 0491 0002 2000 1670 0491 0002

U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
Certified Mail Only; No Insurance Coverage

Postage	\$
Insurance Fee	
Postage Receipt Fee (Endorsement Required)	
Postage and Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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7 2002

9/5/02

Postmark  
Here

df

Sent to	Craig Clark
Street, Apt. No. or PO Box No.	P.O. Box 65
City, State, ZIP+4	New Castle Wt 84756

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

7000 1670 0013 9129 8020

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**MICROFILMED**

~~DAI 17 2002~~

9

9/5/02

Postmark  
Here

Street Apt No or PO Box No

Street, Apt. No. or P.O. Box No. 4343 Centre Hope Rd.

City State, ZIP+4

City State, ZIP+4  
7 Moore, D.D. 83255

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage)

7008 1646 013 E100 0291 0002

Return Receipt Fee  
(Insurance Not Required)

Registration Fee  
(Insurance Not Required)

Total Postage & Fees

MICROFILMED

\$ 17.2002

9/5/02

Postmark  
Here

*df*

Sent To:  
*Siegel-Horton*  
Street, Apt. No. or PO Box No.  
*19501 Jacknife Ln.*  
City, State ZIP+4  
*Ala Id 83657*

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No International Delivery)

9008 6216 E100 069T 0002

1 A 1 J S E

Postage	\$
Added Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

9/5/02

Postmark  
Here

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OCT 17 2002

Sent To	William G. Gibb
Street Apt. No. or PO Box No.	657 18th Ave
City State ZIP	SLA . 11T 84103







State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

September 5, 2002

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

Re: Application for Transfer No. 69068, in the name of Siegel-Horton, LLC and  
Transfer No. 5823 in the name of Craig A. Clark and Ellen B. Clark

Dear Interested Parties:

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

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

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

Sincerely,

Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau

Enclosures

c: IDWR - Regional Office

**MICROFILMED**  
OCT 11 2002

## **EXPLANATORY INFORMATION**

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

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

### **ORAL ARGUMENT**

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

### **CERTIFICATE OF SERVICE**

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

### **FINAL ORDER**

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

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

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

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

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

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

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

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

DEC-21-1999

## AGREEMENT REGARDING WATER RIGHTS

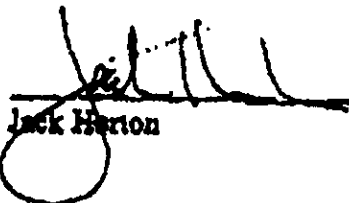
This agreement made this 30<sup>th</sup> day of March 1999 between Jack Horton and his wife and Craig A. Clark and his wife, Ellen Clark.

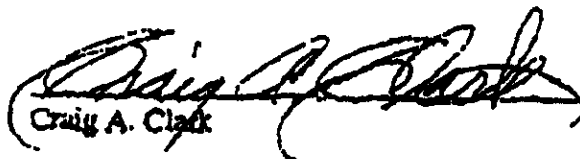
Grant Daniels, recently deceased and his surviving wife are selling parts of the Daniels Ranch to the Hortons as to the parcel known as the "Meadows Ranch" or Home Place and to the Clarks as to the parcel known as the Dry Fork Ranch. The two sales are being closed shortly by the First American Title Company in Blackfoot, Idaho.


As part of the Agreements for the sale and purchase of the separate parcels the buyers, the Hortons and the Clarks, have agreed to exchange 80" of water in Water License Number 34-00300 for water 80" in Water Right Number 34-00442.

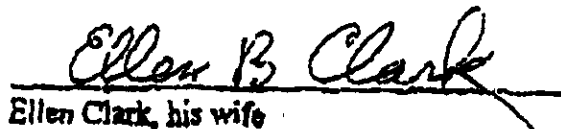
By agreement the parties confirm and ratify this agreement and further agree that the exchange shall survive the closings on the ranch properties.

This agreement may be executed on separate pages by the parties and a facsimile copy thereof shall be accepted as a valid execution hereof by each party.

  
\_\_\_\_\_  
Jack Horton

  
\_\_\_\_\_  
Craig A. Clark

  
\_\_\_\_\_  
Cami Horton, his wife

  
\_\_\_\_\_  
Ellen Clark, his wife

Department of Water Resources
APPLICANT'S
Exhibit <u>1</u>
Date <u>5-22-02</u>

*WJS*

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OCT 17 2002

T 5823  
ATTACHMENT 1 OF 3

0002/003

## AFFIDAVIT OF DON A. BARNETT

STATE OF UTAH                    )  
                                       :SS  
 COUNTY OF DAVIS                )

DON A. BARNETT, being first duly sworn upon oath deposes and states:

1. I am a resident of Farmington, Utah and am over the age of 21. My present address is 1228 S. Cannon Drive, Farmington, Utah. I am a registered Professional Engineering with a B.S. in Engineering Geology and a M.S. in Civil Engineering. I have more than fifteen years of experience as a consulting engineer and geologist in the Intermountain States on water resource and water right matters. I am familiar with Applications for Transfer of Water Right Nos. 5823 and 69068 filed with the Idaho Department of Water Resources.

2. In general, it is the intent of the two applications to simply trade equal portions of two water rights with different priorities between two different parcels of land which were historically in the same ownership. Both water rights divert from Antelope Creek. The upstream right has a 1904 priority and has historically been used to irrigate what is known as the "Dry Fork Ranch" or parcel and is now owned by ~~Clark~~ and the downstream right has an 1886 priority and has historically been used to irrigate what has been referred to as the "Daniels Homeplace" which is now owned by Horton.

3. The two transfers are interdependent. When accomplished, no more water will be diverted and no more land will be irrigated than has been historically. The application will simply allow the Dry Fork Ranch to irrigate with a better priority than in the past and in exchange a portion of the Daniels Homeplace will be irrigated with a poorer priority water right.

4. The historic points of diversion for the two ranches are to remain unchanged and are about 3 miles apart. I understand that there several intervening water rights between the Dry Creek Ranch and the Daniels Homeplace points of diversion. It occurs to me that the only intervening water users who could be effected by the proposed transfer would be those with water right priorities between 1884 and 1904. If one has a priority better than 1884 it would be protected due to priority regardless of the approval of the transfers. On the other hand, if one has a water right junior to 1904, historically diversion would have been allowed already at the upper point of diversion and, hence, there would be no impact to the junior priority water right. If there are intervening water rights with priorities between 1885 and 1904 they could be, but would not necessarily be, impacted by the proposed transfers depending on the flow regime in Antelope Creek. Impact would only occur if the flow of Antelope Creek is such at times that the return flows to Antelope Creek from intervening water rights is required to fill the 1886 priority right at the Daniels Homeplace. If flows are

-1-

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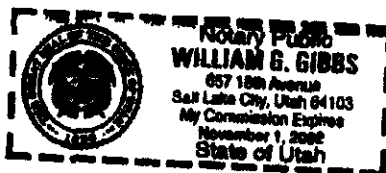
Department of Water Resources	
APPLICANT'S	
Exhibit	2
Admitted	5-22-02

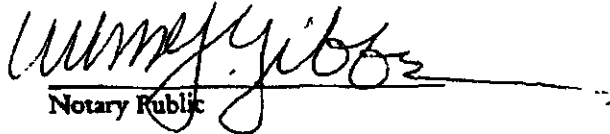
greater, there is no impact to upstream, downstream or intervening rights by moving the better priority right upstream. If natural flows plus return flows are insufficient to fill the 1886 priority right at the Daniels Homeplace, then the intervening junior priority rights would have been turned off and, hence, moving the right upstream would have no impact to any rights on the stream. Hence, it would only be during a very limited flow regime that any rights could possibly be impacted.

5. Some have expressed concern over a change in the return flow patterns. Again it is important to note that the same lands are to be irrigated as were historically. Hence, impact is only possible when the 1886 right is being honored and the 1904 right is off and only to the extent that the return flow patterns have been diminished and only to those rights which are situated between historic points of return from the Daniels Homeplace and the Dry Creek Ranch.

  
Don A. Barnett

Subscribed and sworn to before me this 21<sup>st</sup> day of May, 2002.



  
Notary Public

MICROFILMED  
OCT 17 2002



**Water District No. 34**  
**P. O. Box 53**  
**Mackay, ID 83251**  
**(208) 588-3137**

November 5, 2001

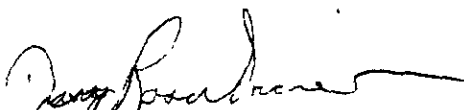
Craig Clark  
P. O. Box 65  
Newcastle, UT 84756

Dear Mr. Clark:

As per our previous telephone conversation I have reviewed the data for the discontinuation of water distribution at Antelope for the last several years. You specifically requested information concerning the discontinuation water delivery for the priority dates of 1885 and 1904. After review I found that water rights with an 1885 priority date stayed on an average of 18 days longer than the 1904 water rights. However, I also found in some years the 1885 rights never went off and in some years the 1904 rights never came on. So as you can see, each year can vary greatly.


I hope this answers your question. Should you have any more questions, please don't  
hesitate to call me at (208) 588-3137.

Sincerely,

  
Doug Rosenkrance  
Watermaster

DR:stn

Department of Water Resources	
APPLICANT'S	
Exhibit	3
Date Admitted	5-22-02



MICROFILMED  
OCT 17 2002

**RESPONSES TO OBJECTIONS TO WATER RIGHT TRANSFER NO. T5823**

**OBJECTION:** We object to diverting water from a main stream and its wetlands ecosystem through a ditch located in dry cultivated land, rocky ground, and dry streambed to another area which will result in massive water loss.

***RESPONSE:** The ditch has been used for approximately 100 years. The ditch is located in or adjacent to meadow lands except for the less than 1/4 mile when it is adjacent to a irrigated alfalfa field. The ditch location does not appear to be in any rocky ground or dry streambed. The supply ditch to the Clark property is also used by the Reese Ranch with 1884 water.*

**OBJECTION:** The feasibility of transferring water from sections 17, 20, and 21 is questionable because of the water loss over 2.5 miles through cultivated, rocky land and a creek bed that is often dry. The acres of usage are also questionable as water diverted to section 3 would have to pass across Antelope Creek. There is little or no irrigatable land on Section 11 and approximately 10 acres that could be irrigated in Section 10.

***RESPONSE:** The lands being irrigated, the diversion points, and supply ditches are all presently being used and will not be changed by the proposed transfer. The Clark property will end up with 1.6 cfs of 1885 water and 1.6 cfs of 1904 water from Antelope Creek as compared to the present 3.2 cfs of 1904 water. No additional land or water is involved in the transfer. The difference in the distance involved in delivering the 1885 Antelope water to the Clark property and return to Antelope Creek is approximately 1/2 mile more than the present delivery to the Horton property and return to Antelope Creek.*

**OBJECTION:** It is illogical to divert water from section 3 to section 3 through a ditch over 2.5 miles long and transported across Antelope. If the real purpose is to divert water to a recently expanded cultivated area, severely short on water rights, in sections 17, 20, and 21, then we vehemently object to the water transfer.

***RESPONSE:** No water will be transported across Antelope creek. Long term diversions and supply ditches are being utilized. The supply ditch to the Clark property is also used by the Reese Ranch with 1884 water. The only portion of the supply ditch where Clark's water will be by itself is the last less than 1/4 mile where the ditch is adjacent to Reese's alfalfa field which is presently sprinkler irrigated. The established cultivated area on the Clark property is productive alfalfa grass hay ground as compared to poorly drained or gravelly wet meadow areas. Water usage in relation to forage production is more beneficial and efficient under alfalfa grass hay as compared to wet meadow areas.*

**OBJECTION:** This would permanently reduce Antelope Creek stream flow, adversely affecting the natural habitat that is now present in the stream and surrounding lands. Diverting water from the Antelope Valley to the Dry Fork Valley would also adversely effect the surface and sub irrigation structure that now prevails in the Antelope Valley where portions of the sub water is returned to the stream.

MICROFILMED  
OCT 17 2002

Department of Water Resources	
APPLICANT'S	
Exhibit	Lt
File Addition	5-22-02

**RESPONSE:** *Doug Rosenkrance, Watermaster for District 34, has estimated that 1885 water lasts on the average approximately 18 days longer than 1904 water. Antelope Creek stream flow would be reduced by the 1.6 cfs for the estimated 18 days. Correspondingly, Dry Fork stream flow, a tributary of Antelope Creek, would be increased during the 18 day period. Dry Fork Valley is an extension of Antelope Valley. The natural habitat along Dry Fork Creek and Spring Creek will be improved. The tail-water and the sub water from irrigation of the alfalfa hay cropland returns to Dry Fork Creek, Spring Creek, and subsequently Antelope Creek. Spring Creek discharges into Antelope Creek just below the area of the Horton property involved in the transfer. With the serious beaver ponding problem and resulting water loss on Antelope Creek, total water discharge from the area, benefiting the lower stream users, may be improved by this transfer.*

→ **OBJECTION:** We also object to a proposal that implies the need for a new diversion point proposed by a party that has recently acquired a ranch that for approximately a hundred years has had adequate diversion points and ditches to water the property on Antelope Creek.

✓ **RESPONSE:** *There are no new diversion points or supply ditches involved in this water right transfer. No new or additional lands are being irrigated. All diversion points and supply ditches are presently being used.*

**OBJECTION:** We object to setting a precedent where parties move water from the original Antelope Creek stream bed as this can result in others displacing or forfeiting the original water rights for this area. We all know the devastation in other river areas from this practice.

**RESPONSE:** *No forfeiture of water rights is planned or indicated. Each water right transfer must be considered on its own merits.*

**OBJECTION:** In the future what checks will be made to prevent both 1.6 cfs of water from being used in Sections 17, 20, and 21 which has currently inadequate water rights for it's 159 acres of cultivated land?

**RESPONSE:** *The Basin 34 Watermaster controls the usage and distribution of water in the Antelope Valley Area according to Idaho Water Laws.*

**OBJECTION:** Upon further research it has been discovered that the legal notice requesting a change of Water Right Transfer No. T5823 is misleading. It appears that the real intent of this request is to transfer water from Section 3, water right number 34-00300 (1885 water) to Sections 17, 20, and 21 and to transfer an equivalent amount of water, right number 34-00442 (1904 water) to Sections 2, 3, 10, and 11. This would result in transferring more water form Antelope Creek at a time when the stream flow is critical.

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**RESPONSE:** *It is planned to transfer 1.6 cfs of 1885 water from Sections 2,3,10, and 11 to Sections 17, 20, and 21 in exchange for the transfer of 1.6 cfs of 1904 water from Sections 17, 20, and 21 to Sections 2,3,10, and 11. The transfer should result in an average of 18 days of additional water to the Clark property for alfalfa grass hay production as compared to wet meadow production, which is felt to be a more beneficial and efficient use of water.*

**RESPONSES TO OBJECTIONS OF WATER RIGHT TRANSFER NO.69068**

**OBJECTION:** We object to diverting water from main Antelope Creek and its wetlands ecosystem through a ditch located in dry, rocky cultivated land resulting in massive water loss

**RESPONSE:** *The ditch has been used for approximately 100 years. The ditch is located in or adjacent to meadow lands [wet lands] except for the less than 1/4 mile when it is adjacent to a irrigated alfalfa field. The ditch location does not appear to be in any rocky ground or dry streambed nor is it adversely impacted by the beaver dam problem on main Antelope Creek.*

**OBJECTION:** This proposed transfer would permanently reduce Antelope Creek stream flow disturbing the natural habitat that is now present in the stream and surrounding lands. Diverting water from the Antelope Valley to the Dry Fork Valley would adversely affect the surface and sub-irrigation structure that now prevails in Antelope Valley where portions of the sub-water is returned to the creek.

**RESPONSE:** *As previously stated, Doug Rosenkrance, Watermaster for District 34 has estimated that 1885 water lasts on the average approximately 18 days longer than 1904 water. Antelope Creek stream flow would be reduced by the 1.6 cfs for the estimated 18 days. Correspondingly, Dry Fork stream flow, a tributary of Antelope Creek, would be increased during the 18 day period. Dry Fork Valley is an extension of Antelope Valley. The place of use of the water in question on Clark's property is less than 3/4 of a mile from Antelope Creek. The tail water and sub water from irrigation of Clark's alfalfa hay cropland returns to Dry Fork Creek, Spring Creek and subsequently Antelope Creek. Except in the very serious drought years, there is water flowing in this section of Dry Fork Creek. The sub water from irrigation of Clark's field will always return to Antelope Creek down stream. As stated in Doug Rosenkrance's letter, the number of days 1885 water will be on longer than 1904 water in severe drought years will be less than the average of 18 days and in some years zero.*

**OBJECTION:** Water in Antelope Valley is generally in short supply during the latter part of the irrigation season and is not adequate to fill existing water rights. Moving the diversion point of this 1885 water right to a location above its current diversion point, further from users on the lower part of the valley, will result in more water shrinkage. This will adversely affect users on the lower end of Antelope Creek during this critical water usage period for 1904 water is generally not available. The net effect of this transfer would be to divert more water to recently cultivated land on dry alluvial plains

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from wild meadowlands. These meadowlands accumulate water during the early irrigation season, when water is usually plentiful, and return water to the lower portions of Antelope Creek during the late irrigation season when water is scarce. Transferring water from lush meadow sub-irrigated land to dry cultivated ground is not consistent with sound water management. This does not constitute the efficient use of the limited supply of water in Antelope Valley.

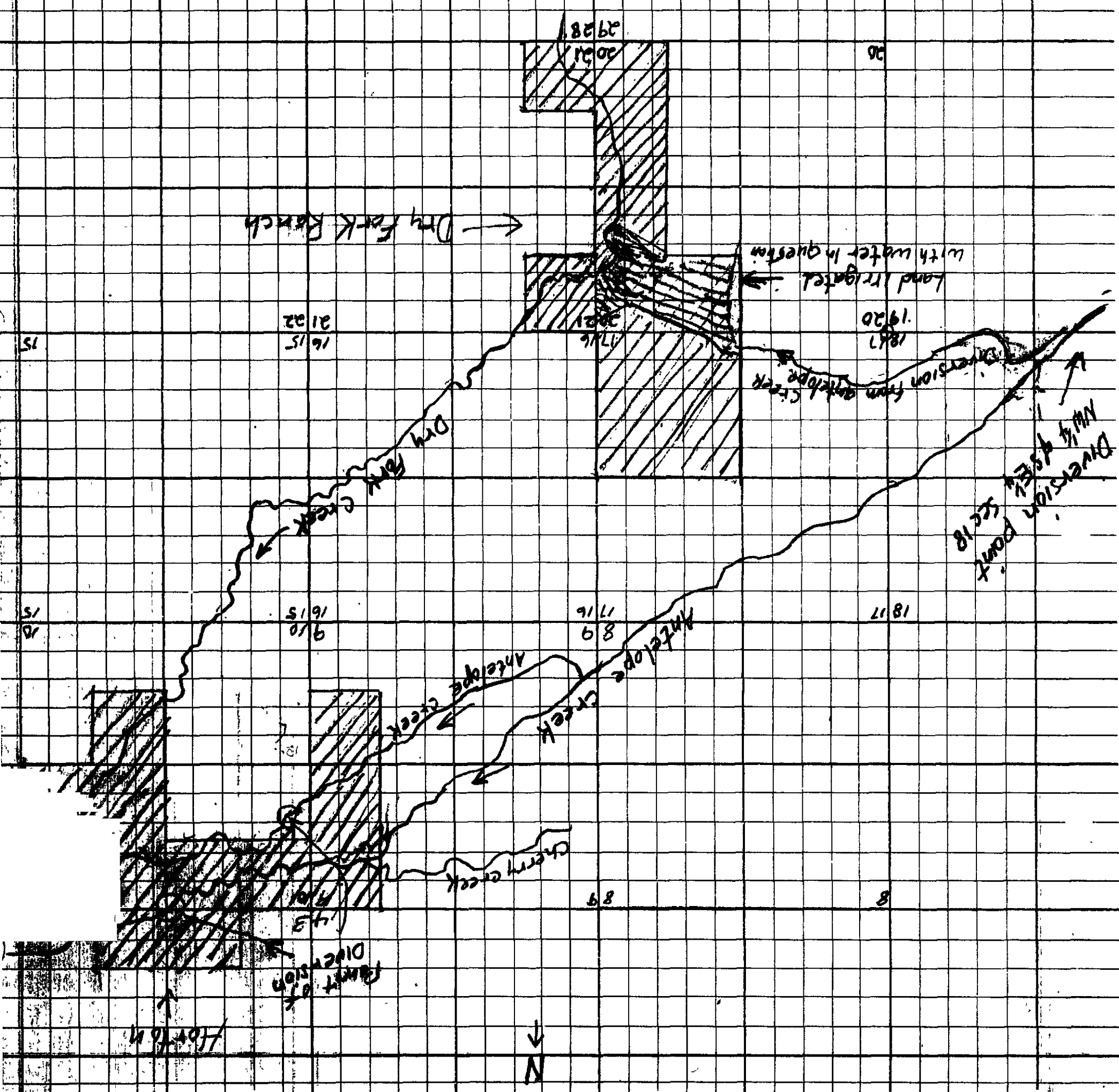
*RESPONSE: Moving diversion points upstream normally benefit downstream users by increasing the distance for return flow of tail-water and sub-water to the stream channel. Water usage in relation to forage production is more beneficial and efficient under alfalfa grass hay as compared to wet meadow areas and is consistent with sound water management. This transfer will not impact the accumulation of water by the meadowlands during the early irrigation season, when water is usually plentiful, and return water to the lower portions of Antelope Creek during the late irrigation season when water is scarce.*

A handwritten signature in black ink, appearing to read "Almonte" or similar, written in a cursive style.

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PH

- Map is for illustration purpose only -





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SEP - 3 2002

Department of Water Resources  
Department of Water Resources

Mr. Glen Saxton  
Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706

Sept. 1, 2002

RE: In the matter of application for transfer No. 69068 in the name of Siegel-Horton, LLC and transfer No. 5823 in the name of Craig A. Clark and Ellen B. Clark.

Response to the exceptions to the Preliminary Order.

Dear Mr. Saxton:

The protestants strongly support their position addressing the four principle items considered by the Department of Water Resources at the Idaho Falls hearing on May 22, 2002. In filing a response to the exceptions to the Preliminary Order, we will re-inforce these positions and show that any diversion of 1885 Antelope Creek water to the Dry Fork valley will damage Antelope Creek water users.

Current conditions clearly illustrate the affect of shrinkage in Antelope Creek, where a futile call was issued by the water master of District 34 on or near August 23, 2002. There are approximately 1000 inches where the stream leaves the last wild meadow ranch with an insignificant amount (60 inches) of water entering the diversion point of the senior water right holders. The water shrinks approximately 90% . This clearly illustrates the effect of reduced stream flow on the percentage of shrink. The length and soil conditions of this location is similiar to Antelope Creek from the Clark property diversion point to the Smith Ranch. Mr. Rosenkrance indicates when he is in regulation there are about 4000 inches available at the upper diversion point and that 1000 inches are diverted between the two diversion points but does not address shrinkage or the time of year. Antelope Creek flow decreases considerably over this period. Shrinkage is considerable through these arid areas as occurs in many places in Basin 34. Diverting 1885 water from Antelope Creek, which is generally available for use 18 days longer than the 1904 water, will increase the precent of shrinkage of remaining Antelope Creek water. The diversion would occur during the mid to latter part of the irrigation season when water is in short supply. There are intervening water rights with priorities between 1885 and 1904

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that would be impacted as Antelope Creek flow is generally low during this period. The average turn-off date is July 10-15, 90% of the time. Average turn-off dates can be verified by the water master. Mr. Barnett states in his affidavit of May 21, 2002, that "it would only be during a very limited flow regime that any rights could possibly be impacted". This "very limited flow regime" generally occurs sometime during the irrigation season. This can be verified by historical turn-off dates which happens during the first part of July. As water is diverted from Antelope Creek the frequency and earlier dates of futile calls is eminent.

The meadow lands of Antelope Valley are located at an elevation of 6,000 feet and higher; Dry Fork area elevation is near 6500 feet. The growing season is short as freezing occurs ten months out of the year and the season is late compared to lower elevations. The 1885 water that is available 18 days longer than 1904 water is a considerable portion of the growing season. Water availability is critical during the first part of July and determines crop success or failure. Any diversion of water from Antelope Creek during this period would increase the percentage of shrink that downstream users would have to sustain, affecting stream flow, turn-off dates and damage to water users. Mr. Barnett, in his affidavit of May 21, 2002, alluded to the fact that some water users could be affected by his statement "It occurs to me that the only intervening water users who could be effected by the proposed transfer would be those with water right priorities between 1885 and 1904". This has special significance when a priority between 1885 and 1904 is a large portion of ones total water rights.

Historically the 1904 water diverted from Antelope Creek was used to irrigate the meadow land which is now the Clark property. Water was used to irrigate the meadow area of the valley floor until the Ovy Waddoups' property was sold to Grant Daniels. In very recent years this area has been greatly expanded by preparing arid alluvial plains above the valley floor for irrigation by plowing the land, providing ditches and planting alfalfa. It would appear that the intent of these actions was to expand the area of water use and greatly enhance the land value to potential buyers. It may be illegal to irrigate more acres but would be difficult to enforce. Historically the Antelope Valley has not had a ditch rider to enforce water rights and regulations. Self regulations are often ineffective .

Mr. Barnett states that "Some years there is surface return flow from the Dry Fork lands to Antelope Creek. However, in a year like this year, I understand

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from the water master that there is very little, if any, return flow from Dry Fork. If the transfer applications change the amount of return flow then during the average 18 day period each year, downstream users could be impacted. "Empirical data shows this year is near typical where Dry Fork water does not cross the road at the Smith Ranch. Dry Fork Creek is currently dry even though water was diverted from Antelope Creek during the past three years and through October of 2001. In fact, Mickey King is currently forced to pump well water to water cattle on property downstream and adjacent to the Clark property. This supports the contention that no return flow occurs as a result of using Antelope Creek water to irrigate Dry Fork property.

In good years, Dry Fork flows from the headwaters through approximately three miles of dry, rocky creek bed to the meadow areas. Shrinkage is considerable and varies from approximately 50% to 100%, depending on the water volume. This flow occurs approximately May 15 and for three to four weeks recharges the Dry Fork meadows and provides water flow to Antelope Creek. The dry, rocky reach of Dry Fork is dry for the rest of the year. Dry Fork flow to Antelope Creek soon ceases as the stored underground is unable to sustain irrigation and the flow into Antelope Creek. The 18 day period referred to above will likely occur in July when Dry Fork is dry between the Clark and Smith property and illustrates no return flow from Antelope water. Dry Fork flow is directly related to snowfall at its headwaters and has nothing to do with Antelope Creek water applied to dry land during the mid irrigation season.

Mr. Barnett's statement of Aug. 14, 2002, states "To my knowledge, the protestants provided no measurement, data, or analysis to show how the moving of 1.6 cfs upstream over an average of an 18 day period each year would decrease the natural vegetation and animal habitat along Antelope Creek and will damage economic and aesthetic values of their property". We are not concerned about moving 1.6cfs upstream for 18 days but are concerned about the transferring of 1.6cfs from Antelope Creek to the Dry Fork valley for 18 days. Antelope Creek flow would be reduced by 1.6cfs of water to downstream users. We concur with Mr. Barnett's statement "Historically, probably about 50% of the water diverted on to the home place lands would have returned to the stream and been available for downstream diversion". The return of 0.80cfs is critical to downstream users when early July cut-off calls are eminent. This has special significance for water users with priority dates between 1885 and 1904. Empirical data

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illustrates that no return flow occurs from the Dry Fork property. To my knowledge the applicants have not provided any scientific data, such as soil samples determining permeability and depth of ground water, which would support a 50% return to Antelope Creek of the 1.6cfs used to irrigate dry, sloping land above the valley floor.

Decreased stream flow causes increased water temperatures which is detrimental to fish and other animal habitat. This is illustrated by the condition of Cherry Creek during the latter part of 2001 and early part of 2002 where the creek had low flow and a dry creek bed at some locations, depending on return flow from adjacent meadows. Fish were destroyed and natural vegetation and animal habitats were affected. The source of Cherry Creek during this part of the year is from the wet-lands and meadows sub water of Antelope Creek. These areas are recharged during the spring run-off and meadow irrigation. A contributing factor to the historical decreasing volume may be the result of diverting water from the upper meadows of Cherry Creek to the dry sloping areas above the valley floor. This expansion occurred during the early 1990's and likely had an adverse affect on return flow to down stream users. The affect of Antelope Creek on the volume of Cherry Creek water is manifested by the larger volume through the meadows of Antelope Creek as compared to the amount of water at the head of the Cherry Creek ranch. It is important to maintain Antelope Creek stream volume and the irrigation of meadows to maintain Cherry Creek flow.

The applicants are fully aware of the economic and aesthetic value of water and the effect on land values. The Horton-Clark land sale agreement apparently priced in the value of water. If water didn't affect these values we would not be in this dispute.

Antelope Creek is the most traveled county road in Butte County. Much of this travel is the public traveling to the area to fish, hunt, camp, picnic and observe the wildlife that inhabits the stream area. There are 16 landowners that oppose this water transfer and more would be in opposition if they had been able to understand the public notices that appeared in the Arco Advertiser newspaper. The notices did not provide a clear understanding of the applicants' proposals.

Mr Barnett's proposal that the Director can apply conditions to the transfer approval to protect other water rights is ludicrous. There is no one to

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enforce these conditions and self-regulation is not an option. Mr. Barnett proposes that in years when there is no surface return flow from Dry Fork to Antelope Creek the approval would limit the up-stream transfer to 0.80cfs. This leaves the remaining 0.80 cfs to replicate the 50% return flow to downstream users. He also states that in wet years when return flows from Dry Fork lands reaches Antelope Creek the restriction could be lifted. Mr. Barnett did not present any scientific data to determine the origin of water flowing from Dry Fork to Antelope during these years. Empirical evidence shows that Dry Fork occasionally flows to Antelope Creek during spring run-off from the headwaters of Dry Fork, and is dry during mid to latter irrigation periods.

Mr. Barnett's modified proposal is unclear and is subject to interpretation. In the comments of Mr. Gibbs' statement, dated Aug. 16, 2002, he states "...applicants request the Application be approved as originally submitted, or in any event a transfer be approved of one-half the water rights as originally requested." If this proposal is interpreted by Siegel-Horton, leasees or potential buyers, as by Mr. Gibbs, they would be led to believe 0.80 cfs could be diverted at the lower diversion points of the Siegel-Horton ranch when 1885 priority rights are on. This proposal would require arbitrary judgement calls to determine the source, amount and time of flow as Dry Fork Creek changes rapidly. The proposal would also create a condition of confusion, antagonism and distrust which would burden the Antelope Creek water users for the foreseeable future. There is also the problem of continuity to new owners and leasees. There is also the possibility of an added economic burden if the Antelope Creek water users had to monitor water conditions and enforce the conditions of this proposal.

To my knowledge the applicants provide no measurements, data or analysis of the proposed 0.80cfs transfer to determine shrinkage between point of diversion and place of use. There is no data to support whether 0.80cfs, adjusted for shrinkage through a long dry ditch, is consistent with the conservation of water resources within the state of Idaho.

### Summary

In this response to the exceptions to the Preliminary Order, we have presented new supporting information that diversion of water from Antelope Creek to Dry Fork Creek will cause injury to other users. Empirical data is presented to illustrate the decrease in water to downstream

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users and the increase in percentage of shrink as water volume decreases.


The intent to enlarge the water right is manifested by recent preparation of new ground for irrigation and the additional water available for the 18 days by replacing 1904 with 1885 water right.

The historical public use of the Antelope valley for multiple use is supported by the high volumn of travel to the recreational areas. It would be inconceivable for the public to approve any action that would reduce the stream flow affecting recreation they have enjoyed for years. The Siegel-Horton/Clark sales agreement illustrates the importance of economic and aesthetic value of water and the effects on land values.

Data was presented to show return flow or lack of return flow and the excessive percentage of shrink if one half of the original water request is diverted to the Dry Fork area. We continue to object to the original proposal or the modified proposal as presented in the exception to the Preliminary Order. This is not in the best interest in the conservation of water.

Small amounts of water diverted from Cherry Creek and Antelope Creek may appear to be insignificant, but over time, when taken all together, it has a detrimental effect on downstream users and the environmental health of the valley.

Sincerely,

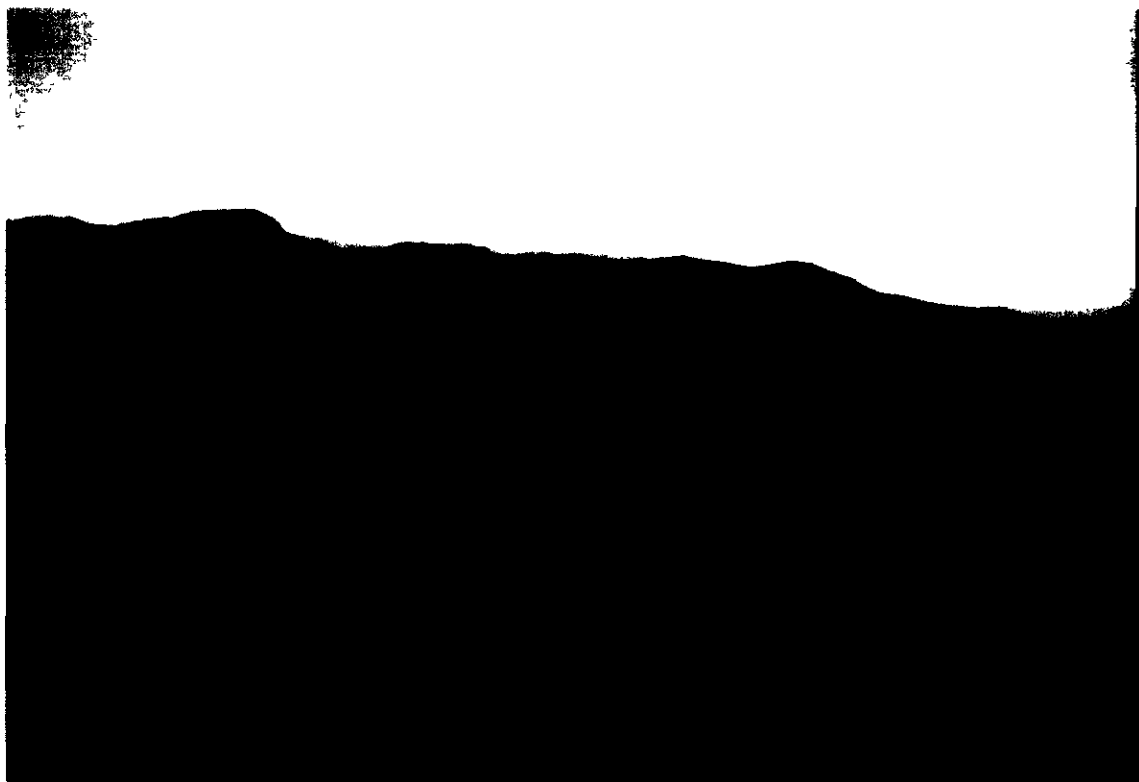
  
Tom Waddoups  
Representative  
Antelope Creek Protestants

Encl: 2

c: Craig A and Ellen B Clark  
Siegel-Horton LLC

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Dry Fork Creek as it crosses  
the county road at the Smith ranch.

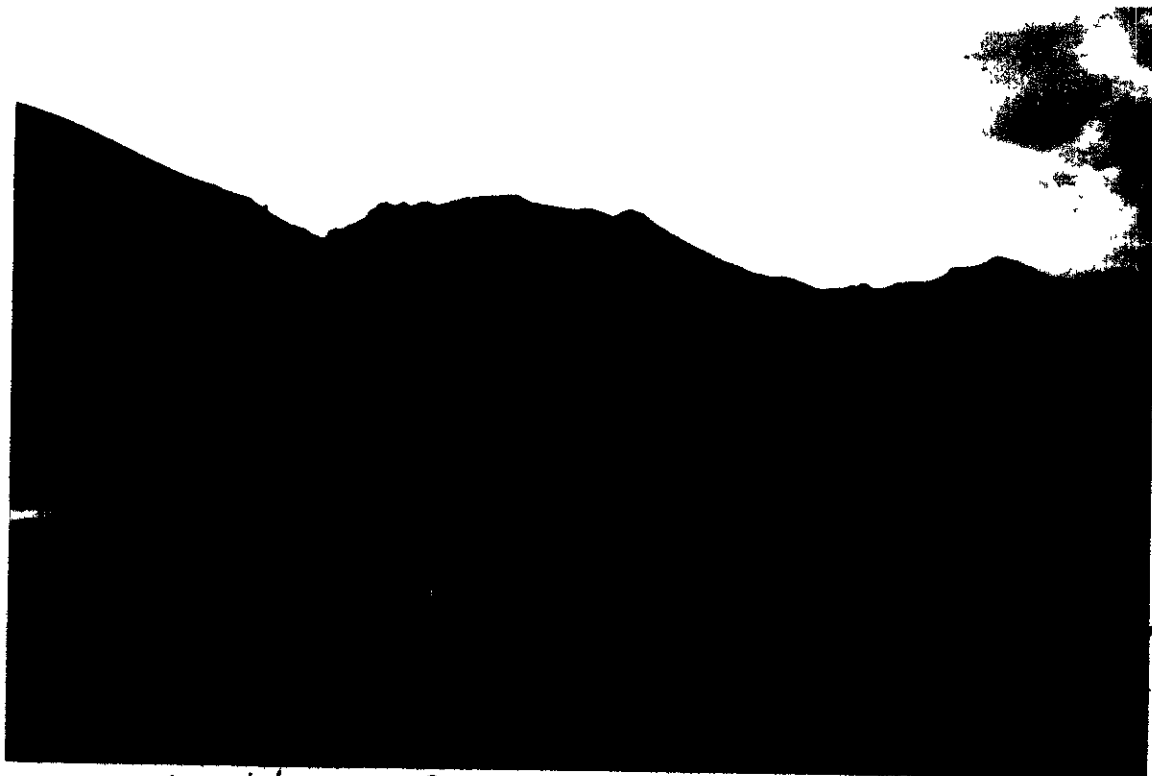
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Diversion ditch from Antelope Creek  
to Dry Fork Valley

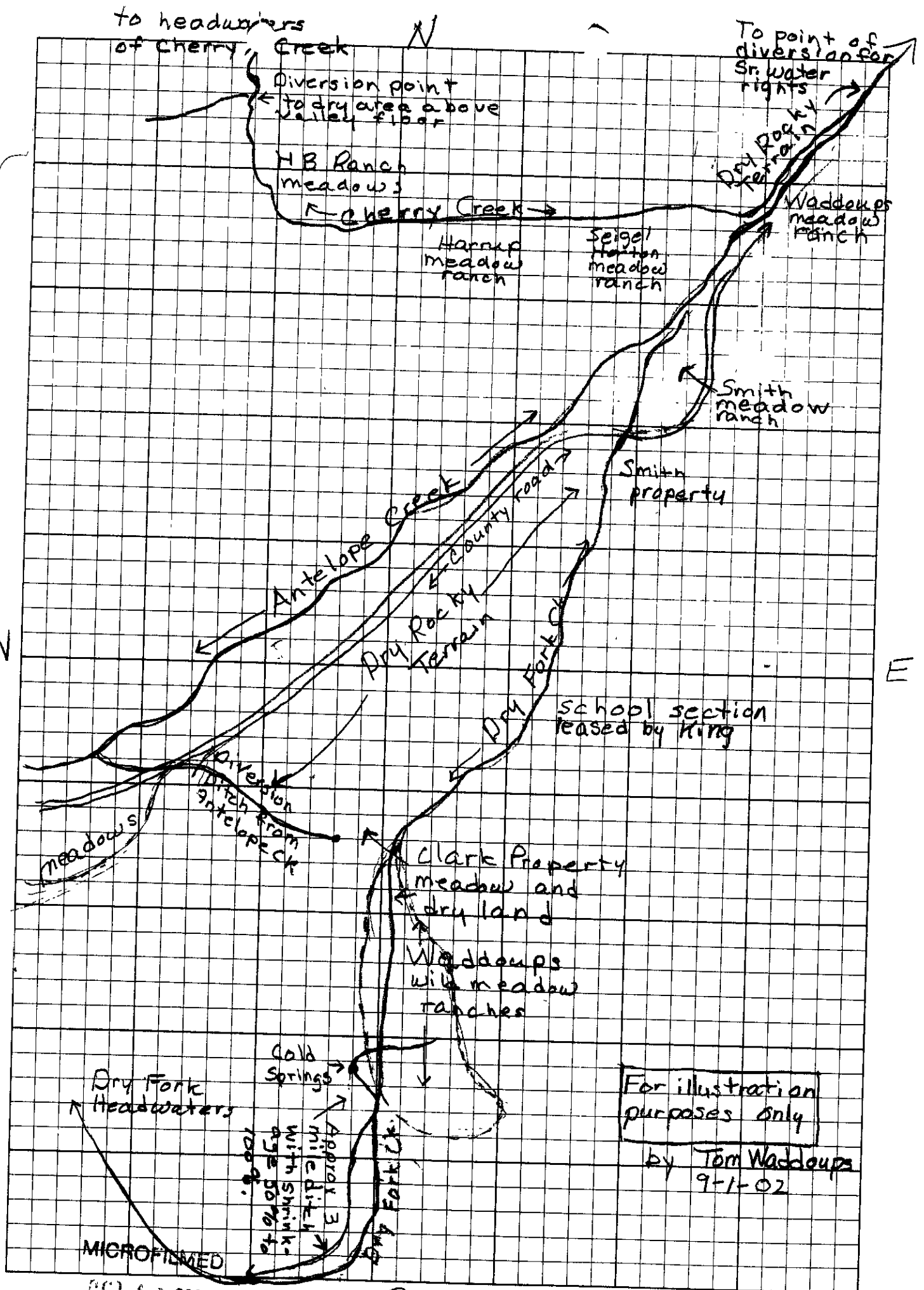


to point of use



west side of road adjacent to point  
of use

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State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

August 19, 2002

Dear Interested Party:

**RE: IN THE MATTER OF APPLICATION FOR TRANSFER NO. 69068 IN THE  
NAME OF SIEGEL-HORTON, LLC AND TRANSFER NO. 5823 IN THE NAME  
OF CRAIG A. CLARK AND ELLEN B. CLARK**

Enclosed for your information, review and response is a copy of a letter dated August 14, 2002 to William G. Gibbs from Don A. Barnett. The letter was sent to me by FAX on August 16, 2002, on behalf of the applicants in the above captioned matter. I am forwarding a copy to the parties, since I can not determine from the applicant's submittal that the applicants have served the parties as required by IDAPA Rule 37.01.01302 (Rule of Procedure 302).

Although the transmittal letter from Mr. Gibbs is titled SUBMISSION OF APPLICANTS, I am treating the submittal as exceptions to the Preliminary Order issued on July 1, 2002. IDAPA Rule 37.01.01730.02.c (Rule of Procedure 730.02.c) provides that opposing parties shall have fourteen (14) days to respond to exceptions that have been filed. Please consider that the fourteen (14) day response period starts from the date the applicants served you with a copy of their submittal, if they served you, or the date of this letter, whichever is earlier.

Please recognize that if you file a response to the exceptions, you also are required to serve all the other parties with your response.

If you have questions, please feel free to contact me.

Sincerely,

L. GLEN SAXTON, P.E.  
Hearing Officer

Encl: 1

c: See Service List

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

IN THE MATTER OF APPLICATION )  
FOR TRANSFER NO. 69068 IN THE )  
NAME OF SIEGEL-HORTON, LLC AND ) **SUBMISSION OF APPLICANTS**  
TRANSFER NO. 5823 IN THE NAME )  
OF CRAIG A. AND ELLEN B. CLARK )  
\_\_\_\_\_ )

Applicants attach an analysis of the proposed Transfer by Mr. Don Barnett of Barnett Intermountain Water Consulting for your consideration. Applicants submit the analysis by Mr. Barnett is not only persuasive but irresistible.

1. Applicants have carried the "burden of going forward" with the information applied in the Application together with that presented at the hearing and subsequent thereto.
2. Protestants provided nothing.
3. Applicants submit that the evidence presented requires that the Application as submitted should be approved.
4. In any event, the Department can approve the partial transfer as suggested by Mr. Barnett and as to which no protest can have any validity.

Wherefore Applicants request the Application be approved as originally submitted, or in any event a transfer be approved of one-half the water rights as originally requested.

Very truly yours,

  
William G. Gibbs  
For Applicants Craig and  
Ellen Clark

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of August, 2002, a copy of a letter issued by L. Glen Saxton, IDWR hearing officer, dated August 19, 2002, was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756

BUZZ BANTA  
BOX 491  
ARCO ID 83213

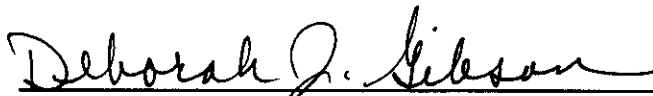
SIEGEL-HORTON LLC  
19501 JACKNIFE LN  
OLA ID 83657

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

WILLIAM G GIBBS  
657 18<sup>TH</sup> AVE  
SALT LAKE CITY UT 84103

RONALD D CARLSON  
REGIONAL MANAGER  
IDAHO DEPT. OF WATER RESOURCES  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718



Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau

CERTIFICATE OF SERVICE

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AUG 16 2002

William G. Gibbs  
LAW OFFICES

Department of Water Resources

TO: Mr. Glenn Sexton, Hearing Officer  
FROM: Wmly  
DATE: 8-16-02  
RE: Clark Transfer

NO. OF PAGES INCLUDING COVER SHEET: \_\_\_\_\_

COMMENTS:

Following is our final  
submission

Wmly

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657 18th Avenue • Salt Lake City, Utah 84103 • Phone: (801) 355-1053 • Fax: (801) 355-1018

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

IN THE MATTER OF APPLICATION )  
FOR TRANSFER NO. 69068 IN THE )  
NAME OF SIEGEL-HORTON, LLC AND )  
TRANSFER NO. 5823 IN THE NAME )  
OF CRAIG A. AND ELLEN B. CLARK )

**SUBMISSION OF APPLICANTS**

Applicants attach an analysis of the proposed Transfer by Mr. Don Barnett of Barnett Intermountain Water Consulting for your consideration. Applicants submit the analysis by Mr. Barnett is not only persuasive but irresistible.

1. Applicants have carried the "burden of going forward" with the information applied in the Application together with that presented at the hearing and subsequent thereto.
2. Protestants provided nothing.
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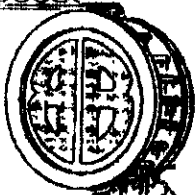
Wherefore Applicants request the Application be approved as originally submitted, or in any event a transfer be approved of one-half the water rights as originally requested.

Very truly yours,

  
William G. Gibson  
For Applicants Craig and  
Ellen Clark

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**BARNETT INTERMOUNTAIN WATER CONSULTING**

106 West 500 South, Suite 101  
Bountiful, Utah 84010-6232  
(801) 292-4662  
FAX (801) 524-6320

August 14, 2002

William G. Gibbs, Esq.  
657 18<sup>th</sup> Avenue  
Salt Lake City, Utah 84103

RE: Review of Preliminary Order on Applications for Transfer No.s 69068 and 5823 in  
the Name of Siegel-Horton, LLC and Craig A. and Ellen B. Clark, Respectively.

Dear Mr. Gibbs:

Pursuant to your request I have reviewed the above referenced preliminary order and have also discussed further the hydrology of Little Antelope Creek with Doug Rosenkrance, the water master. As you know, I was not in attendance at the hearing but I have reviewed the findings, summary and conclusions within the preliminary order. I concur with Conclusions 1, 2 and 3. Conclusion 4 is purely a legal interpretation of the law.

I am confused as to why there is a Conclusion 5. I think I understand the concern of the Hearing Officer, but I don't understand why such is unique to these proposed transfers. The reason that more acres won't be irrigated under the transfers is that it would be illegal. The applicants could irrigate more acreage than is allowed under their rights without the transfers now...except that it would be illegal. If the Hearing Officer's concern lies in the fact that after the transfers are approved there will be mixed priority rights on the same general lands and that it would be difficult to police or determine whether an expansion of the earlier priority right is occurring, then I would think that the applicants could resolve the concern by designating which lands on each of their parcels are to be irrigated with which priority water right (i.e. Siegel-Horton could designate which 80 acres are to receive the 1904 priority water and which 177 acres are to receive the 1885 priority water. Likewise, Clark could designate which 80 acres are to receive the 1904 priority water and which 80 acres are to receive the 1885 priority water). Again, I don't understand why this concern is unique to these applications. Clearly there are many many examples of multiple priority water rights associated with common parcels of land. In fact, in the SRBA it is common for IDWR to recommend multiple rights with different priorities now to a common permitted place of use. Nonetheless, if I have correctly understood his concern, I think that you could suggest the above described remedy.

I have spoken with the water master regarding Conclusion 6. Of course, Conclusion 6 is simply that the applicants did not meet their burden of proving that there will not be an enlargement, not that there will in actuality be an enlargement. Rosenkrance indicated that the typical flow of

Don A. Barnett, P. E.

Jack A. Barnett, P. E.

---

Water Resources - Water Rights - Ground-water Hydrology - Drinking Water Source Protection

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## BARNETT INTERMOUNTAIN WATER CONSULTING

William G. Gibbs, Esq.

August 14, 2002

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Antelope Creek in this reach when he is in regulation is about 4000 inches (80 cfs). Due to diversions, the flow may drop to about 3000 inches (60 cfs) at the lower point of diversion. There is a little tributary in-flow between the two points of diversion, but he doesn't note any significant gains or losses. Much more importantly, however, is the regulation within the reach. In his regulation this is all treated as one reach. Different priorities are not on or off between the two points of diversion. If a 1904 priority right is to be shut off it wouldn't matter where the point of diversion is located within this stretch of the stream. Likewise, an 1885 priority right would be regulated at the up-stream point of diversion similar to the down-stream point. Such may not be true on bigger systems or if the transfers proposed moving water further up or down the system. But on this system, these two points of diversion are in the same reach and treated similarly. Hence, the concern raised in the conclusions does not apply to these proposed transfers as it might in another system. There will be no betterment or impairment to any right due to the proposed transfer. It would be important that IDWR rely on the observations and input from the water master and his mode of regulation on this matter. My understanding is that there was not any conflicting information present by the protestants at the hearing, and hence, it would be good to get the water master to make a statement regarding his observations and regulation.

I disagree with Conclusion 7 and find that it conflicts with Conclusion 3. To my knowledge, the protestants provided no measurements, data, or analyses to show how the moving of 1.6 cfs up stream over an average of an 18-day period each year would "decrease the natural vegetation and animal habitat along Antelope Creek and will damage economic and aesthetic values of their property." Finding 18 indicates that the protestants "contend[ed]" these concerns but I find nowhere that they came "forward with evidence regarding matters of public interest" (see Conclusion 3). How can the applicants "overcome" the protestants' concerns when they are not established? Protestants should be held to the same burden of proof established for the applicant in the order and show empirically the impact to vegetation, habitat and property values. Hence, I believe that Conclusion 7 should read: "The protestants did not establish how the moving of 1.6 cfs upstream 3 miles during an average of 18 days each year would impact vegetation, habitat and property values. Hence, the Hearing Officer does not find one way or the other on this matter."

Conclusions 8 and 9 are simply recitations of above conclusions, principally Conclusions 5, 6 and 7 which we have discussed above and which can be remedied (Conclusion 5), answered with input from the water master (Conclusion 6), or should be modified (Conclusion 7). Hence, based on the above discussion of the conclusions, I don't find why the Department shouldn't approve the transfers.

However, as you and I have discussed, and as I understand the system from the water master, there is one area of concern not discussed in the Conclusions of Law, though it is raised in

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## BARNETT INTERMOUNTAIN WATER CONSULTING

William G. Gibbs, Esq.

August 14, 2002

Page 3

Finding 16, which I believe effects the approvability of the transfers. My understanding from the water master is that this is at the heart of the protestants' true concerns. The concern has to do with the hereafter versus heretofore return flow from the irrigation uses. Historically, the waters were used to for the irrigation of meadow hay in close proximity to Antelope Creek. Under the transfer it is proposed to take the water to lands in the Dry Fork drainage. Dry Fork is tributary to Antelope Creek close to where the waters would have historically returned from the old Danicks home place. Hence, the concern is not over the location of the return but the amount of return. Historically, probably about 50% of the water diverted on to the home place lands would have returned to the stream and been available for downstream diversion. Some years there is surface return flow from the Dry Fork lands to Antelope Creek. However, in a year like this year, I understand from the water master that there is very little, if any, return flow from Dry Fork. If the transfer applications change the amount of return flow then during the average 18-day period each year, downstream users could be impacted.

However, the Director is not limited to simply approving or rejecting an application, he can apply conditions to the approval to protect other water rights. If one were to take the extreme position that 100% of the waters diverted to Dry Fork are consumed and don't return to Antelope Creek, then the approval could limit the up-stream transfer to 50% (the historic consumption) of the historic diversion. Thus in years when there is no surface return flow from Dry Fork to Antelope Creek, the approval would limit the up-stream transfer to 0.80 cfs, leaving the remaining 0.80 cfs in the stream to satisfy instream and downstream demands and replicate return flow amounts. In wet years when return flows from the Dry Fork lands reach Antelope Creek, the restriction could be lifted. Further, the restriction would only apply during the period when the 1904 priority rights are off and the 1885 priority rights are being honored. When the 1904 priority rights are on, the full 1.6 cfs could be diverted at the upper point of diversion, and of course, when the 1885 priority rights are off, no diversion at either location would occur.

I hope that the above review of the Proposed Order are helpful. Should you have any questions regarding my review please contact me.

Sincerely,



Don A. Barnett, P.E.

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OCT 17 2002

William G. Gibbs  
LAW OFFICES

TO: Mr. L. Glen Saxton, Hearing Officer  
FROM: Craig + Ellen Clark  
DATE: 7-31-02  
RE: Water transfers # 69068 + 5823

NO. OF PAGES INCLUDING COVER SHEET: \_\_\_\_\_

COMMENTS:

Mr. & Mrs. Clark have requested I send this letter to you.

We believe there are the following matters that should be considered before a Final Order is issued:

1. The only information from the Water Master in the affected area is a letter in response to a question from Petitioner. It does not meet the requirements of the law for information and recommendation from him.
2. The information and recommendations should be available before the Final Order is issued. The State has the responsibility to obtain this information.

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2. We believe that the law provides that the State Engineer shall approve the Application unless any of those items listed by the Hearing Officer in P & of his Preliminary Order are shown to exist. We submit that none of the so listed were found by evidence presented at the Hearing to exist. The Hearing Officer took the position in his Preliminary Order that the burden of proof was on the Petitioner to show the negative. This is not in accordance with the law.

3. The Water Engineering Consulting firm whom Petitioners have engaged needs an additional 15 days to complete their study.

The Petitioners therefore request:

1. The Water Masters Report be obtained
2. The Hearing Officer review the Burden of Proof Issue.
3. The Petitioner be granted additional time

William G. Gibbs  
for Petitioners

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State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

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

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

July 16, 2002

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756

TRILBY MCAFEE  
3721 ANTELOPE RD  
MOORE ID 83255

BUZZ BANTA  
BOX 491  
ARCO ID 83213

JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 83255

SIEGEL-HORTON LLC  
19501 JACKKNIFE LN  
OLA ID 83657

**RE:** In the Matter of Application for Transfer No. 69068 in the name of Siegel-Horton, LLC., and Transfer No. 5823 in the name of Craig A. Clark and Ellen B. Clark

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **Order Granting Petition for Reconsideration** in the above-entitled matter.

If you have any questions, please contact either Glen Saxton or myself at (208) 327-7900.

Sincerely,

Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau

Enclosure

C: IDWR - Region

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OCT 17 2002

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OCT 17 2002

**CRAIG & ELLEN CLARK****PO BOX 65****NEW CASTLE, UTAH 84756****435-439-5404****RECEIVED****JUL 16 2002**

Department of Water Resources

July 12, 2002

L. Glen Saxton, P.E., Hearing Officer  
State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Boise, Idaho 83706

**REF: PETITION FOR RECONSIDERATION** in the matter of Application for Transfer No 69068 in the name of Siegel-Horton, LLC. And Transfer No 5823 in the name of Craig A. Clark and Ellen B. Clark

The order to deny both of the above transfers does not appear to be based on factual information or accurate analysis for the following reasons:

1] Doug Rosenkrance, Watermaster, stated that Antelope Creek is treated as one stream for its full length. Water rights are shut off as to their date of priority on the entire stream. The date 1904 or 1885 water rights would be shut off would be exactly the same at either diversion in question for these transfers. Return flows between the two points of diversion are not relevant. Clearly, moving the rights as proposed in the applications would not enlarge the supply of water available to the rights.

2] The analysis states that "While the rate of diversion is not enlarged, if the right is used for a longer period of time or upon more acres, a larger volume of water will be diverted from the water source, enlarging the use and injuring other water rights." This is simply not accurate. Water volume is a factor of rate of diversion and time measured at the point of diversion. Number of acres irrigated or delivery ditch losses are not considered in water volume calculations.

3] Measuring devices at the point of diversions, as now required by Idaho Department of Water Resources, will control the volume of water delivered to each water right

**MICROFILMED****OCT 17 2002**

4] The applications will not enlarge water use and will improve the ecology along the lower section of Dry Fork Creek which is a tributary of Antelope Creek

5] Clearly, the irrigation of alfalfa hay is a more beneficial and efficient use of water than poorly drained meadows. This is certainly consistent with conservation of the water resources within the state of Idaho.

We request that the preliminary order be changed to approval or that a further hearing should be held.

Sincerely,

Craig Clark

A handwritten signature in cursive script, appearing to read "Craig Clark", with a long horizontal flourish extending to the right.

MICROFILMED

OCT 17 2002



William G. Gibbs  
LAW OFFICES

TO: Mr. L. Glen Saxton, Hearing Officer  
FROM: Craig & Ellen Clark

DATE: 7-11-02

RE: Transfers # 69068 + 5823

NO. OF PAGES INCLUDING COVER SHEET: 3

COMMENTS:

Enclosed is a Petition for Reconsideration regarding the above Applications for Transfer.

We also request the record be held open until July 31, 2002 so that we may file additional papers.

Thank you  
Craig & Ellen Clark  
by Wm. G. Gibbs

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OCT 17 2002

**CRAIG & ELLEN CLARK****PO BOX 65****NEW CASTLE, UTAH 84756****435-439-5404**

July 12, 2002

L. Glen Saxton, P.E., Hearing Officer  
State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Boise, Idaho 83706

**REF: PETITION FOR RECONSIDERATION** in the matter of Application for Transfer No. 69068 in the name of Siegel-Horton, LLC. And Transfer No. 5823 in the name of Craig A. Clark and Ellen B. Clark

The order to deny both of the above transfers does not appear to be based on factual information or accurate analysis for the following reasons

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2) The analysis states that "While the rate of diversion is not enlarged, if the right is used for a longer period of time or upon more acres, a larger volume of water will be diverted from the water source, enlarging the use and injuring other water rights." This is simply not accurate. Water volume is a factor of rate of diversion and time measured at the point of diversion. Number of acres irrigated or delivery ditch losses are not considered in water volume calculations.

3) Measuring devices at the point of diversions, as now required by Idaho Department of Water Resources, will control the volume of water delivered to each water right.

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4) The applications will not enlarge water use and will improve the ecology along the lower section of Dry Fork Creek which is a tributary of Antelope Creek

5) Clearly, the irrigation of alfalfa hay is a more beneficial and efficient use of water than poorly drained meadows. This is certainly consistent with conservation of the water resources within the state of Idaho

We request that the preliminary order be changed to approval or that a further hearing should be held

Sincerely,

Craig Clark

A handwritten signature in black ink, appearing to read "Craig Clark", with a long horizontal flourish extending to the right.

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JOHNNY KING  
4343 ANTELOPE RD  
MOORE ID 82355

4a. Article Number

7000/670 0013 9129 8396

Service Type

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

7. Date of delivery

7/5/02

5. Received By: (Print Name)

JOHNNY KING

6. Signature: (Addressee or Agent)

X JOHNNY KING

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

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RESOURCES  
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1301 N ORCHARD ST  
BOISE ID 83706

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3. Article Addressed to:

CRAIG A CLARK  
ELLEN B CLARK  
PO BOX 65  
NEW CASTLE UT 84756

4a. Article Number

7000 1670 0013 9129 8433

4b. Service Type

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

4. Date of Delivery

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5. Received By: (Print Name)

Ellen B. CLARK

6. Signature: (Addressee or Agent)

X Ellen B Clark

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

1. ☐ Addressee's Address
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3 Article Addressed to:

SIEGEL-HORTON LLC  
19501 JACKKNIFE LN  
OLA ID 83657

4a. Article Number

70001670001391298419

4b. Service Type

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

7. Date of Delivery

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5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

XO-North

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

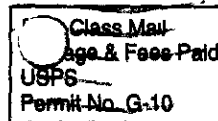
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3. Article Addressed to:

TRILBY MC AFEE  
3721 ANTELOPE RD  
MOORE ID 83255

34-300 & 34-442

5. Received By: (Print Name)

Trilby McAfee

6. Signature: (Addressee or Agent)

X

Tally McAfee

4a. Article Number

7000 1670 0013 9129 8402

4b. Service Type

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

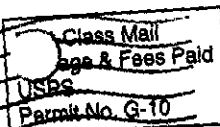
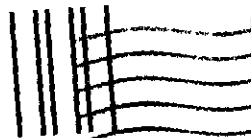
7. Delivery

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

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Department of Water Resources



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**3 Article Addressed to:**

BUZZ BANTA  
BOX 491  
ARCO ID 83213

**4a. Article Number**

7000 1670 0013 9129 842

**4b Service Type**

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

**4c Date of Delivery**

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**5. Received By: (Print Name)**

34-300 & 34-442 OCT 17 2002

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

**6. Signature: (Addressee or Agent)**

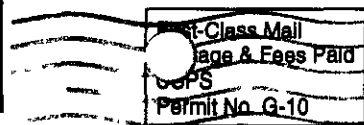
X *Buzz Banta*

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Department of Water Resources



July 2, 2002

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City, State, ZIP+4	<i>Arco Id. 83213</i>

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 Street, Apt. No., or PO Box No.  
*4343 Antelope Rd*  
 City, State, ZIP+4  
*Moore, Id. 82355*

7000 1670 0013 91216 8419

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Sent To	<i>Siegel-Horton LLC</i>
Street, Apt. No. or PO Box No.	<i>19501 Jackknife Ln.</i>
City, State ZIP+4	<i>Ola, Id. 83657</i>



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

July 2, 2002

Re: In the matter of Application for Transfer No. 69068 in the name of Siegel-Horton, LLC. And Transfer no. 5823 in the name of Craig A. Clark and Ellen B. Clark.

Dear Interested Parties:

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

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

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

Sincerely,

Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau

Enclosures

c: IDWR - Regional Office Manager

**MICROFILMED**

**OCT 17 2002**

## **CERTIFICATE OF SERVICE**

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

## **FINAL ORDER**

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

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

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

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

## **APPEAL OF FINAL ORDER TO DISTRICT COURT**

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

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

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

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

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

### **PETITION FOR RECONSIDERATION**

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

### **EXCEPTIONS AND BRIEFS**

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

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

### **ORAL ARGUMENT**

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

MICROFILMED  
JUL 17 2002

State of Idaho  
Department of Water Resources



## ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR TRANSFER  
NO. 69068 IN THE NAME OF SIEGEL-HORTON, LLC AND TRANSFER  
NO. 5823 IN THE NAME OF CRAIG A. CLARK AND ELLEN B. CLARK

Date: May 22, 2002  
Time: 9:30 a.m.  
Location: IDWR Conference Room  
900 N. Skyline Dr.  
Idaho Falls, ID 83402-1718  
Hearing Officer: L. Glen Saxton

\*\* Please Print \*\*

NAME	ADDRESS	REPRESENTING (Applicant, Protestant)
Jimmie K Waddoups	4253 Antelope Rd	Protestant
Craig Clark	Dry Fork Ranch	Applicant
Buzz Banta	Bx 491 Arco, ID 83212	Applicant
Johnny King	Moore Idaho 83255	Protestor
Tom Waddoups	4253 Antelope Rd. Moore, Ida. 83255	Antelope valley water user
Beth Waddoups	4253 Antelope Rd Moore, Ida 83255	
Elsie Waddoups	4253 Antelope Rd #5111 Idaho Falls, ID	Protestor
Randy McAffee	3721 Antelope Rd Moore	Protestor
Tailby McAffee	3721 Antelope Rd Moore	Protestor
Mark King	4343 Antelope Rd. Moore, Ida.	Protestor
Donald Barnum	3646 West Antelope Rd	Protestor

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OCT 17 2002

**ROSTER OF ATTENDANCE - PAGE** \_\_\_\_\_

**\* \* Please Print \* \***

[illegible]

**MICROFILMED**  
**OCT 17 2002**





State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

**DIRK KEMPTHORNE**  
Governor

**KARL J. DREHER**  
Director

**MEMORANDUM**

To: L. Glen Saxton  
From: Karl J. Dreher  
RE: **APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410**  
Date: May 14, 2002

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

**IN THE MATTER OF APPLICATION FOR TRANSFER NO. 69068 IN THE  
NAME OF SIEGEL-HORTON, LLC AND TRANSFER NO. 5823 IN THE NAME  
OF CRAIG A. CLARK AND ELLEN B. CLARK**

Date: May 22, 2002  
Time: 9:30 a.m.  
Location: IDWR Conference Room  
900 N. Skyline Dr.  
Idaho Falls, ID 83402-1718

**MICROFILMED**

**OCT 17 2002**

### **CERTIFICATE OF SERVICE**

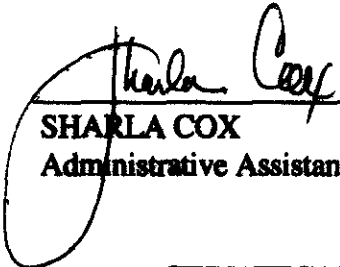
I hereby certify that on the 25<sup>th</sup> day of April, 2002, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

Trilby McAfee  
3721 Antelope Rd  
Moore ID 83255

Siegel-Horton LLC  
19501 Jacknife Ln  
Ola ID 83657

Craig Clark  
PO Box 65  
New Castle UT 84756

Buzz Banta  
Box 491  
Arco ID 83213

  
\_\_\_\_\_  
**SHARLA COX**  
Administrative Assistant

**CERTIFICATE OF SERVICE**

**MICROFILMED**  
**OCT 17 2002**

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE**

**STATE OF IDAHO**

**IN THE MATTER OF APPLICATIONS )  
FOR TRANSFER #5823 AND 69068 )  
IN THE NAME OF CRAIG CLARK AND )  
SIEGEL-HORTON, LLC )**

**NOTICE OF  
HEARING**

In June and August of 2000, these transfers were filed proposing an exchange of water rights. The applications were protested by numerous parties.

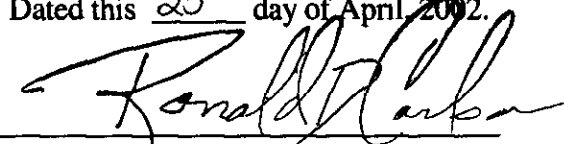
**THE DEPARTMENT HAS NOW SCHEDULED THE MATTER FOR  
HEARING ON MAY 22nd, 2002, AT 9:30 A.M., AT THE IDWR NORTH  
CONFERENCE ROOM IN IDAHO FALLS, ID.**

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

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

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

Dated this 25<sup>th</sup> day of April, 2002.



**RONALD D. CARLSON**  
Regional Manager

**NOTICE OF HEARING**

**MICROFILMED**  
MAY 1 2002

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
TRANSFER ANALYSIS SHEET

T69068

INITIAL REVIEW BY: HWT

1. Right number 34-003003 Applicant Siegel-Horton LLC

2. Type of right: ☐ Decree ☐ License ☐ Claim ☒ SRBA Recommendation

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. Map for remainder of right? ☐ Yes ☒ No

d. ☒ Check description of point(s) of diversion.

e. ☒ Check description of place of use

f. ☐ Check map (shows p.d. and p.u. after transfer).

g. ☐ Check for correct signature, notarization, and fee.

h. ☐ Check proof of ownership of right &/or land from which water is transferred. See 2 + 3 have questions

i. ☐ Check for expansion in use of right. Comments \_\_\_\_\_

j. ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) \_\_\_\_\_

k. ☒ Is use within a Watermaster District? ☒ Yes ☐ No

If yes, what district? WD 34 - Doug Rosenkrantz

Send copy, also send  
copy to

FINAL PROCESSING REVIEW BY: \_\_\_\_\_

1. Watermaster recommendation requested on \_\_\_\_\_ Received on \_\_\_\_\_

2. Reviewed by Adjudication Staff? ☐ Yes ☐ No

3. Is transfer published correctly? ☒ Yes ☐ No

4. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve

2. ☐ Deny

3. Conditions\* \_\_\_\_\_

4. By \_\_\_\_\_ Date \_\_\_\_\_

\*All uses within Watermaster District require special conditions

John King  
4343 Antelope Rd  
Moore, ID  
83255



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

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

EASTERN REGION  
June 5, 2001

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

Siegel-Horton  
19501 Jackknife Ln  
Ola ID 83657

RE: Application for Transfer No.: 69068

Dear Applicant:

Enclosed please find copies of the protests filed against the above referenced application for transfer of a water right. 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 enlargement in the use of the original water right?
- 3) Is the change consistent with the conservation of water resources within the state of Idaho?
- 4) Does the change conflict with the local public interest?

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

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

Respectfully submitted,

*Harold W. Jones*  
HAROLD W. JONES  
Water Rights Supervisor

HWJ:sc

cc: IDWR State Office

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001 17 2002



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

EASTERN REGION

June 5, 2001

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

Trilby McAfee  
3721 Antelope Rd  
Moore ID 83255

RE: Application for Transfer No. 69068

Dear Protestant:

This letter acknowledges receipt of the protest filed by you against the above referenced applications 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 transfer?
2. Does the change constitute enlargement in the use of the original right?
3. Is the change consistent with the conservation of water resources within the state of Idaho?
4. Does the change conflict with the local public interest?

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

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question. The address is as follows:

SIEGEL-HORTON LLC  
19501 JACKKNIFE LN  
OLA ID 83657

MICROFILMED  
JUN 17 2002

Page 2

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

Respectfully submitted,



HAROLD W. JONES  
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

MICROFILMED  
OCT 17 2002

Receipt # E026729

RECEIVED

MAY 21 2001

WATER RIGHT OBJECTION

Department of Water Resources  
Eastern Region

We the undersigned object to the proposed Notice of Water Right Transfer No. 69068.

We object to diverting water from main Antelope Creek and its wetlands ecosystem through a ditch located in dry, rocky cultivated land resulting in massive water loss.

This proposed transfer would permanently reduce Antelope Creek stream flow disturbing the natural habitat that is now present in the stream and surrounding lands. Diverting water from the Antelope Valley to the Dry Fork Valley would adversely affect the surface and sub-irrigation structure that now prevails in Antelope Valley where portions of the sub-water is returned to the creek.

Water in Antelope Valley is generally in short supply during the latter part of the irrigation season and is not adequate to fill existing water rights. Moving the diversion point of this 1885 water right to a location above its current diversion point, further from users on the lower part of the valley, will result in more water shrinkage. This will adversely affect users on the lower end of Antelope Creek during this critical water usage period for 1904 water is generally not available. The net effect of this transfer would be to divert more water to recently cultivated land on dry alluvial plains from wild meadowlands. These meadowlands accumulate water during the early irrigation season, when water is usually plentiful, and return water to the lower portions of Antelope Creek during the late irrigation season when water is scarce. Transferring water from lush meadow sub-irrigated land to dry cultivated ground is not consistent with sound water management. This does not constitute the efficient use of the limited supply of water in Antelope Valley.

We, the residents of Antelope Valley who oppose this transfer, are extremely concerned with any action that will affect our water source during the latter part of the irrigation season. It is during this time that water is generally in short supply and water rights often go unfilled. We want to maintain our beautiful valley with the natural vegetation and animal habitat that is dependent on late season water supply. This is our home. We are not land speculators. Our only interest is to maintain the valley in its present state and continue to make a living with the limited water available for our ranches and farms.

We vigorously object to this water transfer for all aforementioned reasons.

MICROFILMED

1 OCT 17 2002



- |     | NAME   | ADDRESS                                  |
|-----|--|--|
| 10. | Donald Barnum  | Rt 1 Box 65 Moore 83255                  |
| 11. | Alec Van Etten                                       | Rt. 1 Box 61A Moore, Id.<br>83255        |
| 12. | Rester H. Bell                                       | Rt. 1 Box 58 Moore, Id.<br>83255         |
| 13. | Maj. Doherty<br>County Divide Ranch<br>A.M. Bradford | 3776 W <del>to</del> 3000 N. Darlingtc   |
| 14. |  |  |
| 15. | Tim Sayer  | 3526 W Antelope Road                     |
| 16. | Rick   | Rt#1 Box 60 Moore Id<br>3550N 3668W      |
| 17. | Randy McAffee<br>Tilby McAffee                       | 3721 antelope Rd<br>Moore Idaho<br>83255 |

We designate Trilby McAfee of 3721 Antelope Road, Moore, ID 83255  
Phone: (208) 554-3102 to be our personal representative to address all matters  
concerning this proposed water transfer.

<u>NAME</u>	<u>ADDRESS</u>
1. Krusty King	HC 60 Box 285 Moore
2. John D King	4340 Antelope Moore, Id
3. Harold E. Smith Jr.	4557 Antelope Rd. Moore, Id
4. Jim Kallberg WADDOUPS Antelope Ranch	4253 Antelope Rd Moore ID 83255
5. Philip Keller	4095 Antelope RD. moore ID 83255
6. Mike Seal Antelope Valley Ranch	4615 CHERRY CR. RD Moore ID. 83255
7. S. S. Harrop Under Protest	HC 60 Box 240 Moore ID 83255
8. David Tule	HC 60 Box 255 Moore ID 83255
9. Peter Shawna 143 S 1200 W Blackfoot Id 4	

MICROFILMED<sup>2</sup>

OCT 17 2002

RECEIVED

MAY 11 2001

Department of Water Resources  
Eastern Region

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 *MAY 3, 2001*

and ending with the issue dated

*MAY 10, 2001*  
*Colleen Babcock*

STATE OF IDAHO }

COUNTY OF BUTTE }

On this *10th* day of *May*

in the year of *2001*, before me, a Notary Public,

personally appeared

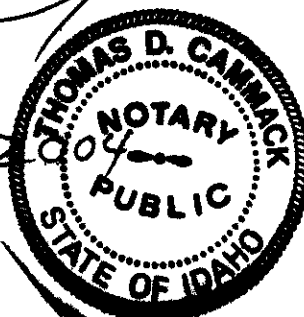
*Colleen Babcock*

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. Cannack*  
Notary Public for Idaho

Residing at *Arco, Id*

My commission expires *1-23-2004*



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OCT 17 2002

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATERMASTER

RECEIVED

APR 27 2001

Application No: 69068

Applicant's Name: Siebel - Horton, LLC

Department of Water Resources  
Eastern District Office

Watermaster's Recommendation:

- a) \_\_\_\_\_ I do not oppose approval of this application.
- b) \_\_\_\_\_ I do not oppose approval of this application if it is conditioned as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- c)  X  I oppose approval of this application for the following reasons:  
  
Neighboring irrigators feel this transfer will have a negative impact on the deliverability of their water rights.
- d) \_\_\_\_\_ Additional Comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this 26<sup>th</sup> day of April, 2001.

Water District No: 34

  
Doug Rosenkrance

MICROFILMED  
APR 27 2002



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

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

EASTERN REGION

April 25, 2001

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

Doug Rosenkrance  
WATERMASTER #34  
PO Box 53  
Mackay ID 83251

RE: Application for Transfer #69068

Dear Doug:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department by May 21, 2001.

If you have any questions, please feel free to contact us. Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones  
Water Right Supervisor

HWJ:sc

enc.

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OCT 17 2002



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

EASTERN REGION

April 25, 2001

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

John King  
4343 Antelope Rd  
Moore ID 83255


RE: Applications for Transfer #69068

Dear John:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. The last date of protest is May 21, 2001, and we are required to take final action shortly thereafter.

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

Respectfully submitted,

  
Harold W. Jones  
Water Right Supervisor

HWJ: sc

Enc.

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OCT 17 2002



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

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

**EASTERN REGION**

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

April 24, 2001

SIEGEL - HORTON LLC  
19501 JACKNIFE LANE  
OLA ID 83657

RE: Application for Transfer No 69068  
Water Right No(s) 34-300

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right transfer application. Please refer to the above referenced transfer number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the Arco Advertiser on May 3 and 10, 2001. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.>

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

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

Sincerely,

Harold W Jones  
Water Right Supervisor

HWJ::sc

**MICROFILMED**

**OCT 17 2002**



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

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

**EASTERN REGION**

April 24, 2001

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

**Legal Notice Department**  
ARCO ADVERTISER  
PO BOX C  
ARCO ID 83213

RE: Transfer No. 69047 and 69068

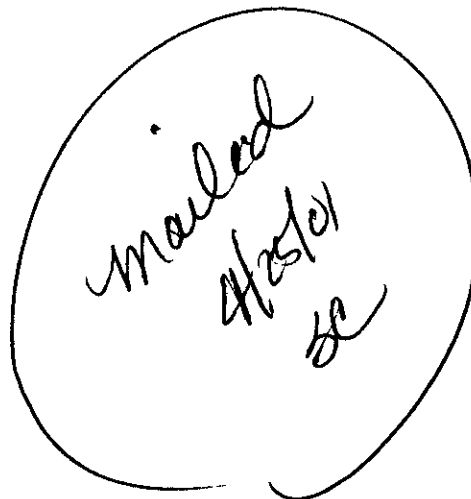
**Dear LEGAL NOTICE DEPARTMENT:**

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). 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. Please send the affidavit and bill to this office before May 21, 2001. Your cooperation is appreciated.

Sincerely

Sharla Cox  
Administrative Assistant



**MICROFILMED**  
**OCT 17 2002**



NOTICE OF PROPOSED CHANGE OF WATER RIGHT

TRANSFER NO. 69068

SIEGEL - HORTON LLC, 19501 JACKKNIFE LANE OLA ID 83657, has filed Application No. 69068 for changes to the following water rights within BUTTE County:

Right No. 34-300

Priority 6/1/1885

Source ANTELOPE CREEK

Use IRRIGATION (257 acres) 5.90 CFS

Total Amount 5.90 CFS

Point(s) of Diversion SESW S3 T04N R24E  
SWNE S9 T04N R24E  
NWSE S9 T04N R24E  
SWNW S10 T04N R24E  
NWSW S10 T04N R24E

Place of Use S10 T04N R24E  
S2 T04N R24E  
S3 T04N R24E  
S9 T04N R24E

The purpose of the transfer is to change a portion of the above rights as follows.

The applicant and Craig Clark (protested transfer #5823) are applying to trade 1.60 cfs of each of their water rights on Antelope Creek. The acres irrigated remain the same. Under this transfer 1.60 cfs of 34-00300 will move to 80 acres in the NE 1/4 Sec 20 T04N R24E and be diverted in the NWSE Sec 18 T04N R24E.

Any protest against the proposed change must be filed with the Department of Water Resources, together with a protest fee of \$25.00 for each application on or before May 21, 2001. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on May 3 and 10, 2001

MICROFILMED

OCT 17 2002